BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PATRICK MULLALEY, Claimant, vs. LYONDELL CHEMICAL COMPANY, Employer, and ACE AMERICAN INSURANCE COMPANY, Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 5058827 ARBITRATION DECISION Head Note Nos.: 1402.30, 2206, 2209, 2401, 3202

STATEMENT OF THE CASE

Patrick Mullaley, claimant, filed a petition for arbitration against Lyondell Chemical Company, as the employer and Ace American Insurance Company as the insurance carrier. Mr. Mullaley also filed a claim against the Second Injury Fund of Iowa. An in-person hearing occurred in Des Moines on June 18, 2018.

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 5, Claimant's Exhibits 1 through 14, Employer's Exhibits A through I, and Second Injury Fund Exhibits AA-BB. All exhibits were received without objection.

Claimant testified on his own behalf. He called no other witnesses to testify. The employer called Ashley James and Richard Green, Jr. to testify. The Second Injury Fund of Iowa did not call any witnesses to testify live. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel requested the opportunity to file post-hearing briefs. Their request was granted. The parties' post-hearing briefs were due on August 8, 2018, at which time the case was considered fully submitted before the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury that arose out of and in the course of his employment with Lyondell Chemical Company on November 12, 2015.

2. Whether this claim is barred pursuant to Iowa Code section 85.23 for lack of proper and timely notice by claimant to the employer.

3. Whether the alleged injury caused temporary disability and, if so, the extent of claimant's entitlement to temporary disability, or healing period, benefits.

4. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent partial disability benefits from the employer.

5. The proper commencement date for permanent partial disability benefits, if any.

6. Whether claimant is entitled to payment, reimbursement, or other satisfaction of past medical expenses.

7. Whether the employer is entitled to a credit for payment of short-term and/or long-term disability benefits against any award of healing period or permanent partial disability benefits.

8. Whether claimant has proven a qualifying permanent first injury to implicate and qualify for Second Injury Fund benefits.

9. Whether claimant has proven a qualifying permanent second injury to implicate and qualify for Second Injury Fund benefits.

10. Whether claimant has proven entitlement to industrial disability benefits, including a claim for permanent total disability, from the Second Injury Fund of Iowa.

11. The extent of the Second Injury Fund's credit, if benefits are awarded against the Second Injury Fund.

12. Whether costs should be assessed against any party and, if so, the extent to which costs should be assessed.

FINDINGS OF FACT

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

Patrick Mullaley began working for Lyondell Chemical Company (hereinafter referred to as "Lyondell") in 1991. He worked for approximately two years in production, packaging and shipping. For the remainder of his employment with Lyondell, Mr. Mullaley worked as a maintenance technician. Claimant testified that as a maintenance technician, he was required to fix and troubleshoot any of the machines in the Lyondell plant. A written job description for the maintenance technician position is contained at Claimant's Exhibit 9, page 34.

Claimant's supervisor prepared a written assessment of claimant's job duties in February 2016, which is contained at Claimant's Exhibit 10, page 36. That job description or assessment indicates that claimant would be required to lift up to 100 pounds frequently. It also demonstrates that claimant would be required to perform firm grasping with either hand up to five or six hours per shift. (Claimant's Ex. 10, p. 36)

Mr. Mullaley testified that he used impact wrenches and torque wrenches, as well as other impact and vibratory tools during his employment activities at Lyondell. He testified that these activities were difficult for him with his right wrist and caused him pain in the right wrist. He also testified that his right wrist grew steadily worse as he worked at Lyondell.

In fact, claimant testified that he took time off work from time to time when his symptoms were at their worst. He also testified that he realized the injections he received into his right wrist were losing their efficacy over time. He conceded that he could see his career coming to an end at some time as a result of his right wrist symptoms.

Mr. Mullaley testified that he is right-hand dominant. He testified that he continues to have a painful right wrist, despite no longer working for Lyondell. He also testified that he anticipates needing a right wrist fusion at some point in the future. He has very limited range of motion in his right wrist. He also testified that he cannot pour a gallon of milk with his right hand.

Claimant's right wrist difficulties started in 1986. X-rays taken on August 5, 1986 demonstrated Kienbock's disease. As a result of that diagnosis, claimant submitted to a surgical procedure to shorten the radius in his right arm. Surgery occurred on October 14, 1986. (Joint Ex. 1, pp. 1-2)

Surgery was beneficial for claimant, and he went approximately 10 years without further medical intervention for his right wrist. Unfortunately, Kienbock's disease is a progressive disease resulting from an inadequate blood supply to the lunate bone. Predictably, claimant's right wrist symptoms returned over time. On August 9, 1996, claimant sought medical care again. He reported that he developed right wrist pain

again approximately one month prior. He reported that he was not able to operate the throttle on his motorcycle with his right hand and wrist. (Joint Ex. 1, p. 9)

