BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
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WORKERS' COMPENSATION

RICK PRUISMANN, Claimant, vs. IOWA TANKLINES, INC., Employer, and ZURICH AMERICAN INS. CO., Insurance Carrier, Defendants.	File No. 5053398 ARBITRATION DECISION Head Note Nos.: 1803, 3001

STATEMENT OF THE CASE

Claimant, Rick Pruismann, filed a petition in arbitration seeking workers' compensation benefits from Iowa Tanklines, Inc., employer, and Zurich American Insurance Company, insurance carrier, both as defendants, as a result of a stipulated injury sustained on November 19, 2014. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on June 28, 2016, in Des Moines, Iowa. The record in this case consists of claimant's exhibits 1 through 24, defendants' exhibits A through G, and the testimony of the claimant. The parties submitted post-hearing briefs, the matter being fully submitted on September 1, 2016.

ISSUES

The parties submitted the following issues for determination:

1. The extent of claimant's permanent disability, including whether claimant is permanently and totally disabled under industrial disability principles or the odd-lot doctrine;

2. The proper rate of compensation;

3. Whether claimant is entitled to penalty benefits under Iowa Code section 86.13 and if so, how much; and

4. Specific taxation of costs.

The stipulations of the parties contained in the hearing report are accepted and incorporated by reference in this decision. The parties are expected to and ordered to comply with stipulations that have been accepted.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record and his deposition testimony, especially given consideration of claimant's diagnosis of memory impairment. His demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. During the course of hearing, the undersigned observed claimant ambulate slowly, alternate between sitting and standing, use chair arms for support in transitions, and also grimace slightly with positional changes. Claimant is found credible.

Claimant was 64 years of age at the time of hearing. He is single and resides in Webster City, Iowa. Claimant graduated high school in 1972; he lacks further formal postsecondary or vocational education or training. (Claimant's testimony; Exhibit A, page 10) Following graduation from high school, claimant served in the US Army National Guard for eight years as a heavy equipment operator and mechanic. Claimant concurrently and thereafter worked as a mechanic and semi-truck driver, including operation of tankers and trailers. (Claimant's testimony; Ex. 11, p. 2)

In 1990, claimant was hired by defendant-employer. He worked as a driver, then dispatcher, and ultimately as a mechanic. Claimant worked exclusively as a mechanic for defendant-employer from the late 1990s; he worked at multiple locations nationwide. (Claimant's testimony; Ex. 11, p. 2) Defendant-employer's job description for the position of mechanic notes physical requirements including: frequent walking, stooping, kneeling, crouching or crawling; occasional climbing or balancing; lifting/moving up to 10 pounds frequently and more than 100 pounds occasionally; frequent exposure to high, precarious places; and a need for full range of body motion. (Ex. 12, pp. 1-2) Claimant's testimony regarding his job duties lends support to the accuracy of the job description, particularly the amount of weight lifted, need to climb and maintain balance, crawl and maneuver under and around machinery, and need to bend, twist, climb, crawl and kneel. (Claimant's testimony)

Claimant's relevant medical history includes a work-related crush injury to claimant's right ankle on May 3, 2007. The injury resulted in a closed bimalleolar right ankle fracture and a course of care with surgeon, David Inda, M.D. (Ex. 1, p. 1) Dr. Inda immediately performed a surgical closed reduction and application of an external fixator. (Ex. 1, pp. 2-3) Approximately two weeks later, Dr. Inda performed a surgical open reduction internal fixation procedure. (Ex. 1, pp. 4-6)

Over the following years, claimant continued to experience right ankle symptoms which necessitated further surgical intervention. In January 2008, claimant underwent a limited hardware removal. (Ex. 2, p. 1) In May 2009, Dr. Inda performed another hardware removal procedure, along with an ankle arthroscopy with debridement of synovitis and osteochondritis dissecans, and microfracture. (Ex. 2, pp. 2-3) Although claimant continued to report symptoms over time, Dr. Inda allowed claimant to work without restrictions. (Ex. 2, p. 4) In April 2012, Dr. Inda performed a calcaneal osteotomy secured with screws, debridement of the posterior tibial tendon, transfer of the flexor digitorum longus tendon, and excision of an accessory navicular. (Ex. 2, pp. 5-6) In September 2012, Dr. Inda performed surgical removal of screws from the right calcaneus. (Ex. 2, p. 8) Following this procedure, Dr. Inda released claimant to return to work without restrictions, but noted claimant used a brace and orthotic inserts. (Ex. 2, p. 9)

In March 2013, Dr. Inda placed claimant at maximum medical improvement (MMI), despite claimant's complaints of continued ankle and heel pain. Dr. Inda imposed no restrictions, but recommenced continued use of braces and noted claimant might require anti-inflammatory medication or injections in the future. Dr. Inda also opined that given the location of fracture and assuming arthritic changes, claimant may ultimately require an ankle arthrodesis. (Ex. 2, p. 10) Dr. Inda subsequently opined claimant sustained a total impairment of 16 percent right lower extremity due to the right ankle fracture. (Ex. 2, pp. 10-11; Ex. 3, p. 1) Claimant returned to Dr. Inda on June 2, 2014 and reported ongoing right heel pain which flared with standing on concrete. Dr. Inda prescribed Mobic and new orthotics; he allowed claimant to work without restrictions. (Ex. 2, p. 12)

