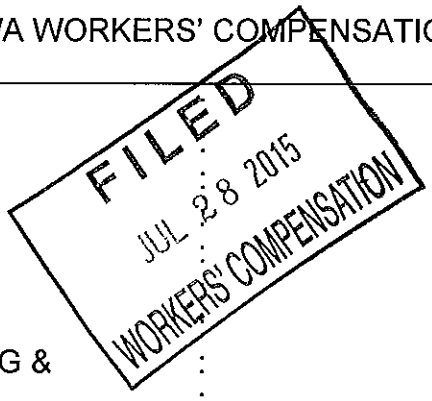
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



MARK D. PETERSON,

Claimant,

vs.

CONVEYOR ENGINEERING & MFG. CO.,

Employer,

and

TRAVELERS INDEMNITY CO. OF CT.,

Insurance Carrier,
Defendants.

File No. 5050009

ARBITRATION

DECISION

Head Note Nos.: 1803, 1804
4000.2, 4100

STATEMENT OF THE CASE

Claimant, Mark Peterson, filed a petition in arbitration seeking workers' compensation benefits from Conveyor Engineering & Manufacturing Company, (Conveyor), employer, and Travelers Indemnity Company of Connecticut, insurer, both as defendants. This matter was heard in Cedar Rapids, Iowa on April 21, 2015 with a final submission date of May 19, 2015.

At hearing, defendants objected to claimant's exhibit 2, pages 21-25 as being untimely served. Exhibit 2, pages 21-25 are reports from Kent Jayne, M.A., MBA, CRC. Exhibit 2, pages 21-25 were served untimely. Exhibit 2, pages 21-25 were excluded from the record as being untimely served and not in compliance with rule 876 IAC 4.19(3)(d).

The record in this case consists of claimant's exhibits 1-2, pages 1-20; exhibit 2, pages 26-43, exhibits 3-10; defendants' exhibits A through E; and the testimony of claimant.

ISSUES

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

2. Whether defendants are liable for a penalty under Iowa Code section 86.13.

STIPULATIONS

The parties stipulated at hearing, that following the taking of testimony they would discuss and stipulate the claimant's rate and the credit due to defendants. In an email dated May 22, 2015, the parties stipulated claimant's rate was $1,159.97, and that defendants were due 134 weeks of credit for permanent partial disability benefits paid as of May 17, 2015. Those emails were printed and marked by the undersigned as Exhibit AA for clarity of the record.

FINDINGS OF FACT

Claimant was 67 years old at the time of hearing. Claimant graduated from high school. He has a degree in sheet metal construction from a community college.

Claimant has worked as a welder and a sheet metal worker for Wilson Foods from 1968 through 1979. Claimant worked for 14 years at Iowa Specialties as a plant supervisor. Iowa Specialties is a steel fabricating company. (Exhibit 8)

Claimant testified that because of his experience and knowledge in metal fabrication, he was hired by the owner of Conveyer. Claimant worked as a plant supervisor for Conveyor. Claimant testified that Conveyor is a specialty manufacturer of conveyors. He said conveyors were built to order. Because of that, the manufacturing process at Conveyor was continually changed to accommodate built to order requirements from customers.

Claimant's job duties as a supervisor for Conveyor, included, but were not limited to, purchasing product, distributing work orders, quality control, inspecting final products, hiring and firing personnel, and personnel review. (Ex. D)

Claimant said he routinely worked in areas of the plant where parts were fabricated and assembled. He said sometimes he would help with assembly. Claimant testified he did whatever was needed to be done to get conveyors out the door. If needed claimant went to the shop floor to help.

Claimant testified one of his main responsibilities for Conveyor was making a "cut list" for parts. Claimant received work orders. Based on review of the work orders, claimant would produce a "cut list" of parts to be manufactured for customized conveyors. The "cut list" provided detail to various departments how to make parts for a conveyor.

Claimant testified he helped train Chris Kovach in preparing "cut lists". He said Mr. Kovach helped claimant prepare and distribute "cut lists." He said Mr. Kovach also helped claimant with purchasing and ordering supplies. He said he shared personnel

duties with Jeff Baxter. Claimant testified he shared other duties with Mr. Kovach and Mr. Baxter.

On July 17, 2012 claimant had a right shoulder injury. This occurred when claimant was checking a shaft for a conveyor and trying to put a bearing on the shaft. The shaft weighed between 30-40 pounds. The shaft slipped, and claimant caught it. Claimant testified he had immediate right shoulder pain.