By September 2001, claimant was diagnosed with advanced Kienbock's diease with a collapse of the lunate bone in his right wrist. (Joint Ex. 1, p. 20) Claimant's treating surgeon in 2001, Tyson K. Cobb, M.D., discussed the future need for a right wrist fusion and/or a right wrist replacement. (Joint Ex. 1, p. 20)

Once again, claimant's right wrist symptoms seem to have subsided. Yet, they predictably returned and worsened. In June 2012, claimant notified an evaluating medical provider that he had ongoing pain due to his Kienbock's diease. (Joint Ex. 2, p. 27) In August 2012, claimant's orthopaedic surgeon discussed the option of surgical intervention for the right wrist Kienbock's disease. Mr. Mullaley declined surgical intervention at that time. (Joint Ex. 3, p. 40)

On May 27, 2014, claimant sought medical care with an orthopaedic surgeon, noting that the injection he received in August 2012 helped for quite a while but that the right wrist symptoms were returning. Claimant reported in May 2014 that he was "noticing his pain with work activities, using torque wrench." (Joint Ex. 3, p. 41)

On February 20, 2015, claimant again returned for evaluation of his right wrist. Mr. Mullaley reported an increase in his right wrist pain after an incident at work in which he hyperextended his right wrist against a large amount of pressure and experienced immediate pain and increased swelling. (Joint Ex. 3, p. 43) Claimant requested another wrist injection in February 2015. It was again noted on x-ray that claimant had advanced collapse of the scapholunate interval at the radiocarpal joint. The surgeon explained in February 2015 to claimant that a wrist fusion was an option to alleviate his wrist pain. (Joint Ex. 3, p. 43)

By October 9, 2015, claimant was reporting that his right wrist symptoms were better with rest, avoidance of wrist motion, ice and pain medications. (Joint Ex. 3, p. 45) On October 27, 2015, claimant reported that the last injection in early October only helped his right wrist symptoms for a few days and complained that "any sort of activity at work worsens his pain." (Joint Ex. 3, p. 47) Claimant reported pain levels in his right wrist of 8 or 9 out of 10 on October 27, 2015, and his surgeon had a long discussion with him about treatment options. (Joint Ex. 3, pp. 47-48)

Mr. Mullaley submitted to a right wrist proximal carpectomy surgery performed by Tobias R. Mann, M.D., on November 12, 2015. During his employment, the business changed hands and new employers were in place, but the claimant's position and the manufacturing processes essentially remained the same. Mr. Mullaley's employment ended with the employer in November 2015, after his right wrist surgery. (Claimant's testimony)

Claimant experienced some symptom relief after the November 2015 surgery. However, he did not recover all of his grip strength after surgery. On January 12, 2016, Dr. Mann explained to claimant that it was expected that claimant would recover only 50 to 80 percent of his normal grip strength after surgery. (Joint Ex. 3, p. 54)

Mr. Mullaley continued to complain of right wrist weakness noting "a lot of weakness in his wrist" at a return medical evaluation on June 21, 2016. (Joint Ex. 3, pp. 58-59) Dr. Mann noted that claimant may not be able to do everything he was previously capable of prior to surgery because of the decreased strength. (Joint Ex. 3, pp. 58-59)

Claimant now asserts that his right wrist condition was caused, materially aggravated, or accelerated by his work activities at Lyondell. Three physicians have offered causation opinions in this case.

Mr. Mullaley's treating orthopaedic surgeon, Dr. Mann, opined that claimant's right wrist condition is not causally related, materially aggravated, or accelerated by his work at Lyondell. Instead, Dr. Mann opined that Kienbock's is an idiopathic condition and is not caused by claimant's work at Lyondell. (Defendants' Ex. A, p. 1) Dr. Mann further opines that claimant's Kienbock's disease "progressed in its own fashion, on its own course, and at its own speed. The work did not aggravate or accelerate the progress and progression of the disease." (Defendants' Ex. A, p. 2)

Dr. Mann is the surgeon that performed the November 2015 surgery on claimant's wrist. He evaluated claimant several times and had the advantage of inspecting claimant's wrist joint intra-operatively. Claimant criticizes and challenges the credibility of Dr. Mann's report because it is expressed on defense counsel's letterhead in a "check-the-box" format. Certainly, this is something that can and should be considered and is weighed in my analysis.

