BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ALEC BABCOCK,

Claimant,

vs.

MH CONSTRUCTION EQUIPMENT CO,

Employer,

and

ZURICH AMERICAN INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 5065685

ARBITRATION

DECISION

Head Note Nos.: 1402.30, 2502, 2907

STATEMENT OF THE CASE

Alec Babcock, claimant, filed a petition for arbitration against MH Construction Equipment Company, as the employer, and Zurich American Insurance Company, as the insurance carrier. The undersigned heard this case on February 28, 2019, in Des Moines.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 9, Claimant's Exhibits 1 through 5 and Defendants' Exhibits A through I. Claimant testified on his own behalf and called his wife, Jennifer Babcock, to testify. Defendants called Chad Klein to testify. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. All parties filed their post-hearing briefs on March 11, 2019, at which time the case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. The extent of claimant's entitlement to healing period benefits, including both temporary total disability and temporary partial disability claims.

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

3. The proper commencement date for permanent disability benefits.

4. Whether penalty benefits should be assessed against defendants for allegedly unreasonably delaying or denying weekly benefits.

5. Whether costs should be assessed against either party and, if so, the amount of costs that should be assessed.

The hearing report identifies a request for an independent medical evaluation reimbursement, pursuant to Iowa Code section 85.39, as an additional disputed issue. However, defendants stipulated to claimant's entitlement to the independent medical evaluation fee and agreed to reimburse the same. A verbal order was entered on the hearing record directing defendants to reimburse claimant's independent medical evaluation fee. (Transcript, page 8) As a result, this issue will not be discussed and no further findings, conclusions, or orders will be entered with respect to claimant's request for reimbursement of the independent medical evaluation.

The hearing report also identifies a disputed issue pertaining to the credit defendants should receive for previously paid weekly benefits. In discussing this issue with counsel at the commencement of hearing, the undersigned ascertained that no findings or conclusions specific to the credit issue are required by the undersigned. Counsel indicated that they would be able to calculate the applicable credit to which defendants are entitled once I determine claimant's entitlement to healing period and permanent partial disability benefits. (Tr., pp. 8-9) Counsel are expected to perform those necessary calculations. If counsel cannot reach agreement as to how the credit should be calculated, either or both parties should file a timely rehearing for rehearing. Otherwise, the undersigned will rely upon counsel's statements and enter no findings of fact, conclusions of law, or orders pertaining to defendants' claimed credit.

Finally, the hearing report indicates there is a dispute as to past medical mileage. Once again, counsel indicated to the undersigned at the commencement of hearing that this issue could be resolved without further debate, findings of fact, or conclusions of law. Defendants consented to entry of a verbal order directing them to reimburse claimant for all past medical mileage and the undersigned entered a verbal order to this effect at the commencement of the arbitration hearing. (Tr., pp. 9-11) Therefore, no findings of fact, conclusions of law or additional orders will be entered pertaining to the issue of past medical mileage.

FINDINGS OF FACT

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

Alec Babcock is a 27-year-old gentleman, who lives near Riverside, Iowa. He has a general educational development (GED) certificate, but has not pursued further

education behind the high school level. Mr. Babcock joined the Army National Guard and served from 2010 to 2012. He received training in the military pertaining to power generation.

Claimant's employment history includes employment in the fast food industry, in a grain processing facility, as a train locomotive operator and switchman, working cleaning in an oil tank in North Dakota, and in general maintenance positions. Claimant's employment positons have been generally physical in nature. His complete employment history is included in Claimant's Exhibit 1, pages 2 through 5.

Mr. Babcock starting working for the employer, MH Construction Equipment Company in May 2016. Claimant worked full-time in a maintenance positon for the company, performing preventative maintenance, servicing, and repairing forklifts, pallet jacks, and industrial cleaning equipment for the employer's customers. (Claimant's testimony; Claimant's Ex. 1, p. 5) According to the job description, claimant was required to lift and carry at least 50 pounds, as well as items such as a radiator, water pump, starter, hydraulic pump and other parts required to service the machinery. (Joint Ex. 1, p. 2)

On October 20, 2016, Mr. Babcock was on-site at a customer's facility. He carried a forklift jack from his vehicle up some stairs. As he was opening the door and turning with the jack on his shoulder to enter the customer's facility, claimant's low back popped. Mr. Babcock called for assistance and was not able to finish his workday. Mr. Babcock recalls the injury occurring on Wednesday. He did not work on Thursday or Friday of that week. The employer admitted the injury and sent him for medical care the following week. (Claimant's testimony)

