BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SOMPORN GRABIN, Claimant, vs. CEDAR RAPIDS JANITORIAL, Employer, and ACCIDENT FUND INSURANCE COMPANY OF AMERICA, Insurance Carrier, Defendants.	File No. 1658277.01 ARBITRATION DECISION Head Note Nos.: 1803

STATEMENT OF THE CASE

The claimant, Somporn Grabin, filed a petition for arbitration and seeks workers' compensation benefits from Cedar Rapids Janitorial, employer, and Accident Fund Insurance Company of America, insurance carrier. The claimant was represented by Thomas Wertz. The defendants were represented by Laura Ostrander.

The matter came on for hearing on October 1, 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 6; Claimant's Exhibits 1 through 7; and Defense Exhibits A through D. The claimant testified at hearing, in addition to the CEO of Cedar Rapids Janitorial, Brenda Rodgers. Gina Castro was served as court report for the proceeding. The matter was fully submitted on October 11, 2021 after written arguments by the parties.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant is entitled to temporary disability benefits from June 2, 2019, through June 9, 2019.

2. The extent of permanent disability in claimant's left knee pursuant to the AMA Guides to the Evaluation of Permanent Impairment. Defendants claim an overpayment of benefits.

3. Whether claimant is entitled to mileage.

4. Whether claimant is entitled to Iowa Code section 85.39 independent medical examination (IME) expenses.

5. Whether defendants are responsible for a penalty.

6. Costs are disputed.

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 December 28, 2018.

3. The commencement date for any permanent disability benefits is June 10, 2019.

4. Medical expenses are not in dispute. Defendants have agreed to pay the medical mileage outlined in Claimant's Exhibit 5.

5. The weekly rate of compensation is $498.72.

6. Defendants have paid and are entitled to a credit of 8 weeks and 6 days of compensation (permanent partial disability).

7. Affirmative defenses have been waived.

FINDINGS OF FACT

Claimant Somporn Grabin was 74 years old as of the date of hearing. She is an immigrant from Thailand. She has no formal education and is unable to read and write. She testified live and under oath in English. She has a thick accent but her English was good. I find her testimony to be highly credible. She was a decent historian, although she was not a particularly sophisticated witness. Her testimony generally matches the other credible evidence in the record. There was nothing about her demeanor which caused me any concern for her truthfulness.

Ms. Grabin worked for Cedar Rapids Janitorial. In 2019, Cedar Rapids Janitorial had a contract with Integrated DNA Technologies in Coralville, Iowa. Ms. Grabin spent a significant amount of time assigned to this location. Her job mostly involved normal janitorial duties such as cleaning floors, emptying trash, dusting and cleaning bathrooms. On December 28, 2018, she sustained a workplace accident. She testified while walking outside the facility, she slipped on some ice landing on her hands and her

left knee. The parties have stipulated that this incident arose out of and in the course of her employment. The incident itself is well-documented. (Claimant's Exhibit 4, page 36) She had immediate pain and swelling in the left knee.

Ms. Grabin had preexisting problems with her left leg. She was actively being treated by David Lawrence, M.D., for the condition of peripheral vascular disease in her left lower extremity in 2018. (Joint Exhibit 1, page 1) She was on medication. Dr. Lawrence was worried about claudication. She had symptoms which made it difficult to walk. At some point in March 2018, she had a procedure called "L fem-BK pop bypass" which involved her left leg. Based upon the available records, it appears that the surgery went well and by April 23, 2018, her symptoms had largely resolved. (Jt. Ex. 1, p. 4) It appears, however, that she returned to Dr. Lawrence on November 6, 2018, with increasing symptoms.

> However she is developing velocities at the proximal anastomosis. She remains symptomatic and is able to do her job without any signs of claudication. She remains very active and tobacco free. Patient reports an area of decreased sensation on the medial aspect of the left calf likely secondary to her bypass incision.