Dr. Cobb is also an orthopaedic surgeon. Dr. Cobb treated claimant early in the progression of his right wrist Kienbock's disease. He examined and counseled claimant about the right wrist condition in 2001. Dr. Cobb opined that claimant's right wrist condition is not causally related, materially aggravated, or accelerated by his work activities at Lyondell. (Defendants' Ex. B, p. 6) Dr. Cobb further opined that the surgery claimant submitted to in November 2015 would have been required regardless of the work duties performed at Lyondell. (Defendants' Ex. B, p. 7)

Dr. Cobb had the advantage of seeing claimant early in the Kienbock's disease process and understanding the development of the condition over time. Claimant, however, asserts a valid critique of Dr. Cobb's opinions. Dr. Cobb did not re-evaluate claimant before offering a causation opinion. He performed only a records review before formulating his opinions. Dr. Cobb's lack of personal evaluation since 2001 certainly weakens the credibility of his causation opinion.

Claimant obtained an independent medical evaluation performed by Robin Sassman, D.O. Dr. Sassman opined:

> Mr. Mullaley's diagnosis of Kienbock's Disease in 1986 preceded his employment at Lyondell Chemical Company; and, his employment was not the cause of the disease entity. The question then becomes were Mr. Mullaley's work activities a substantial contributing factor in the worsening of his right wrist to the point that he required the surgery he had on

> November 12, 2015. Mr. Mullaley's work did require him to do a lot of repetitive and forceful gripping and wrist motions. He also indicated that there were many occasions when his right wrist was forcefully hyperextended as he performed his duties for Lyondell Chemical Company. Additionally, using certain tools, such as a torque wrench, worsened his symptoms.
>
> Taking all of the above information into consideration, I conclude that Mr. Mullaley's work activities at Lyondell Chemical Company were a substantial aggravating factor in his underlying Kienbock's disease and lead [sic] to the right wrist surgery to occur when it did. Mr. Mullaley may have needed to have the carpectomy at some point in the future absent the activities of his job; however, I believe that the need for the surgery to occur when it did was accelerated by the work he did at Lyondell Chemical Company.

(Claimant's Ex. 5, p. 22)

Defendants challenge and critique Dr. Sassman's opinions, asserting that she lacks the level of expertise or credentials possessed by Dr. Mann and/or Dr. Cobb. They also appropriately point out that Dr. Sassman performed only a one-time evaluation as an independent medical evaluation for purposes of litigation. Perhaps most persuasively, defendants point out that Dr. Cobb and Dr. Mann were both physicians selected by claimant. Defendants did not select or authorize any of the physicians in this case. Nevertheless, claimant sought an independent medical evaluation to contradict the orthopaedic surgeons he selected.

Having considered claimant's testimony, the testimony of Ashley James and Richard Green, Jr., the job description located at Exhibit 9, as well as the causation of opinions of Dr. Mann, Dr. Cobb, and Dr. Sassman, I find that claimant failed to prove his work activities at Lyondell Chemical Company caused, materially aggravated, or materially accelerated his right wrist condition. I find the medical opinions of the two orthopaedic surgeons, Dr. Mann and Dr. Cobb, to be most persuasive in this case.

While Dr. Sassman is a well-respected physician, her credentials are not comparable to the orthopaedic surgeons on this issue. Dr. Mann performed surgery. He had the opportunity to inspect claimant's right wrist intra-operatively and has the advantage of seeing the wrist personally to offer his opinions. Dr. Cobb similarly treated claimant's condition long before the alleged injury date. Dr. Cobb has expertise and has professionally presented on issues related to the scapholunate collapse problem similar to that experienced by claimant. (Defendants' Ex. C, p. 17) When comparing the credentials, personal observations, and opportunity to treat claimant's right wrist condition, I find the opinions of Dr. Mann and Dr. Cobb most persuasive. Therefore, I find that claimant has failed to prove that his right wrist injury arose out of, or that it was materially aggravated or accelerated by, his work activities at Lyondell Chemical Company.

Claimant knew, or subjectively thought, the right wrist symptoms and worsening of his Kienbock's disease was related to, or caused by, work activities by November 2015. Mr. Mullaley had surgery on his right wrist in November 2015 and missed work thereafter.

Claimant applied for long-term disability benefits and knew that the right wrist condition was causing a significant and lengthy absence from employment. He applied for long-term disability in March 2016. Dr. Mann advised claimant by January 2016 that he would be expected to have a permanent loss of strength following the right wrist surgery.

Mr. Mullaley also applied for Social Security disability benefits, asserting he was unable to return to work at least in part as a result of the right wrist condition. He applied for Social Security disability benefits in 2016 and received his award of Social Security benefits on September 13, 2016. Certainly, by this date, claimant knew that he had advanced Kienbock's disease in his right wrist, he believed that it was worsened by his work activities and that he was no longer working since his right wrist surgery in November 2015. Certainly, by at least September 2016, claimant knew that his condition resulted in permanent loss of strength and that he had qualified for long-term disability and Social Security disability benefits.

Claimant never notified the employer that he believed or was claiming that his right wrist condition was caused or materially aggravated by his employment activities at Lyondell Chemical Company. In April 2017, claimant's counsel sent correspondence to the employer giving notice of the alleged work injury in November 2015. I find that the employer has proven it did not receive notice of the alleged injury until April 2017.