Andrew Patterson, M.D., evaluated claimant on October 24, 2016. Dr. Patterson confirmed the history of claimant's injury and documented low back symptoms that radiated into claimant's right leg. (Joint Ex. 2, p. 5) On October 26, 2016, John Klein, M.D., identified spasms in claimant's low back. (Joint Ex. 2, p. 10) Dr. Klein initiated physical therapy. (Joint Ex. 2, p. 11)

Claimant attended physical therapy but reported ongoing back pain in spite of 18 physical therapy visits. (Joint Ex. 3, p. 26) Therefore, Dr. Klein ordered an MRI of claimant's low back, which was performed on December 8, 2016. The MRI demonstrated a mild broadly based right paracentral to right lateral protrusion at L5-S1 of claimant's spine. (Joint Ex. 4, p. 27)

Mr. Babcock was referred to Chad Abernathey, M.D., a neurosurgeon, for evaluation. Dr. Abernathey recommended against surgical intervention but referred claimant to a pain clinic for evaluation. (Joint Ex. 6, p. 43) Tork Harman, M.D., a pain specialist, evaluated claimant on January 27, 2017. He administered an L5-S1 epidural injection. (Joint Ex. 4, pp. 31-32)

The initial injection did not improve claimant's symptoms and Dr. Harman repeated the procedure on February 20, 2017. (Joint Ex. 4, p. 33) The second epidural injection improved claimant's right leg pain, but did not improve his low back pain. (Joint Ex. 5, p. 41) Ultimately, claimant returned for evaluation by Dr. Abernathey, who confirmed he was not a surgical candidate. (Joint Ex. 6, p. 44)

Claimant obtained a second surgical opinion, performed by Patrick Hitchon, M.D., at the University of Iowa Hospitals and Clinics on July 10, 2017. Dr. Hitchon concurred that claimant's condition was not surgical in nature. (Joint Ex. 7, p. 48) Dr. Hitchon referred claimant to Joseph Chen, M.D., in the University of Iowa Hospitals and Clinic's pain clinic subspecialty.

Mr. Babcock also submitted to EMG testing in August 2017, which confirmed that he had moderate, acute L5 radiculopathy on the right side. (Joint Ex. 8, p. 68) This EMG provides objective findings that corroborate claimant's subjective reports of symptoms.

Dr. Chen evaluated claimant on March 16, 2018. He recommended a 30-pound occasional lifting restriction. (Joint Ex. 7, p. 55) He did not change that restriction until October 16, 2018. However, even in October 2018, Dr. Chen noted ongoing symptoms and suggested that claimant may qualify for comprehensive, inter-disciplinary treatment in the University of Iowa Hospital and Clinic's Spine Rehabilitation Program. (Joint Ex. 7, p. 64) Although Dr. Chen opined that claimant could work at full duty as of October 16, 2018, I find that to be unrealistic given the ongoing symptoms.

Dr. Chen ultimately declared claimant to be at maximum medical improvement, released him to work without medical restrictions, but noted that claimant qualified for an eight percent permanent impairment of the whole person as a result of the ongoing symptoms in claimant's low back and down his right leg. (Joint Ex. 7, p. 67) This is a significant impairment rating for a non-operative back and suggests significant ongoing symptoms, not likely compatible with full-duty work release.

Once released and declared to be at maximum medical improvement, Mr. Babcock obtained an independent medical evaluation performed by Mark C. Taylor, M.D., on December 3, 2018. Dr. Taylor agreed that claimant achieved maximum medical improvement on November 2, 2018. He assigned a nine percent permanent impairment of the whole person as a result of the work injury. However, Dr. Taylor opined that claimant is not likely capable of working at MH Construction in his former position. Dr. Taylor imposed a 30-pound lifting restriction on an occasional basis, noting he preferred the lifting be done between knee and chest heights. Dr. Taylor recommended that claimant be able to alternate sitting, standing, and walking as needed. Dr. Taylor also recommended limitations on claimant's walking of stairs, use of ladders, squatting, bending and kneeling. (Joint Ex. 9, p. 76)

Given the objective findings of the MRI and EMG, coupled with the consistent symptoms reported to various medical providers, I find claimant's testimony and that of his wife pertaining to his symptoms and abilities to be credible. Claimant's testimony about his abilities is most consistent with Dr. Taylor's restrictions. I find Dr. Taylor's opinions to be most credible in this record and specifically find that claimant requires the restrictions outlined by Dr. Taylor and that he has a nine percent permanent impairment of the whole person.

Claimant is a younger worker. At age 27, he has options for retraining and new lines of work that can improve his future earning capacity. On the other hand, claimant's work history is mostly manual labor. He has very limited education. This injury has taken away some of the physical abilities claimant relied upon to make a living through the date of injury.