On August 10, 2012 claimant was evaluated by Gregory Hill, M.D. An MRI of the right shoulder was interpreted by Dr. Hill as a rotator cuff tear and biceps tendinopathy. Surgery was discussed and chosen as a treatment option. (Ex. 4, pp. 1-3)

On September 26, 2012 claimant underwent a rotator cuff reconstruction and subacromial decompression. Surgery was performed by Dr. Hill. (Ex. 5)

Claimant testified he returned to work in approximately October 2012. He said on his return, due to shoulder pain, he delegated his work duties. Claimant said his job required a lot of handwriting. Claimant said he had difficulty doing handwriting and doing extended work with a computer because of his right shoulder pain. He said on his return, he had a lot of shoulder pain and headaches. He said that as a result, he had difficulty with fatigue and concentration.

Claimant testified in deposition and at hearing he continued to do his job at Conveyor from his return to work in October of 2012 until late June of 2014. Claimant testified his employer did not make accommodations for him when he returned to work at Conveyor in October of 2012.

Claimant returned in followup with Dr. Hill in December of 2012. Claimant complained of continual pain in the right shoulder. Claimant was prescribed physical therapy. He was told not to use his right arm at work. (Ex. 4, pp. 4-5)

In April of 2013 claimant returned in followup with Dr. Hill. Claimant had continued complaints of right shoulder soreness. An MRI was recommended to evaluate claimant's continuing pain. (Ex. 4, p. 6) An MRI showed claimant's repair on his right shoulder was intact. Claimant was advised to have a second opinion regarding shoulder treatment. (Ex. 4, p. 8)

On June 4, 2013 claimant was evaluated by James Nepola, M.D. at the University of Iowa Hospitals and Clinics (UIHC). Claimant complained of pain in the right shoulder with use. Claimant was given a shoulder injection and was restricted from lifting above his head on the right. Claimant was also restricted to lifting no more than five pounds on the right. (Ex. 3, pp. 1-5; Ex. A, p. 1)

Claimant returned in followup with Dr. Nepola on September 10, 2013. Claimant reported 60 percent relief in pain. He had a glenohumeral injection on September 10, 2013 and reported a 50 percent reduction in pain. (Ex. 3, pp. 6-8)

On September 17, 2013 claimant had an injection in the bicep where he was suffering from tenodesis. Claimant reported 10 percent improvement. Claimant indicated improvement in pain and sleeping following injections. (Ex. 3, pp. 9-12)

Claimant returned to Dr. Nepola on September 24, 2013. A determination was made to continue with conservative care. Claimant was given a subacromial (SA) and an acromioclavicular (AC) joint injection. (Ex. 3, pp. 13-15) On October 29, 2013 claimant noted improvement in range of motion. (Ex. 3, pp. 16-20)

Claimant returned to the UIHC. Claimant continued to note improvement in his shoulder condition. Claimant was restricted to no pushing, pulling or lifting more than 25 pounds with both arms. He was limited to pushing, pulling and lifting no more than 15 pounds on the right. (Ex. 3, pp. 21-25)

Claimant returned to the UIHC on January 7, 2014. He indicated injections continued to have some benefit. Claimant complained of right shoulder pain with range of motion and neck pain. Surgery was discussed. Claimant was told that further surgery might leave him in worse condition. Claimant elected continued conservative care. He was found to be at maximum medical improvement (MMI). (Ex. 3, pp. 26-30)

Claimant returned to Dr. Nepola on March 18, 2014. Claimant's shoulder was worse, and claimant had difficulty writing on a board at work. Claimant was given an injection and noted a 40 percent improvement in pain. (Ex. 3, pp. 31-35)

Claimant returned to UIHC on April 8, 2014. He indicated his pain had progressed since last visit. Claimant was still working full time. Claimant was given another SA injection. Claimant indicated a 50 percent improvement in pain following the injection. Claimant was restricted to no repetitive reaching or reaching above shoulder height on the right with lifting up to 2 pounds on the right above the chest. (Ex. 3, pp. 36-40)

In an April 16, 2014 email Jeff Baxter indicated claimant's work restrictions could be accommodated by Conveyor, but he wanted claimant's input. (Ex. C) Claimant testified Mr. Baxter was a supervisor at Conveyor.