Claimant testified following his right ankle injury, he returned to work for defendant-employer in his pre-injury mechanic position. He performed all his job duties, but indicated his pace slowed. (Claimant's testimony)

Claimant's personal medical history also includes assessments pertaining to his memory. On October 21, 2014, claimant presented to his personal provider, Pierre Bernard, D.O. in follow up of prior complaints of abdominal discomfort. During the visit, both claimant and his significant other reported claimant had experienced increased forgetfulness over the past year. Dr. Bernard's assessments included short-term memory impairment, suspected to represent early stage Alzheimer's disease. (Ex. 17, pp. 1-2)

At work on November 19, 2014, claimant lifted a motor into the back of a truck. When he attempted to stand thereafter, claimant felt pain of his back and extending down his left leg. Claimant reported the injury and left work for the day. (Claimant's testimony)

Defendants arranged for claimant to be evaluated the following day, November 20, 2014, by Joseph Latella, D.O. Dr. Latella noted claimant complained of pain of the left L4-L5 region. Dr. Latella assessed severe low back syndrome, arthritis of the

lumbar spine, and early Alzheimer's disease. He ordered a lumbar spine MRI and prescribed Flexeril, Prednisone, and hydrocodone. (Ex. 4, p. 1) Claimant was removed from work. (Ex. 14, pp. 1-4) Claimant returned to Dr. Latella on November 24, 2014 and December 1, 2014 due to continued L4-L5 pain. Dr. Latella diagnosed a ruptured disc, arthritis, and low back syndrome. (Ex. 4, p. 1)

The recommended lumbar spine MRI was performed on December 3, 2014. (Ex. 4, pp. 2-3) On December 5, 2014, claimant returned to Dr. Latella. Dr. Latella reviewed the MRI and opined it demonstrated ruptured discs at the L4, L5 and S1 levels. Dr. Latella assessed a ruptured disc and sciatic neuralgia; he referred claimant for evaluation with neurosurgeon, David Beck, M.D. (Ex. 4, p. 1; Ex. 5, p. 1)

On December 11, 2014, Dr. Beck evaluated claimant for complaints of left leg and back pain. Dr. Beck opined claimant's MRI showed a small disc herniation at L4-L5 on the left. He recommended a course of physical therapy and an epidural steroid injection. (Ex. 5, p. 1) Claimant underwent the recommended lumbar steroid injection at L4-L5 on December 16, 2014. (Ex. 7, p. 1) Claimant returned to Dr. Beck on January 19, 2015. At that time, Dr. Beck recommended an L4-L5 discectomy on the left due to continued symptoms. (Ex. 5, p. 2)

On January 23, 2015, claimant underwent surgery performed by Dr. Beck, consisting of an L4-L5 laminectomy and discectomy on the left. Claimant was discharged from the hospital the following day. (Ex. 7, pp. 2-3) Claimant was removed from work. (Ex. 14, pp. 5-6)

Following surgery, claimant followed up with Dr. Beck. On March 16, 2015, Dr. Beck noted improvement in claimant's symptoms, but a constant aching of the left leg. Dr. Beck ordered a course of physical therapy. Claimant and Dr. Beck discussed claimant's ability to return to work, which Dr. Beck described as in a "very physical job." Dr. Beck advised claimant to return to the clinic in one month to discuss returning to work. (Ex. 5, p. 3)

At a physical therapy appointment on April 10, 2015, the therapist noted claimant had shown improvement with therapy, with improved gait and a lack of pain-related limitation in motion testing. However, he also noted claimant needed to "transfer these improvements into functional work tasks." He specifically highlighted a need to work on lifting, in order to reach return to work goals. Accordingly, the therapist recommended 2 to 3 additional weeks of physical therapy, with 2 sessions per week. (Ex. 5, p. 4)

On April 15, 2015, claimant returned to Dr. Beck, who noted continued improvement. He released claimant to return to work on April 27, 2015, performing regular duties on half-day shifts. Dr. Beck recommended continued therapy and a return evaluation in four weeks. (Ex. 5, p. 5; Ex. 14, p. 7)

Claimant attended his final authorized session of physical therapy on April 28, 2015. At that time, he reported 75 percent improvement. The therapist noted claimant

had resumed work, but had been on light duty and had not been performing "all the tasks at work." Claimant explained he was "sometimes" bothered by symptoms at work, especially when working under a vehicle. During the session, claimant demonstrated an ability to lift and carry 35 pounds. At the conclusion of the session, claimant's therapist opined claimant had made "large improvements" and was "returning to function at work." Although the session marked claimant's final authorized session, the therapist recommended two additional sessions of therapy in order to meet a "very work-relevant" goal of performance of lifting tasks with 50 pounds of weight. (Ex. 8, p. 7)

Claimant returned to Dr. Beck on May 11, 2015. Dr. Beck opined claimant had achieved MMI as of that visit, on May 11, 2015. He released claimant to return to work, full duty, on May 12, 2015. Dr. Beck opined claimant sustained an 8 percent whole person impairment based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 15-7, section 2d. (Ex. 6, p. 1; Ex. C, p. 1) Review of the referenced table and section reveals Dr. Beck rated claimant on the basis of a spinal disorder element of the range of motion rating method. Specifically, the basis is listed as a surgically treated lumbar disc lesion without residual signs or symptoms.