Fortunately, claimant has obtained subsequent employment and was working full-time in maintenance at the University of Iowa Hospitals and Clinics at the time of the hearing. Unfortunately, claimant took about a 30 percent reduction in his earnings between the date of injury and the hearing date.

Mr. Babcock is clearly a motivated worker. Rather than sitting off work on healing period benefits, he sought new employment and commenced working for alternate employers since his date of injury.

While his injury is non-surgical at this time, claimant continues to have symptoms. He credibly testified that he could not return to many of his prior lines of employment due to his symptoms and restrictions. Claimant has sustained a moderate impact and reduction of his earning capacity. Again, his age is a benefit that should help him to recover some of his loss over time.

However, considering claimant's age, the situs and severity of his injury, his permanent impairment, permanent work restrictions, inability to return to some of his prior employment, his actual loss of earnings since the date of injury, his motivation level, as well as his educational background, employment history, ability to retrain, and all other factors of industrial disability outlined by the Iowa Supreme Court, I find that Mr. Babcock has proven a 25 percent loss of future earning capacity as a result of the October 20, 2016 work injury.

Mr. Babcock has also asserted a claim for temporary partial disability benefits. He seeks such an award from June 25, 2018 through July 8, 2018. During this two-week period, Mr. Babcock worked for a subsequent employer but earned less than he did on the date of injury. Claimant's Exhibit 3, page 28 provides an accurate summary as to claimant's actual earnings during this two-week period.

Claimant was clearly not at maximum medical improvement by June 25, 2018. Although he returned to work, he remained under medical restrictions from Dr. Chen at that time and was not capable of performing substantially similar employment. He earned $45.87 less than his stipulated gross average weekly earnings during the week ending July 1, 2018. He earned $175.87 less than his stipulated gross average weekly earnings during the week ending July 8, 2018.

Claimant also seeks an award of temporary total, or healing period, benefits. In addition to those already paid by defendants, claimant seeks an award of additional temporary total disability benefits from July 9, 2018 through August 5, 2018. He was not employed during this period, remained under medical restrictions from Dr. Chen during that period, and was not capable of performing substantially similar employment to that performed on the date of injury.

Mr. Babcock again seeks temporary partial disability benefits from August 6, 2018 through November 2, 2018. He was clearly under Dr. Chen's restrictions from August 6, 2018 through his return evaluation with Dr. Chen on October 16, 2018. On that date, however, Dr. Chen indicated that claimant could perform full duty work. Defendants contend that claimant's return to work in a maintenance job at the University of Iowa Hospitals and Clinics demonstrates that he was capable of substantially similar employment and disqualifies him from further temporary disability benefits.

I reject defendants' argument. Claimant worked in an accommodated status at the University of Iowa Hospitals and Clinics. He testified that the hospital permitted him to work within his medical restrictions and that he was never asked to go beyond his comfort level. I accept that testimony as accurate and it is not contradicted. I find that claimant was not capable of performing substantially similar employment during this period.

Defendants also contend that Dr. Chen's full duty release in October 2018 terminates any healing period benefits. However, I rejected Dr. Chen's restrictions. Mr. Babcock has objectively verifiable symptoms. He credibly testified about his symptoms and limitations. I find that claimant was not capable of performing substantially similar employment between August 6, 2018 and November 2, 2018, when maximum medical improvement was achieved.

Claimant also contends that the defendants unreasonably delayed or denied weekly benefits in this case. Claimant seeks penalty benefits for these delays or denials. Mr. Babcock asserts two theories upon which he asserts penalty benefits should be assessed.

First, claimant asserts that the defendants paid several weeks of benefits late. Claimant acknowledges that the delays were relatively minor, but asserts that there were several late payments without reasonable excuse. Claimant introduced Claimant's Exhibit 4, page 33, which he asserts demonstrates these late payments of benefits.

Review of Exhibit 4, page 33 demonstrates that defendants paid 14 weeks of benefits untimely. Most of the delays were only a couple of days. Yet, claimant has established delays in payment of these weekly benefits. Defendants have not offered any explanation, demonstrated no effort to contemporaneously convey the basis for delay, or demonstrated that they had good cause for the delays.

Claimant also contends that penalty benefits should be imposed for underpayment of claimant's weekly rate. Claimant challenged defendants' weekly rate on May 12, 2017. Defense counsel promptly responded and acknowledged an error on May 17, 2017. However, the underpayment was not rectified until June 8, 2017, approximately three weeks after defense counsel acknowledged the error. Again, I find that claimant has demonstrated a delay in payment of benefits. Defendants offer no reasonable basis for disputing the benefits owed and, in fact, acknowledged benefits were owed through defense counsel. Defendants offer no explanation for the approximate three-week delay and do not demonstrate any effort to contemporaneously convey the basis for delay to claimant during the delay period.