Claimant testified that sometime in April he went on a three-week vacation to Hawaii with his wife. He said during his vacation his pain and headaches decreased. He said within five minutes after his return to work, following his vacation, he had continued pain. He said that on the second day, after his return from his vacation, he told the owner and CEO of Conveyor, Joe Cone, and his wife that he was retiring. He testified he believed he gave his employer notice of his retirement sometime on May 8, 2014. Claimant testified he believed he worked at Conveyor until the end of June 2014. (Tr. pp. 37-38)

Claimant returned to UIHC on June 17, 2014. He indicated his arm was still painful. He indicated he was retiring and only had a few days left of work. Future

conservative treatment was discussed. Claimant was restricted to no repetitive reaching away from the body or above shoulder on the right. He was limited to lifting up to two pounds above his chest on the right. (Ex. 3, pp. 41-45)

Claimant returned to UIHC on July 29, 2014. Claimant was having worsening pain with any motion of his right arm. Claimant indicated he was not significantly improved since retiring from Conveyor. Claimant was given an SA and AC joint injection. He indicated a less than 20 percent improvement following the injections. (Ex. 3, pp. 46-51)

In a December 23, 2014 letter Dr. Nepola found claimant at MMI as of January 17, 2014. He found claimant had a 17 percent permanent impairment to the upper extremity, converting to a 10 percent permanent impairment to the body as a whole. This was based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, figures 16-40, 16-43 and 16-46. Claimant had permanent restrictions of no repetitive reaching from the body or above shoulder on the right. He was also restricted to lifting no more than 2 pounds at chest height on the right. (Ex. 3, pp. 53-55)

Dr. Nepola opined claimant would be able to perform duties of using a computer to place orders and check job statuses at work. (Ex. 3, pp. 54-55)

In a January 5, 2015 report, David Tearse, M.D., gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant complained of stabbing pain in his right shoulder and neck stiffness. Based on the AMA Guides to the Evaluation of Permanent Impairment, Dr. Tearse found claimant had a 23 percent permanent impairment to the upper extremity, converting to a 14 percent permanent impairment to the body as a whole. He restricted claimant to no repetitive reaching or above shoulder reaching on the right. He also limited claimant to lifting from floor to waist on the right up to 5 pounds, and 25 pounds from floor to waist with both arms. He recommended claimant continue to do home exercises and take anti-inflammatory medication. (Ex. 1)

In a March 2, 2015 report, Kent Jayne, MA, MBA, CRC, gave his opinions of claimant's vocational opportunities. Claimant complained of daily right shoulder pain and daily headaches. Claimant indicated lifting, keyboarding, dealing cards or doing repetitive activities aggravated his pain. Claimant indicated he awoke at night due to pain. Claimant noted he had difficulty keyboarding for more than 5 minutes on a computer. Mr. Jayne found that given Drs. Nepola and Tearse's restrictions, claimant would be incapable of competitive employment in any reasonably stable branch of the labor market. He found claimant was vocationally disabled. (Ex. 2, pp. 1-20)

In a March 12, 2015 report, Shannon Ford, MA, CRC, gave her opinions of claimant's vocational opportunities. Ms. Ford reviewed documents, including but not limited to, claimant's medical records, pleadings, claimant's deposition and Mr. Jayne's report. Based on restrictions given by Drs. Tearse and Nepola, Ms. Ford found claimant had the functional equivalent to be able to do jobs in the sedentary to selectively chosen

medium physical demand levels. Based on claimant's age, education, experience, and his limitations, imposed by both Dr. Tearse and Dr. Nepola, Ms. Ford found approximately nine jobs available to claimant within his geographic area. She opined claimant was able to obtain and maintain employment. (Ex. B)

Claimant testified he anticipated he would work until he was 70. He said as a result of the shoulder injury, he ended up retiring at the age of 66. (Ex. E, Deposition p. 45) Claimant testified his decision to retire was a good one, and he feels better since retiring. Claimant testified that since he left Conveyor, his pain has decreased and his headaches are not as bad. Claimant testified Conveyor did not make accommodations for him when he returned to work in October of 2012.

Claimant testified he has not applied for work since leaving Conveyor. He said he does not intend to look for work.

Claimant testified when he told Conveyor he was retiring, his employer offered to let him work part time. Claimant testified he turned down that offer. (Tr. pp. 66-67)

CONCLUSIONS OF LAW

The first issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

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 R. Co., 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.