Defendants subsequently initiated permanent partial disability benefits coinciding with the 8 percent whole person rating issued by Dr. Beck. Forty-four weeks of such benefits were paid, at a weekly rate of $325.71. (Ex. 24, pp. 1-2; Ex. E, pp. 1-7, 10-16)

Claimant returned to full duty work as a mechanic. Although he returned to his pre-injury position, claimant testified he did not perform his duties in the same manner as pre-injury. Claimant testified he worked more slowly and was more careful in his actions. Additionally, claimant testified he received assistance from coworkers on occasion, particularly with moving and lifting heavy items. Claimant testified he lacked the ability to move items weighing 100 pounds and also lacked full motion of his body. Claimant described difficultly and increased pain with stooping, crawling, bending, walking, and riding in vehicles. Claimant admitted that employees routinely assisted one another with tasks in the shop. (Claimant's testimony)

At his deposition, claimant testified he believed the physical requirements noted in defendant-employer's job description for the position of mechanic, specifically with respect to lifting, were accurate. He further noted he was capable of performing all his duties prior to suffering the back injury, but did not perform all tasks in the same manner following his return to work. He described difficulty with weight, climbing, balancing, and crawling under and onto vehicles and equipment. Claimant testified that following the back injury, he utilized assistive equipment with lifting whereas pre-injury, he would have manually lifted the object. Claimant also explained he received assistance from coworkers with certain tasks, but acknowledged that coworkers readily assisted each other with tasks prior to his back injury. (Ex. A, pp. 13-14)

On June 8, 2015, defendant-employer terminated claimant's employment. Defendant-employer's records indicate claimant was laid off due to lack of work. (Ex.

15, p. 1) Claimant testified he was not warned of an impending layoff, was not advised of any job performance issues, and was unaware of any other employees being laid off at that time. He acknowledged he would not necessarily be aware if employees were laid off from other terminals. (Claimant's testimony) Claimant testified had he not been laid off; he intended to continue working for defendant-employer. (Claimant's testimony; Ex. A, p. 14)

Following his termination, claimant filed for unemployment benefits. In connection with receipt of benefits, claimant completed an employment search. His job log lists six in-person contacts for employment, with notations that each place was not hiring. (Ex. 13, p. 1) Claimant testified he contacted each of these employers and was advised the company was not hiring; he did not submit any applications for employment. (Claimant's testimony)

On June 15, 2015, claimant filed an application for Social Security Disability benefits, based upon listed conditions of a right ankle fracture, herniated disc of the back, and early stage dementia. He alleged an onset of disability of November 19, 2014. (Ex. 10, p. 2; Ex. D, p. 2) On his application, claimant provided details of the physical demands of his former mechanic position and noted the heaviest weight he lifted was 50 pounds and that he frequently lifted 25 pounds. (Ex. D, p. 4)

Dennis Weis, M.D. performed a residual functional capacity assessment and found claimant capable of: lifting and carrying 20 pounds occasionally and 10 pounds frequently; standing and walking 6 hours of an 8-hour workday; sitting 6 hours of an 8-hour workday; occasionally climbing ramps or stairs, balancing, stooping, kneeling, crouching or crawling; and never climbing ladders, ropes, or scaffolds. (Ex. 10, p. 9) A vocational assessment was made, including consideration of claimant's ability to perform past relevant work. It was noted claimant worked as a mechanic from 1995 to 2015, work categorized as skilled, medium physical demand level work. The assessment concluded claimant lacked the residual functional capacity to perform such work, as his residual functional capacity limited claimant to light physical demand work. (Ex. 10, pp. 10-11) Specifically, the finder concluded claimant was limited to light work by the medical examiner and accordingly, could not return to mechanic work as described or as normally performed in the national economy due to lifting and/or standing requirements. (Ex. 10, p. 12) Following review, claimant was found disabled, with an onset date of November 19, 2014. (Ex. 10, p. 12)

At the arranging of claimant's counsel, on September 11, 2015, claimant presented to board certified occupational medicine physician, Sunil Bansal, M.D. for an independent medical examination (IME). Dr. Bansal authored a report containing his findings and opinions dated November 24, 2015. As elements of his evaluation, Dr. Bansal reviewed claimant's medical records and performed a physical examination. (Ex. 9, pp. 1-10, 11-13) He also interviewed claimant, who complained of constant left low back pain. Claimant reported he believed he could safely lift 20 pounds occasionally and 10 pounds on a more frequent basis, could stand in one place for 15 minutes before he needed to move about, could walk for approximately 1 hour

before he needed to sit, could sit approximately 1 hour before becoming stiff and sore, and he experienced difficulty with traversing stairs or on uneven surfaces. (Ex. 9, p. 11)