(Jt. Ex. 1, p. 6) Dr. Lawrence's diagnosis in November 2018 was "claudication of left lower extremity – resolved post left fem-pop bypass, now with moderate proximal graft stenosis." (Jt. Ex. 1, p. 7)

Following her work injury, Ms. Grabin was evaluated at Mercy Hospital Emergency Department. She was diagnosed with a traumatic rupture of the patellar tendon, placed in a knee immobilizer, given pain medications including hydrocodone, and referred to a specialist. (Jt. Ex. 2, p. 30) X-rays showed no fracture, but did reveal degenerative joint disease. (Jt. Ex. 2, p. 31) Ms. Grabin was seen at St. Luke's Work Well Clinic on January 4, 2019, and was quickly referred for an MRI. (Jt. Ex. 3, p. 36) Treatment was then undertaken by Jeffrey Ralston, M.D. She was off work at this time and defendants commenced temporary disability payments. (Cl. Ex. 6, p. 44)

Dr. Ralston examined her on January 9, 2019, following the MRI. (Jt. Ex. 1, pp. 10-11) He diagnosed a closed fracture of the left tibial plateau and left knee pain – unspecified. (Jt. Ex. 1, p. 10) He kept her off work and recommended repeat x-rays and range of motion exercises. Dr. Ralston continued to follow up with her for several weeks while her fracture continued to heal. In March 2019, he recommended physical therapy.

Ms. Grabin attended physical therapy with Kepros Physical Therapy between March 26, 2019, and May 29, 2019, for a total of 20 visits. (Jt. Ex. 5) The records document her condition during that time. She had pain and weakness. She had difficulties standing, squatting, using stairs, lifting, carrying and walking. By May 2019, her healing was "routine", however, Dr. Ralston opined the following: "I'm concerned that the patient's symptoms will not improve to the point where she can return to her

former employment. I've asked to her complete her therapy over the next 3-4 weeks." We will attempt to return her to work without limitations on 3 June." (Jt. Ex. 1, p. 20) He opined this would be on a trial basis to see if she could handle it. The plan was to make an assessment of her ability to perform the work after trying it for a week. Ms. Grabin attempted to return to work without restrictions as recommended by Dr. Ralston.

Brenda Rodgers testified on behalf of the employer. She is the CEO of Cedar Rapids Janitorial. Her testimony is credible as well. She obviously liked Ms. Grabin. Ms. Rodgers testified that she offered Ms. Grabin her regular work hours beginning on June 3, 2019, and it was Ms. Grabin who asked to only work 20 hours that week. Ms. Grabin could not handle the work. In the record, it is not clear how many hours Ms. Grabin actually worked the week of June 3, 2019.

Ms. Grabin returned to Dr. Ralston on June 10, 2019. Dr. Ralston opined Ms. Grabin was at maximum medical improvement. "Unfortunately she has permanent disability and will be unable to return to her form of employment. I have placed her on permanent restrictions which limits her kneeling crawling stooping and lifting heavy objects or climbing ladders." (Jt. Ex. 1, p. 23) He noted that she was "able to resume some of her activities at work and home but has had to limit some activities because of pain the limited activities include kneeling, sitting on the floor, lifting heavy objects and standing for extended periods of time." (Jt. Ex. 1, p. 23) I interpret Dr. Ralston's notes to support Ms. Grabin's position that she was unable to work during that week. The employer stopped paying benefits on June 3, 2019, based upon Dr. Ralston's return to work order. The issue is whether Ms. Grabin is entitled to benefits during this period.

At that time, Dr. Ralston also assigned a 2 percent whole body impairment rating pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 17-33. (Jt. Ex. 1, p. 26) He did not convert this rating to the lower extremity.