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa Supreme Court formally adopted the "odd-lot doctrine". Under that doctrine, a worker becomes an odd-lot employee when injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonable stable market for them does not exist." Id. at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. When the worker makes a prima facie case of total disability by producing substantial evidence the worker is non-employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence, and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful efforts to find steady employment, vocational or other expert evidence demonstrating that suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and the potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of facts is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried. Only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

Claimant contends he is an odd-lot employee. In the alternative he contends he is permanently and totally disabled. Defendants dispute claimant is permanently and totally disabled, or an odd-lot employee.

Claimant was 66 years old at the time of hearing. Claimant graduated from high school. He has a degree in sheet metal drafting from a community college. Claimant worked for 14 years at Iowa Specialties as a plant supervisor. Iowa Specialties is a steel fabricating company. Claimant was hired at Conveyor because of experience in metal fabrication.

Two physicians have opined regarding the degree of claimant's permanent impairment. Dr. Tearse evaluated claimant on one occasion for an IME. He found claimant had a 14 percent permanent impairment to the body as a whole. (Ex. 1, p. 12) Dr. Nepola treated claimant for an extended period of time. He found claimant had a 10 percent permanent impairment to the body as a whole. (Ex. 3, p. 54) Dr. Tearse restricted claimant to no repetitive extended reaching or over-the-shoulder reaching on the right. He also limited claimant to lifting 25 pounds with both hands, and 10 pounds on the right from floor to waist. (Ex. 1, p. 12) Dr. Nepola also limits claimant from repetitive activity away from the body and above shoulder level. (Ex. 3, p. 54)

As a practical matter, Dr. Nepola has far more experience with claimant's history and his medical presentation than does Dr. Tearse. Given this record it is found the permanent impairment rating given by Dr. Nepola is more convincing than that of Dr. Tearse. Both Dr. Tearse and Dr. Nepola's permanent restrictions are essentially the same. Dr. Tearse's restrictions are a little more detailed regarding lifting from the ground to waist. Given these facts, I find it is unnecessary to make a finding as to which physician's restrictions are more convincing. It is found claimant has permanent restrictions given by both Dr. Tearse and Dr. Nepola.

Two vocational specialists have given their opinions regarding claimant's occupational opportunities. Mr. Jayne opined claimant is vocationally disabled and is incapable of competitive employment in the labor market. (Ex. 2, pp. 10-13) Ms. Ford opines claimant was employable and located approximately nine positions in claimant's geographic area claimant could perform.

A review of past agency decisions indicates that in 2014 alone, Mr. Jayne routinely opined in over a dozen cases that claimants were also completely disabled. Bos v. Climate Engineers Inc., File No. 5044761 (Arb. November 12, 2014); Kent v. Diamond Shine Management Services, Inc., File No. 5021501 (Review-Reopening February 18, 2014); Ruiz v. Revstone Casting Industries, LLC, File No. 5041967, 5050063, 5050064 (Arb. September 9, 2014); Hoffman v. Linn County, Iowa, File No. 5038326, 5042802 (Arb. February 28, 2014) ("Mr. Jayne concludes that claimant is completely disabled in large part due to his chronic pain. Mr. Jayne's inclusion of the stock language that goes into nearly every report he provides does little to assist the deputy in ascertaining the claimant's true loss of access to employment"). See also Hoffman v. Care Initiatives, Inc., File No. 5032353 (Arb. July 28, 2011) (". . .Mr. Jayne opined that . . . claimant is unable to perform any services except those which are so limited in quantity, dependability, and/or quality that there is no reasonable stable labor market for them. . .the above is stock language. . . in Mr. Jayne's reports.")

Claimant did return to work for Conveyor from October 2012 through late June 2014 in essentially his same job at Conveyor with some limitations. Given this record, it is hard to believe Mr. Jayne's opinion that claimant is incapable of competitive employment. As noted above, Mr. Jayne routinely opines that claimants, in litigation before this agency, are completely disabled. Given that claimant returned to his job at Conveyor for approximately a year and half after his surgery, and that Mr. Jayne routinely opines claimants are permanently and totally disabled, it is found the opinions of Mr. Jayne regarding claimant's vocational opportunities are not convincing. It is found Ms. Ford's opinions, regarding potential for employment for claimant, are more convincing.

Claimant has a 10 percent permanent impairment to the body as a whole. Claimant has limitations that restrict him from reaching away and above his shoulders, and from lifting from the ground. Claimant worked at Conveyor for approximately a year and a half after surgery at essentially the same job, although he was limited in working on the floor and in lifting. Claimant credibly testified he had daily pain and headaches

while working at Conveyor. Given this record, claimant has failed to carry his burden of proof that he is an odd-lot employee.