Claimant and Dr. Bansal also discussed claimant's prior job duties as a mechanic at defendant-employer. Dr. Bansal noted claimant's duties required bending, twisting, lifting and climbing onto and under trucks. Dr. Bansal also noted claimant was required to replace heavy truck tires and although an assistive machine was available, claimant would lift 50 to 75 pounds to perform this task. (Ex. 9, p. 11) Claimant reported he had been capable of performing these job duties prior to the work injury. (Ex. 9, p. 10)

Following records review, history and examination, Dr. Bansal issued opinions regarding claimant's right ankle and back conditions. With respect to the right ankle, Dr. Bansal assessed a right ankle fracture, status post multiple surgical procedures. He opined claimant sustained a 20 percent lower extremity impairment. (Ex. 9, pp. 13, 15) With respect to claimant's back, Dr. Bansal assessed a ruptured disc at L4-L5, status post L4-L5 laminectomy and discectomy. He expressed agreement with Dr. Beck's MMI date of May 11, 2015 and opined claimant fell within DRE Lumbar Category III, warranting a permanent impairment rating of 10 percent whole person. (Ex. 9, pp. 13-14, 16) Dr. Bansal also recommended restrictions attributable to the "[r]ight ankle/back" conditions: no lifting over 20 pounds occasionally and 10 pounds frequently; no frequent bending, climbing or twisting; and sitting, standing and walking as tolerated, specifically recommending avoidance of sitting or walking over 60 minutes and standing over 30 minutes. (Ex. 9, p. 16) Dr. Bansal opined claimant would ultimately require right ankle arthrodesis. (Ex. 9, p. 17) He recommended claimant receive maintenance care of his back; specifically, evaluation by a pain specialist to consider various treatment modalities. (Ex. 9, p. 16)

Defendants supplied Dr. Beck with a copy of Dr. Bansal's report for review. On February 24, 2016, Dr. Beck issued responses to inquiries from defendants' counsel. Following review of Dr. Bansal's report, Dr. Beck confirmed his opinions remained unchanged. Specifically, Dr. Beck reiterated his opinions that claimant sustained permanent impairment of 8 percent whole person and did not require permanent work restrictions. (Ex. C, pp. 2-3)

Defendants retained vocational evaluator, Tom Karrow, who authored a vocational rehabilitation report dated March 10, 2016. (Ex. B, p. 9) In completing his evaluation, Mr. Karrow reviewed claimant's medical records, interrogatory answers, and deposition transcript. Mr. Karrow also contacted claimant's attorney, who advised he would not allow Mr. Karrow to interview claimant. (Ex. B, pp. 1-2) Mr. Karrow therefore based his report upon the written records presented.

Mr. Karrow reviewed claimant's educational and work histories. (Ex. B. p. 3) He noted claimant's work history included work as a mechanic, which he described as heavy, semi-skilled work; tractor trailer truck driver, described as medium, semi-skilled work; dispatcher, described as light, semi-skilled work; heavy equipment operator, described as medium, semi-skilled work; and host, described as light, unskilled work.

(Ex. B, p. 4) Mr. Karrow then identified several transferrable skills possessed by claimant. (Ex. B, p. 5)

Mr. Karrow considered the impact of the permanent restrictions imposed by Dr. Beck and Dr. Bansal upon claimant's vocational opportunities. Mr. Karrow noted Dr. Beck released claimant to perform full duty, without restrictions on May 12, 2015. He further noted the restrictions recommended by Dr. Bansal: no lifting over 20 pounds occasionally or 10 pounds frequently; no frequent bending, climbing or twisting; and standing and walking as tolerated, but no sitting or walking over 60 minutes or standing over 30 minutes. (Ex. B, p. 3)

Mr. Karrow noted defendant-employer's job description for the mechanic position required frequent lifting/moving of 10 pounds and occasional lifting/moving of more than 100 pounds. Given Dr. Beck's release of claimant without restrictions, Mr. Karrow opined claimant would be capable of performing his pre-injury job. Similarly, assuming no restrictions per Dr. Beck, Mr. Karrow opined claimant was capable of performing all prior jobs within his work history. Assuming Dr. Bansal's restrictions, Mr. Karrow opined claimant was capable of performing the positions of host and dispatcher, as both were light physical demand work. (Ex. B, pp. 4-5)

Mr. Karrow reviewed claimant's job search log and noted claimant listed six individual employers, but no dates of contact. (Ex. B, p. 3) Based upon the named employers listed, Mr. Karrow indicated it appeared the jobs available would fall in the medium to heavy physical demand categories. Mr. Karrow ultimately opined claimant had performed an inadequate job search. He highlighted claimant's failure to register with Iowa Workforce Development and failure to submit any applications for employment. (Ex. B, p. 4)