In July 2019, DNA Technologies ended its contract with Cedar Rapids Janitorial and Ms. Grabin was laid off. (Cl. Ex. 4, p. 37) Dr. Ralston saw Ms. Grabin again on July 31, 2019, and reaffirmed his rating from June 10, 2019. After receiving Dr. Ralston's impairment rating, defendants sent a letter to claimant's counsel outlining the payment of permanent partial disability benefits. (Cl. Ex. 6, p. 39) Defendants converted Dr. Ralston's 2 percent whole body rating to 4 percent of a leg and sent a check with interest shortly after August 21, 2019. In this record, it is unclear why the defendants waited until August 21, 2019, to pay PPD benefits or how they converted Dr. Ralston's 2 percent rating. In any event, according to the payment logs, the defendants actually paid 8.833 weeks of compensation, mailed to the claimant on August 22, 2019. (Cl. Ex. 6, p. 45)

Richard Kreiter, M.D., examined Ms. Grabin on October 15, 2019. He reviewed appropriate records and examined her. He diagnosed "healed, nondisplaced lateral tibial plateau fracture with chondromalacia of medial compartment with joint space loss, and patellar instability/subluxation with chronic pain. (Cl. Ex. 2, p. 23) Dr. Kreiter utilized the AMA Guides, Fifth Edition, Table 17-33 (the same table used by Dr.

Ralston), to assess that Ms. Grabin had sustained a 5 percent of the left lower extremity. (Cl. Ex. 2, p. 23) He then combined that with a rating for the narrowing of the medial compartment "noted in Dr. Ralston's 06/10/2019 note." (Cl. Ex. 2, p. 23) Therefore he assigned an additional 7 percent for the narrowing of the medial compartment and another 7 percent for instability and pain. His ultimate rating was 20 percent of the left lower extremity. (Cl. Ex. 2, p. 23)

Mark Taylor, M.D., evaluated Ms. Grabin on June 14, 2021. He also reviewed records and examined Ms. Grabin. Dr. Taylor was clearly aware of the peripheral vascular disease in her left leg. (Cl. Ex. 1, p. 10) He documented her current symptoms at the time of the evaluation. (Cl. Ex. 1, p. 10) Dr. Taylor was specifically asked to assign impairment from the AMA Guides, Fifth Edition, which resulted from her work injury. (Cl. Ex. 1, p. 13) His final rating mirrored Dr. Kreiter's in most respects although instead of assigning 7 percent for crepitus and patelloformal pain, he assigned 5 percent. (Cl. Ex. 1, pp. 13-14) He ultimately assigned a rating of 16 percent of the lower extremity. (Cl. Ex. 1, p. 14)

Ms. Grabin apparently sustained a fall from a pickup truck tailgate, landing on her left knee in August 2020. (Jt. Ex. 2, p. 32) It appears she was primarily treated for skin abrasion at Mercy Family Medicine. There is no evidence in this record that this incident is an intervening or superseding cause of her disability. Likewise, there is no evidence in this record that either Dr. Kreiter or Dr. Taylor rated her non-work related conditions of diabetes and/or vascular disease in their respective impairment ratings.

When Ms. Grabin filed her claim, she also had a claim pending against the Second Injury Fund of Iowa. The Second Injury Fund settled with Ms. Grabin prior to hearing. Both Dr. Kreiter and Dr. Taylor evaluated and rated an earlier scheduled member disability to claimant's hand. Dr. Kreiter charged $1,000.00 for his examination without breaking down the charges by body part. (Cl. Ex. 7, pp. 48-49) Dr. Taylor's bill is broken down between exam time and report time and was submitted as an expense of $3,067.00. (Cl. Ex. 7, p. 50)

CONCLUSIONS OF LAW

The first question submitted is whether the claimant is entitled to temporary benefits from June 2, 2019, through June 9, 2019. The claimant alleges she is entitled to benefits during this time period. The defendants claim she returned to work on June 3, 2019.

An employee is entitled to 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. Iowa Code section 85.33(2) (2019).