When all relevant evidence is considered, claimant is found to have a 50 percent loss of earning capacity or industrial disability.

Claimant also would not be considered to be permanently and totally disabled applying the same factors for industrial disability as used in the odd-lot analyses above.

The final issue to be determined is if defendants are liable for penalties.

In Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996), and Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996), the supreme court said:

> Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."
>
> Christensen, 554 N.W.2d at 260.

The Supreme Court has stated:

> (1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.
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> (2) If no reason is given for the delay or if the "reason" is not one that a reasonable fact-finder could accept, we will hold that no such cause or excuse exists and remand to the commissioner for the sole purpose of assessing penalties under section 86.13. See Christensen, 554 N.W.2d at 261.
>
> (3) Reasonable causes or excuses include (a) a delay for the employer to investigate the claim, Christensen, 554 N.W.2d at 260; Kiesecker v. Webster City Meats, Inc., 528 N.W.2d at 109, 111 (Iowa 1995); or (b) the employer had a reasonable basis to contest the

claim—the "fairly debatable" basis for delay. See Christensen, 554 N.W.2d at 260 (holding two-month delay to obtain employer's own medical report reasonable under the circumstances).

(4) For the purpose of applying section 86.13, the benefits that are underpaid as well as late-paid benefits are subject to penalties, unless the employer establishes reasonable and probable cause or excuse. Robbennolt, 555 N.W.2d at 237 (underpayment resulting from application of wrong wage base; in absence of excuse, commissioner required to apply penalty).

> If we were to construe [section 86.13] to permit the avoidance of penalty if any amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude section 86.13 is applicable when payment of compensation is not timely . . . or when the full amount of compensation is not paid.

Id.

(5) For purposes of determining whether there has been a delay, payments are "made" when (a) the check addressed to a claimant is mailed (Robbennolt, 555 N.W.2d at 236; Kiesecker, 528 N.W.2d at 112), or (b) the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235.

(6) In determining the amount of penalty, the commissioner is to consider factors such as the length of the delay, 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. Robbennolt, 555 N.W.2d at 238.

(7) An employer's bare assertion that a claim is "fairly debatable" does not make it so. A fair reading of Christensen and Robbennolt, makes it clear that the employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." See Christensen, 554 N.W.2d at 260.

Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

Weekly compensation payments are due at the end of the compensation week. Robbennolt, 555 N.W.2d 229, 235.

Penalty is not imposed for delayed interest payments. Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa App. 1999). Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008).

When an employee's claim for benefits is fairly debatable based on a good faith dispute over the employee's factual or legal entitlement to benefits, an award of penalty benefits is not appropriate under the statute. Whether the issue was fairly debatable turns on whether there was a disputed factual dispute that, if resolved in favor of the employer, would have supported the employer's denial of compensability. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

The record indicates defendants began paying claimant permanent partial disability benefits on October 25, 2012. Benefits were stopped on December 30, 2012. (Ex. 9, p. 1) On December 30, 2012, claimant had returned to work fulltime at Conveyor. At that time, no expert had given an opinion regarding permanent impairment or employability. On December 23, 2014 Dr. Nepola found claimant had a 10 percent permanent impairment to the body as a whole. (Ex. 3, p. 54) On February 10, 2015 defendants issued a check to claimant for permanent partial disability benefits from December 31, 2012 through February 8, 2015. (Ex. 9, p. 3) There is no explanation why defendants did not pay permanent partial disability benefits until approximately 2 months after Dr. Nepola's rating. The period of time from December 30, 2014 through February 10, 2015 is approximately 7 weeks. A penalty of 50 percent is appropriate in this case. Defendants are liable for a penalty of $4,059.90 (7 weeks x $1,159.97 x 50 percent).

ORDER

THEREFORE IT IS ORDERED:

That defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits at the rate of one thousand one hundred fifty-nine and 97/100 dollars ($1,159.97) per week commencing on October 22, 2012.

That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendants shall pay claimant four thousand fifty-nine and 90/100 dollars ($4,059.90) in penalty.

That defendants shall file subsequent reports of injury as required by the agency under rule 876 IAC 3.1(2).

That defendants shall pay the costs of this matter as required under rule 876 IAC 4.33, except for one thousand seventy-two and 50/100 dollars ($1,072.50) for the

rebuttal report from Mr. Jayne, which was excluded from the record as untimely. (Ex. 10, pp. 1, 10)

Signed and filed this 28th day of July, 2015.

JAMES F. CHRISTENSON
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.