Mr. Karrow performed labor market research, focusing on opportunities within the Fort Dodge, Ames and Webster City labor market. (Ex. B, p. 1) Assuming a lack of restrictions as opined by Dr. Beck, Mr. Karrow found claimant was capable of performing all his prior jobs, specifically including as a mechanic or full duty truck driver. (Ex. B, p. 6) Assuming Dr. Bansal's restrictions, Mr. Karrow opined claimant was capable of performing drop-and-hook, no touch truck driving, with a potential limitation on the distance claimant could drive, given a restriction on sitting. (Ex. B, p. 7) Mr. Karrow indicated he was able to locate drop-and-hook, no touch driving loads in the Ames, Fort Dodge and Webster City areas. He listed the names of six firms with such positions and noted average pay of $45,000.00 to $60,000.00 in such jobs. (Ex. B, p. 7) In the event claimant returned to work as a truck driver, Mr. Karrow opined claimant would have no loss in wages earned. (Ex. B, p. 8)

With respect to further vocational opportunities in the geographical area, Mr. Karrow opined claimant would qualify for dispatcher and supervisory trucking positions. Mr. Karrow noted trucking companies have dispatcher positions available "from time to time," with average median wages of $35,000.00. He identified average earnings of $43,000.00 annually for supervisory truck driving positions. (Ex. B, p. 7)

Additionally, Mr. Karrow opined suitable sedentary and light demand job opportunities were available in claimant's geographical area. He described such positions as entry-level jobs in customer service, retail sales, counter clerk, security, dispatching, and related occupations. He listed nine available positions. Mr. Karrow opined each of these positions fell within Dr. Bansal's restrictions. (Ex. B, pp. 7-8) Mr. Karrow indicated these sedentary and light physical demand jobs earned average wages of $9.19 per hour. Comparing this figure to claimant's pre-injury hourly wage of $14.00, Mr. Karrow found a 35 percent wage loss. (Ex. B, p. 8)

Claimant's counsel acknowledged he advised claimant not to meet with Mr. Karrow on the purported basis Mr. Karrow was a defense expert who was not independent. (Ex. G, p. 2)

Claimant testified he contacted two of the employers listed by Mr. Karrow in his report, a home improvement store and an office supply store. He testified both employers indicated they were not hiring. Claimant testified he did not contact or investigate potential job openings at any of the listed trucking firms. (Claimant's testimony)

The evidentiary record also includes a listing of job search contacts made by claimant in March and April of an undated year. Seven contacts are listed, none of which were hiring. (Ex. 13, p. 2) Presumably, these contacts were made in the year 2016, given claimant remained employed at defendant-employer during these months in prior years.

Claimant expressed doubt regarding his ability to perform other positions mentioned by Mr. Karrow, based upon his lack of computer and telephone skills and/or purported inability to work with the public in customer service positions. With respect to his ability to perform truck driving, claimant indicated he would be required to obtain a CDL, a license he has not held in 15 years. In the event he did earn his CDL, claimant would be required to pass a Department of Transportation physical examination; claimant is skeptical of his prospects of passing such an exam given the conditions of his back, ankle, and Alzheimer's disease. He specifically noted he would be unable to operate the pedals of a truck given his constant use of an ankle brace. Claimant further testified that even with drop-and-hook, no touch loads, a driver is still required to climb into and out of trucks, perform inspections, and perform tasks such as pulling pins, connecting hoses, and cranking trailers. (Claimant's testimony)

On March 17, 2016, claimant's counsel authored a letter to Dr. Beck and enclosed a copy of the mechanic job description from defendant-employer for his review. (Ex. 6, pp. 2-4) Following review of the job description, Dr. Beck authored a responsive letter to claimant's counsel on March 21, 2016. Dr. Beck opined that due to claimant's history of undergoing back surgery, it would be "prudent to limit his work activities." Specifically, Dr. Beck imposed restrictions limiting repetitive lifting to 50 pounds and only infrequently exceeding this weight, as well as limiting stooping, kneeling, crawling, bending and twisting to an infrequent basis. (Ex. 6, p. 5)

Claimant retained vocational expert and certified rehabilitation counselor, Kent Jayne, who authored a vocational report dated March 31, 2016. (Ex. 20, p. 1) Mr. Jayne noted his report was authored in response to Mr. Karrow's report. He cautioned that his report did not reflect a vocational evaluation, as he had not met claimant and no testing of claimant's vocational abilities had been performed. (Ex. 19, p. 1) He opined claimant had not, to date, undergone a vocational evaluation or participated in relevant objective testing. (Ex. 19, p. 3) In completion of his rebuttal report, Mr. Jayne reviewed medical records, claimant's former job description, claimant's deposition transcript, and Social Security Disability determination paperwork. (Ex. 19, p. 1)

In his report, Mr. Jayne critiqued Mr. Karrow's report. He noted that Mr. Karrow had assumed claimant was released to full duty work without restrictions. Mr. Jayne opined that if such a release were accurate, one would still need to evaluate the impact of ongoing pain upon claimant's vocational capabilities. (Ex. 19, p. 4) Mr. Jayne also noted that employment rates for individuals with disabilities are lower, leading him to opine claimant would experience barriers to employment. (Ex. 19, p. 10)