> If an employee is entitled to temporary partial benefits under subsection 3 of this section, the employer for whom the employee was working at the time of injury shall pay to the employee weekly compensation benefits, as provided in section 85.32, for and during the period of 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, computed in compliance with section 85.36, and the employee's actual gross weekly income from employment during the period of temporary partial disability. If at the time of injury an employee is paid on the basis of the output of the employee, with a minimum guarantee pursuant to a written employment agreement, the minimum guarantee shall be used as the employee's weekly earnings at the time of injury. However, the weekly compensation benefits shall not exceed the payments to which the employee would be entitled under section 85.36 or section 85.37, or under subsection 1 of this section.

Iowa Code section 85.33(4) (2019).

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).

In this case, Dr. Ralston examined Ms. Grabin on May 6, 2019, and set forth the following opinion.

> I'm concerned the patient's symptoms will not improve to the point where she can return to her former employment. I've asked her to complete her therapy over the next 3-4 weeks. We will attempt to return her to work without limitations on 3 June. I will see her 1 week after that to make an assessment about her abilities to do her work. It is possible that she will require permanent based on her symptoms.

(Jt. Ex. 1, p. 20) It is unknown in this record how much Ms. Grabin worked that week, however, she clearly tried to work because one week later, on June 10, 2019, Dr. Ralston opined the following:

> She has been able to resume some of her activities at work and at home but has had to limit some activities because of pain the limited

> activities include kneeling, sitting on the floor, lifting heavy objects and standing for extended periods of time.
>
> . . . .
>
> She has reached maximum medical improvement. Unfortunately she has permanent disability and will be unable to return to her form of employment. I have placed her on permanent restrictions which limits her kneeling crawling stooping and lifting heavy objects or climbing ladders.

(Jt. Ex. 1, p. 23) In other words, it is evident that Dr. Ralston only released her back to work for a trial period. Ms. Grabin reached maximum medical improvement on June 10, 2019, after the trial period. I find, based upon Dr. Ralston's medical opinion, that Ms. Grabin was unable, not merely unwilling, to perform work during this period. Since Ms. Grabin did work, however, she is not entitled to healing period benefits for this week. She is entitled to temporary partial disability benefits from June 3, 2018, through June 9, 2018, when she reached maximum medical improvement.

To the extent that the defendants claim that Ms. Grabin refused suitable work under Iowa Code section 85.33(3)(a), this argument is rejected. First, this section only applies when an employer communicates the offer of suitable work in writing. *See* Iowa Code section 85.33(2)(b). Second, as set forth above, Dr. Ralston's notes are clear that the claimant had not reached maximum medical improvement on June 3, 2019. He returned her to work without restrictions as a trial to see what she could handle. The return to work proposed by Dr. Ralston was really part of claimant's treatment to better assess her functional abilities. Ms. Grabin never refused any work, she simply could not handle it and this fact was confirmed by Dr. Ralston himself.

The next issue is entitlement to permanent partial disability.

Where an injury is limited to scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a)-(t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably the following language in the case of Soukup v. Shores Co., 222 Iowa 272, 277; 268 N.W. 598, 601 (1936):

> The legislature has definitely fixed the amount of compensation that shall be paid for specific injuries . . . and that, regardless of the education or qualifications or nature of the particular individual, or of his inability . . . to engage in employment . . . the compensation payable . . . is limited to the amount therein fixed.

Permanent partial disabilities are classified as either scheduled or unscheduled.

A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong's Sportswear 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

Thus, when the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National Union C. M. Co., 194 Iowa 819, 184 N.W. 746 (1921).

The legislature amended the law in 2017, to ensure that only the AMA Guidelines to the Evaluation of Permanent Impairment, are used to assess permanent functional disability.

> In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34(2)(x) (2019). In other words, the law, as written, is not concerned with an injured worker's actual functional loss as determined by the evidence, but rather the impairment rating as assigned by the adopted version of the AMA Guides. While the statute does not specifically direct the agency how to choose an impairment rating, presumably the agency is required to assess which rating most accurately aligns with the claimant's actual functional disability.

In this case, Ms. Grabin has sustained a permanent functional impairment to her left leg. Her disability must be assessed under subsection (p), as a percentage of 220 weeks. Iowa Code section 85.34(2)(p) (2019).