In total, defendants unreasonably delayed $8,711.95 in weekly benefits. Again, most delays were relatively minor. Yet, defendants have no real excuse for the delays. Considering the purposes of punishment and deterrence, I find that a penalty totaling $1,250.00 is appropriate in this circumstance.

CONCLUSIONS OF LAW

The initial disputed issue is claimant's entitlement to healing period benefits. Mr. Babcock asserts entitlement to both temporary total disability (healing period) benefits and temporary partial disability benefits. Claimant seeks an award, but defendants have already paid temporary total disability benefits from December 12, 2016 through June 19, 2018. Claimant also seeks an award of temporary partial disability benefits from August 10, 2018 through August 24, 2018 in the amount of $554.55. Again, defendants have already conceded and paid this amount. No further analysis of these claims will be made, as they appear to be conceded.

However, claimant seeks additional temporary total disability and temporary partial disability, which are contested by defendants. 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, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Specifically, claimant seeks additional temporary total disability benefits from July 9, 2018 through August 5, 2018. During this period of time, I found that Mr. Babcock was not working, had not achieved maximum medical improvement, and that he was not capable of performing substantially similar employment. Therefore, I conclude that Mr. Babcock has proven entitlement to temporary total disability, or healing period, benefits during the period from July 9, 2018 through August 5, 2018.

Claimant also seeks an additional award of temporary partial disability benefits from June 25, 2018 through July 8, 2018, and again from August 6, 2018 through November 2, 2018. An employee is entitled to appropriate temporary partial disability benefits during those periods in which the employee is temporarily, partially disabled. An employee is temporarily, partially disabled when the employee is not capable medically of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability. Temporary partial benefits are not payable upon termination of temporary disability, healing period, or permanent partial disability simply because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury. Section 85.33(2).

Mr. Babcock worked for an apartment landlord from June 25, 2018 through July 8, 2018. I found that he ultimately quit this employment because he could not perform the physical nature of the job. He was not capable of substantially similar employment to that performed on the date of injury at this juncture.

Mr. Babcock earned less in his employment with the apartment landlord than he did on the date of injury. He was not yet at maximum medical improvement. Therefore, I conclude that he proved entitlement to temporary partial disability.

"The temporary partial benefit shall be sixty-six and two-thirds percent of the difference between the employee's weekly earnings at the time of injury ... and the employee's actual gross weekly income from employment during the period of temporary partial disability." Iowa Code section 85.33(4). Claimant's Exhibit 3 demonstrates that Mr. Babcock was paid more than his gross weekly earnings during the week ending June 24, 2018. Therefore, he asserts no claim for temporary partial disability during that week.

However, the week ending July 1, 2018, Mr. Babcock earned less at KMB Properties than his gross average weekly earnings at the time of his injury. Specifically, claimant demonstrated he earned $45.87 less than his gross earnings on the date of injury. Therefore, claimant is entitled to temporary partial disability benefits totaling $30.58 for the week ending July 1, 2018.

Again, on the week ending July 8, 2018, claimant earned less than his gross weekly earnings on the date of injury. Claimant established that he earned $175.87 less during that week. He is therefore entitled to an award of $117.25 in temporary partial disability benefits for the week ending July 8, 2018.

Mr. Babcock also requests additional temporary partial disability benefits from August 6, 2018 through November 2, 2018. Claimant began working at the University of Iowa Hospitals and Clinics (UIHC) during this period, but earned less than the average gross weekly wages at the time of this injury. Defendants contend that claimant returned to a maintenance position at UIHC, thus demonstrating that he was capable of substantially similar employment. I found that the job requirements and physical demands of claimant's employment at UIHC were significantly less and not substantially similar to the job requirements and physical demands claimant actually performed at MH Construction Equipment Company. Therefore, I found that claimant was not capable of performing substantially similar employment between August 6, 2018 and November 2, 2018.

I also found that Mr. Babcock was not at maximum medical improvement and that the full duty release offered by Dr. Chen was not realistic. Therefore, I conclude that claimant proved by a preponderance of the evidence that he was not earning as much as on the date of injury, that he was not capable of performing substantially similar employment and that he did not achieve maximum medical improvement until November 2, 2018. I conclude that claimant has proven entitlement to temporary partial disability benefits, as outlined in Claimant's Exhibit 3, page 28, from August 6, 2018 through November 2, 2018 in the amount of $2,479.52.