Mr. Jayne also critiqued the various employment positions identified by Mr. Karrow. He opined few over-the-road truck driving positions were truly "no touch" and further, that even drop-and-hook loads required a driver to perform physical tasks such as climbing into and out of trucks, pulling kingpins, sitting for prolonged periods, cranking dollies, checking loads, connecting air lines, opening and closing trailer doors, walking around lots, and unloading on occasion. (Ex. 19, p. 9) With respect to a potential dispatcher position, Mr. Jayne opined this position required activities which were "sensitive to pain" and the effect of sleep deprivation and pain upon claimant's performance of such tasks had not been evaluated. He opined these opinions were also true with respect to performance of customer service, retail, clerk, or security positions. (Ex. 19, p. 10)

At the arranging of defendants, on April 25, 2016, claimant presented to occupational medicine physician, Charles Mooney, M.D., for an IME. In connection with his evaluation, Dr. Mooney reviewed and summarized claimant's medical records, as well as claimant's former job description. (Ex. 22, pp. 1-3) He also performed a physical examination. (Ex. 22, pp. 4-5)

Dr. Mooney interviewed claimant and in doing so, noted claimant demonstrated fairly poor memory. (Ex. 22, p. 3) Dr. Mooney noted claimant had been diagnosed with dementia, currently treated with medication. (Ex. 22, p. 4) During interview, claimant complained of nearly constant back pain throughout his lumbar spine. He described the pain as generally dull and achy, but indicated the pain could also be sharper in nature. Claimant reported his average level of back pain as a level 2 on a 10-point scale, with pain capable of reaching a level 9. He noted walking caused variable low back pain and pain flared particularly with prolonged sitting. Following prolonged sitting, claimant reported he also may develop intermittent left leg pain with rising to a standing position. (Ex. 22, pp. 3-4)

Following records review, interview and examination, Dr. Mooney assessed status post left L4-L5 discectomy due to a herniated disc with underlying diffuse degenerative disc disease. He also noted initially good resolution of radicular symptoms following surgery. Dr. Mooney opined claimant fell within DRE Lumbar Category III, warranting a permanent impairment rating of 10 percent whole person. He also noted claimant might require future care, including pain medications, anti-inflammatories, and a home exercise program. (Ex. 22, pp. 5-6)

Dr. Mooney opined he concurred with Dr. Beck regarding claimant's need for permanent restrictions. Specifically, Dr. Mooney noted Dr. Beck had allowed claimant to return to medium duty work, with occasional lifting over 50 pounds. He also noted Dr. Beck allowed infrequent stooping, kneeling, crawling, bending or twisting, a time restriction Dr. Mooney equated with an occasional basis. Dr. Mooney opined claimant was capable of returning to his pre-employment position within these restrictions. Dr. Mooney also raised the possibility of claimant functioning at a higher level with additional therapy and work hardening. (Ex. 22, p. 5)

As of the date of evidentiary hearing, claimant remained unemployed. (Claimant's testimony) During his deposition, claimant testified he had not sought employment since his unemployment benefits ceased. (Ex. A, p. 10) The evidentiary record contains summaries of claimant's wages by year and in the positions he held with defendant-employer. (Ex. 18, pp. 1-2) The summaries denote that during the period of 2006 through 2013, claimant's annual earnings varied and ranged from $19,734.75 to $35,353.50. Claimant's hourly rate during his work as a mechanic also varied, ranging from $11.00 to $17.50 per hour. Claimant earned $14.00 per hour at the time of the November 19, 2014 injury. (Ex. 18, pp. 1-2) Review of claimant's pre-injury pay stubs for the period of July 18, 2014 through November 14, 2014, reveal the following:

WEEK NUMBER	WEEK ENDING	HOURS		TOTAL EARNINGS	EARNINGS AT STRAIGHT RATE
1	11/14/14	36.25	regular	$507.50	$507.50
2	11/7/14	38.75	regular	$542.50	$542.50
3	10/31/14	40.00	regular	$570.50	$567.00
		0.5	overtime		
4	10/24/14	12.5	regular	$399.00	$399.00
		16.00	sick		
5	10/17/14	30.25	regular	$479.50	$479.50
		4.00	vacation		
6	10/10/14	34.25	regular	$479.50	$479.50
7	10/3/14	35.00	regular	$490.00	$490.00
8	9/26/14	29.25	regular	$409.50	$409.50
9	9/19/14	18.75	regular	$542.50	$542.50
		20.00	vacation		
10	9/12/14	32.50	regular	$567.00	$567.00

		8.00	holiday		
11	9/5/14	35.00	regular	$546.00	$546.00
		4.00	vacation		
12	8/29/14	35.75	regular	$500.50	$500.50
13	8/22/14	40.00	regular	$581.00	$574.00
		1.00	overtime		
14	8/15/14	40.00	regular	$560.00	$560.00
15	8/8/14	37.75	regular	$528.50	$528.50
16	8/1/14	33.25	regular	$465.50	$465.50
17	7/25/14	40.00	regular	$616.00	$616.00
		4.00	vacation		
18	7/18/14	35.25	regular	$493.50	$493.50

(Ex. 18, pp. 3-20)