I find that Mr. Mullaley was both objectively and subjectively aware of his right wrist condition and that it was potentially caused or aggravated by his work activities at Lyondell Chemical Company by November 2015. Given that he was diagnosed with a collapse of the lunate bone and that surgical intervention was required in November 2015, I find that claimant was also aware that the condition was serious by at least November 2015.

Claimant sought short-term and then long-term disability benefits, as well as Social Security disability benefits, at least partially as a result of his right wrist condition. Having been off work for numerous weeks and having filed for long-term disability and Social Security disability benefits, I find that Mr. Mullaley was aware, or at least should have been aware as a reasonable person, that his condition was serious and potentially compensable by at least September 2016. He also knew by this time that he had a permanent loss of strength as a result of the Kienbock's disease, clearly establishing that his condition was permanent and serious.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial

Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition

of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Claimant bears the burden to establish that his injury arose out of and in the course of his employment with Lyondell Chemical Company. Having found that Mr. Mullaley did not carry this burden of proof and that he failed to prove his injury was caused, materially aggravated, or accelerated by his work activities at Lyondell Chemical Company, I conclude that claimant failed to prove he sustained a compensable work injury on November 12, 2015.

The conclusion that claimant failed to carry his burden of proof renders all other issues moot. However, it is possible that my decision could be appealed. Therefore, I elect to render additional findings and conclusions on the affirmative defense asserted by defendants. Specifically, defendants contend that claimant failed to give timely notice of his injury and that his claim is barred by Iowa Code section 85.23.

Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days from the date of the occurrence, unless the employer has actual knowledge of the occurrence of the injury.

The purpose of the 90-day notice or actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The

actual knowledge alternative to notice is met when the employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940).

The time period both for giving notice and filing a claim does not begin to run until the claimant as a reasonable person, should recognize the nature, seriousness, and probable compensable character of the injury. The reasonableness of claimant's conduct is to be judged in light of claimant's education and intelligence. Claimant must know enough about the condition or incident to realize that it is work connected and serious. Claimant's realization that the injurious condition will have a permanent adverse impact on employability is sufficient to meet the serious requirement. Positive medical information is unnecessary if information from any source gives notice of the condition's probable compensability. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Orr v. Lewis Cent. Sch. Dist., 298 N.W.2d 256 (Iowa 1980); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

As noted, defendants bear the burden to establish their affirmative notice defense. Having found that Mr. Mullaley knew both objectively and subjectively that his right wrist condition may be caused, materially aggravated, or accelerated by his work activities by at least November 2015, I must address the other factors of the notice defense. In this instance, I found that Mr. Mullaley knew or should have known as an objectively reasonable person that his condition was serious when he required surgery in November 2015 and certainly when he missed numerous weeks of work thereafter resulting in claims for both long-term disability and Social Security disability benefits. He reasonably knew or should have known that he had a permanent loss of strength after his surgery in November 2015.

Certainly by September 2016, claimant knew or should have known that his right wrist condition was serious. By that date, claimant also knew that he had missed numerous weeks of work and he was claiming that his condition precluded him from returning to any gainful employment. Finally, I found that claimant did not give the employer notice of the injury and that the employer did not have actual knowledge of the alleged work injury until April 2017.

Claimant was obligated to give notice of his injury to the employer within 90 days of the date that he knew the injury was caused, aggravated, or accelerated by work, knew the condition was serious and that it was likely compensable. Mr. Mullaley knew all of these things on or before September 13, 2016. He did not give notice within 90 days of that date.

Therefore, I conclude that defendants established each of the necessary factors of their notice defense by a preponderance of the evidence. I conclude that defendants established their notice defense. Therefore, even if the right wrist condition was caused, materially aggravated, or accelerated by claimant's work activities at Lyondell Chemical Company, I conclude that the claim would be barred for failure to give timely notice. Iowa Code section 85.23.

Finally, claimant seeks an award of costs. Costs are awarded at the discretion of this agency. Iowa Code section 86.40. In this case, claimant's petition is dismissed without recovery of worker's compensation benefits. I conclude that it is proper to deny claimant's requests for costs.

ORDER

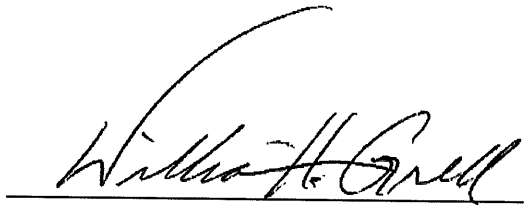
THEREFORE, IT IS ORDERED:

Claimant takes nothing.

The original notice and petition are dismissed with prejudice.

All parties shall bear their own costs.

Signed and filed this 29th day of November, 2018.



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WHG/sam

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.