Mr. Babcock also seeks an award of permanent disability benefits. The parties stipulate that this claim is an unscheduled injury that should be compensated with industrial disability benefits pursuant to Iowa Code section 85.34(2)(u). (Hearing Report)

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v.

Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Having considered claimant's age, the situs and severity of his injury, his permanent impairment, permanent restrictions, ability to find alternate employment, actual loss of earnings, his residual symptoms, education and employment background, motivation, as well as all other factors of industrial disability outlined by the Iowa Supreme Court, I found that Mr. Babcock has proven a 25 percent loss of future earning capacity. This is equivalent to a 25 percent industrial disability and entitles claimant to an award of 125 weeks of permanent disability benefits. Iowa Code section 85.34(2)(u).

On the hearing report, the parties disputed the proper commencement date for permanent partial disability benefits. However, in his post-hearing brief, claimant conceded that defendants' asserted position is accurate and essentially stipulates that permanent partial disability benefits should commence on June 18, 2018. I will accept claimant's post-hearing brief statement as a stipulation and enter no findings of fact or conclusions of law relative to the commencement date for permanent partial disability benefits. Permanent disability benefits will be ordered to commence on June 18, 2018, pursuant to the stipulation of the parties.

Mr. Babcock also asserts a claim for penalty benefits. Specifically, he contends that defendants delayed 14 weeks of benefits and delayed in rectifying an underpayment of the weekly rate.

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).

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

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

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

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

Claimant has clearly established delay in payment of weekly benefits and in rectifying an underpayment of the weekly rate. Defendants did not demonstrate that they had good cause for the delay in payment of benefits or that they contemporaneously conveyed the basis for delay in payment of benefits to claimant. Accordingly, claimant carried his burden to proof to establish a delay in payment of benefits. Defendants failed to carry their burden of proof pursuant to Iowa Code section 86.13(4)(c). Therefore, I conclude that penalty benefits should be assessed in some amount.

The purpose of Iowa Code section 86.13 is both punishment for unreasonable conduct but also deterrence for future cases. Id. at 237. In this regard, the Commission is given discretion to determine the amount of the penalty imposed with a maximum penalty of 50 percent of the amount of the delayed, or denied, benefits. Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 261 (Iowa 1996).

In exercising its discretion, the agency must consider factors such as the length of the delays, the number of delays, the information available to the employer regarding the employee's injury and wages, and the employer's past record of penalties. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996). Having considered the relevant factors and the purposes of the penalty statute, I conclude that a section 86.13 penalty in the amount of $1,250.00 is appropriate in this case. I found that such an amount is appropriate to punish the employer for delays in payment of benefits under these facts and should serve as a deterrent against future conduct. However, the facts of this case are not of such an egregious nature that an additional penalty is warranted.

Finally, claimant seeks an award of costs. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. Claimant has prevailed and I conclude it is appropriate to assess claimant's filing fee ($100.00) pursuant to 876 IAC 4.33(7). It is also appropriate to assess claimant's service fees ($13.34) pursuant to 876 IAC 4.33(3).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant healing period benefits from December 12, 2016 through June 19, 2018 and from July 9, 2018 through August 5, 2018.

Defendants shall pay claimant temporary partial disability benefits from June 25, 2018 through July 8, 2018 and again from August 6, 2018 through November 2, 2018, in a combined total amount of two thousand six hundred twenty-seven and 34/100 dollars ($2,627.34), as set forth in Claimant's Exhibit 3, page 28.

Defendants shall pay claimant one hundred twenty-five (125) weeks of permanent partial disability benefits commencing on June 18, 2018.

All weekly benefits shall be paid at the stipulated rate of five hundred ninety-six and 53/100 dollars ($596.53) per week.

The employer and insurance carrier shall pay accrued weekly benefits in a lump sum together with interest 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, as required by Iowa Code section 85.30.

The employer and insurance carrier shall be entitled to a credit for all weekly benefits paid to date, and counsel are charged with calculating that credit pursuant to their agreement at the commencement of the arbitration hearing.

Pursuant to their agreement and the undersigned's verbal order at the commencement of hearing, defendants shall reimburse claimant's independent medical evaluation fees pursuant to Iowa Code section 85.39.

Pursuant to their agreement and the undersigned's verbal order at the commencement of hearing, defendants shall reimburse claimant all past medical mileage due and owing.

Defendants shall pay claimant penalty benefits in the amount of one thousand two hundred fifty dollars ($1,250.00).

The employer and insurance carrier shall reimburse claimant costs totaling one hundred thirteen and 34/100 dollars ($113.34).

The employer and insurance carrier 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 29th day of March, 2019.

WILLIAM H. GRELL
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.