With respect to his physical abilities, claimant expressed general agreement with the residual functional capacity profile created in his Social Security Disability application. Claimant testified he is unable to lift 50 pounds and believes he can safely lift a maximum of 25 pounds. His ability to stand for extended periods varies and he develops pain of his back and hip with prolonged sitting. Claimant testified he now ambulates slowly, must stop to rest if walking distances, and is cautious and careful with uneven surfaces. He is slow to rise from a squatting position, suffers flares with cold and humidity, and must take stairs one step at a time. Claimant testified his ability to pull objects is superior to his ability to push objects, but the process is slow. Claimant testified he feels a catching sensation in his back with lifting and may be awoken from sleep by pain. Claimant also testified to difficultly with prolonged sitting, including while driving. He testified his tolerance for driving varies, but he typically stops every 1 to 1 ½ hours for a break. He may be able to remain seated a maximum of 2 to 3 hours before he must have a break from the task. (Claimant's testimony)

Claimant testified he is also limited in the manner he performs activities of daily living. He indicated household tasks take him longer to perform and he requires periodic breaks when performing tasks such as mowing. Claimant indicated he has difficulty carrying items up steps and no longer performs vehicle maintenance. He has also modified his process for deer hunting; he now drives to a location and uses a ground blind, as opposed to walking into timber and hunting from a tree stand. He has also changed to use of a cross bow. Claimant continues to camp, using a camper he pulls behind his pickup truck. He parks the camper at a campground, where he leaves the vehicle for the summer months. In 2015, he volunteered as a host at this campground. (Claimant's testimony)

Claimant testified his memory issues remain consistent. Although the severity varies day-to-day, claimant testified he forgets thoughts during conversations, ceases talking, and may change topics. Claimant testified he is also forgetful and makes lists to compensate, such as at the grocery store. (Claimant's testimony)

CONCLUSIONS OF LAW

The first issue for determination is the extent of claimant's permanent disability, including whether claimant is permanently and totally disabled under industrial disability principles or the odd-lot doctrine.

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).

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The parties have stipulated claimant's disability shall be evaluated industrially.

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.

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

Claimant was 64 years of age on the date of evidentiary hearing. His formal education is limited to graduation from high school. Claimant's work history consists entirely of positions as a heavy equipment operator, truck driver, dispatcher, and mechanic. From 1990 to 2015, claimant worked exclusively for defendant-employer in multiple positions. The last 20 years of that time was spent as a mechanic in various locations nationwide. The job description for claimant's position included physical demands of frequently walking, stooping, kneeling, crouching, and crawling; occasionally climbing or balancing; lifting/moving 10 pounds frequently and more than 100 pounds occasionally; frequent exposure to high and precarious places; and a need for full body range of motion. As claimant worked exclusively as a mechanic for defendant-employer for approximately 20 years, any impact upon claimant's ability to fulfill such duties negatively impacts claimant's earning capacity.

As a result of the stipulated work injury of November 19, 2014, claimant was removed from work. He ultimately was diagnosed with a herniation at left L4-L5, which required surgical intervention. Dr. Beck performed L4-L5 laminectomy and discectomy on January 23, 2015. On April 27, 2015, claimant was released to regular duty on half-days. A subsequent physical therapy session noted claimant had been successful in managing 35-pound weights, but recommended additional sessions to reach a relevant working level of 50 pounds. No additional sessions were completed. Rather, Dr. Beck placed claimant at MMI effective May 11, 2015 and released claimant to return to work on full duty May 12, 2015. Claimant thereafter returned to work, but credibly testified he performed his duties differently, his pace had slowed, and he was more careful in his movements. Defendant-employer terminated claimant's employment on June 8, 2015.

Although claimant did return to work in his pre-injury position, it is unclear if he would have been capable of maintaining his employment long-term. He performed full duty for only approximately three weeks prior to his termination, hardly a period of time which could be deemed to conclusively show claimant was capable of performing all the tasks which he may encounter as a mechanic. Claimant testified during this period, he performed his duties in a different manner than pre-injury. However, a change in the manner of performance of such tasks does not necessarily lead to an inference that claimant would have been unable to perform all duties required of him. Further relevant is claimant's testimony that he intended to remain employed by defendant-employer, had he not been terminated.

Following his termination, claimant demonstrated little attempt to re-enter the labor market. He made a very limited job search and submitted no applications for employment. He filed for and was granted Social Security Disability benefits. I find no evidence claimant made a sincere effort to gain employment. He also did not pursue any avenue for retraining or further education. Claimant's prospects for such training are poor, however, given his age, educational background, and memory impairments. I am unconvinced claimant demonstrated motivation to continued employment or participation in the labor market.

Three physicians have offered opinions regarding the extent of functional impairment sustained by claimant as a result of the work injury of November 19, 2014. Dr. Beck issued a rating of 8 percent whole person; Drs. Mooney and Bansal assigned ratings of 10 percent whole person. The undersigned finds these consistent ratings to accurately reflect the extent of claimant's permanent functional impairment.

These three physicians also offered opinions regarding claimant's need for permanent restrictions as a result of the November 19, 2014 injury. Although Dr. Beck initially imposed no permanent restrictions, he ultimately recommended limiting repetitive lifting to 50 pounds and infrequently exceedingly this weight, as well as only infrequent stooping, kneeling, crawling, bending and twisting. Dr. Mooney expressed agreement with Dr. Beck's restrictions and commemorated restrictions allowing medium work, with occasional lifting over 50 pounds and occasional stooping, kneeling, crawling, bending and twisting.