I find that Dr. Taylor's rating is the most accurate assessment of claimant's right leg impairment. His opinion is well-explained in his report and was performed at a point in time better for assessing her full impairment. It is unclear why Dr. Ralston refused to rate claimant's well-documented joint space narrowing. Dr. Taylor generally used the same rating approach as Dr. Kreiter, however, was more conservative in his estimates. This approach was more complete in rating all of the claimant's functional impairments which occurred as a result of her work injury. The rating is more closely aligned with claimant's actual significant functional losses. It is evident that neither Dr. Taylor nor Dr. Kreiter rated any conditions other than her work-connected leg disability. Therefore, I

conclude that claimant is entitled to 35.2 weeks (220 x .16) of compensation commencing on June 10, 2019, as stipulated by the parties.

The next 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.

The claimant alleges several different penalty theories. The claimant alleges that permanency benefits were not timely paid. Dr. Ralston provided his rating on June 10, 2019. (Jt. Ex. 1, p. 23) He reaffirmed this rating on July 31, 2019. (Jt. Ex. 1, p. 26) The defendants did not issue payment until approximately August 22, 2019. (Cl. Ex. 6,

pp. 39, 44) The defendants did not present evidence at hearing to explain this delay. A penalty is mandatory. Claimant further contends that the defendants incorrectly converted Dr. Ralston's rating from 2 percent of the body as a whole to 4 percent of the leg or lower extremity. Based upon the evidence presented at hearing, it appears the claimant is correct that claimant should have been paid 5 percent. Defendants also failed to include important disclosure of her right to file a claim in claimant's termination notice. (Cl. Ex. 6, p. 39) In any event, the total amount of unreasonably delayed payments is 11 weeks of payments or $5,485.92. A 50 percent penalty on this amount is appropriate to deter defendants from this conduct in the future.

Claimant also seeks a penalty on the delayed temporary disability benefits, which I have found is temporary partial disability benefits. This issue, however, is fairly debatable and the claimant is not entitled to a penalty for this.

The next issue is IME expenses and costs.

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

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).

Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and

> subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

I find Dr. Kreiter's IME expense is reasonable. Based upon the evidence in the record, it appears Dr. Kreiter charged a flat fee to rate both claimant's present injury, as well as a preexisting disability so the claimant could pursue a claim against the Second Injury Fund. In any event, the fee actually charged by Dr. Kreiter was reasonable. The defendants shall reimburse $1,000.00 to the claimant for the IME.

I find additional case expenses for the cost of Dr. Taylor's report only and the filing fee, are also appropriate. The claimant is not entitled to the costs of Dr. Taylor's examination.

The final issue is medical expenses, and specifically mileage for transportation to medical appointments.

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. Iowa Code section 85.27 (2019).

Upon review, I find claimant is entitled to the mileage set forth in Claimant's Exhibit 5.

ORDER

THEREFORE IT IS ORDERED

Defendants shall pay temporary partial disability benefits to the claimant from June 3, 2019, through June 9, 2019, consistent with this decision.

Defendants shall pay the claimant thirty-five and two-tenths (35.2) weeks of permanent partial disability benefits at the rate of four hundred ninety eight and 72/100 ($498.72) per week commencing June 10, 2019.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall be given credit for the weeks previously paid as set forth in the Hearing Report.

Defendants shall pay reasonable transportation expenses in the amount of two hundred twenty and 70/100 dollars ($220.70) as set forth in Claimant's Exhibit 5.

Defendants shall reimburse one thousand and 00/100 dollars ($1,000.00) for the IME report of Dr. Kreiter.

Defendants shall pay a penalty in the amount of two thousand seven hundred forty-two and 96/100 dollars ($2,742.96) for the late payment of permanent partial disability benefits.

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

Costs are taxed to defendant in the amount of one thousand nine hundred twenty-five and 00/100 dollars ($1,925.00).

Signed and filed this 25th day of February, 2022.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Laura Ostrander (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.