Dr. Bansal recommended more limiting restrictions, consistent with the medical examiner who evaluated claimant's functional capacity in connection with his Social Security Disability application. However, both of these physicians considered claimant's capacity on a broader level, including the right ankle. Although claimant's right ankle restrictions would be relevant to consideration, it is unclear what restrictions these physicians attribute to each of claimant's conditions. Such an allocation would have allowed the undersigned to better consider the accuracy of these opinions in light of claimant's return to full duty work following the right ankle injury.

Dr. Beck acted as claimant's treating surgeon and is the only opining physician who possessed the opportunity to examine and interact with claimant on multiple occasions. His opinion regarding claimant's need for restrictions is consistent with claimant's testimony regarding his ability to return to work in May 2015. Dr. Beck's opinion is also buttressed by the opinion of Dr. Mooney, who recommended consistent restrictions and opined claimant would be capable of continued employment in his pre-injury position.

Each party offered vocational expert opinions for consideration. The undersigned provides greater weight to the opinions of Mr. Karrow, as he considered the impact of both a full duty work release and imposition of Dr. Bansal's restrictions upon claimant's earning capacity. He also attempted to identify positions for which claimant was a candidate within each set of restrictions and addressed the wages available in the identified positions. Mr. Jayne's vocational report simply critiques Mr. Karrow's report without attempting to identify employment options or address earnings in such positions.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 45 percent industrial disability as a result of the stipulated work-related injury of November 19, 2014. Such an award entitles claimant to 225 weeks of permanent partial disability benefits (45 percent x 500 weeks = 225 weeks), commencing on the stipulated date of May 12, 2015.

Claimant also claims entitlement to permanent total disability benefits under the odd-lot doctrine.

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an 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 reasonably 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. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not 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 effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and 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 fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and 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.

In the instant matter, claimant failed to make a prima facie case of total disability. Claimant demonstrated a minimal and, as described by Mr. Karrow, inadequate job search. Claimant's vocational expert, Mr. Jayne, offered only a rebuttal report; he specifically noted his report did not reflect a vocational evaluation. Accordingly, he critiqued Mr. Karrow's report, but did not offer an opinion that claimant was unemployable in the competitive labor market. As claimant failed to make a prima facie case of total disability, claimant is not entitled to benefits as an odd-lot worker.

The next issue for determination is the proper rate of compensation.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings is excluded, however. Section 85.36(6).

Both claimant and defendants have utilized section 85.36(6) to compute claimant's rate of compensation. The disagreement lies in which 13 weeks are properly utilized in these computations. Defendants utilized the 13 weeks immediately preceding the work injury, records for the weeks ending August 15, 2014 through November 14, 2014. Claimant proposes exclusion of several weeks, resulting in one needing to reach back to the week ending July 18, 2014 before reaching 13 weeks of representative earnings. Specifically, claimant urges exclusion of the weeks ending October 24, 2014, October 17, 2014, October 10, 2014, September 26, 2014 and August 1, 2014. By their respective methodologies, claimant arrives at a gross average weekly wage of $536.31 and defendants arrive at a gross average weekly wage of $508.04.

Following review of the entirety of the record, I find only one week of the 13 weeks immediately preceding the stipulated work injury of November 19, 2014 should be excluded from the rate computation as an unrepresentative week. Review of the 18 weeks of claimant's pay stubs included in evidence reveals claimant's hours varied from 28.5 hours to 44 hours, he worked minimal overtime on two occasions, he received paid vacation or holiday time in five weeks, and he utilized sick leave only once. Claimant's hours varied week-to-week and lack consistency, although he was typically paid for in the range of 33.25 to 40 hours per week. Given this variation of earnings, I do not believe it is appropriate to exclude weeks simply because claimant earned less than he did in other weeks. Claimant did not provide a testimonial basis for a determination that the weeks in question were not customary.

I do find claimant's earnings in the week ending October 24, 2014 do not reflect claimant's customary earnings and are properly excluded from the rate computation. During that week, claimant received pay based upon 28.5 hours of a combination of regular and sick time. Of these hours, 16 were designated as sick pay, indicating claimant missed work due to illness. There is no evidence claimant routinely missed work due to illness or infirmity, as this week was his only use of sick leave during the 18 weeks included in evidence. Also notable is that a medical record included in evidence denotes claimant had been seen in follow up of abdominal discomfort on October 21, 2014 by his personal provider. Accordingly, it is determined claimant's earnings during the week ending October 24, 2014 do not reflect claimant's customary earnings.

Due to the exclusion of the week ending October 24, 2014, I include the week ending August 15, 2014 in computation of rate. During this 13-week period, claimant's straight time earnings totaled $6,765.50. Claimant's gross average weekly wage is found to be $520.42 ($6,765.50 / 13 weeks = $520.42). The parties stipulated that at the time of the work injury, claimant was single and entitled to one exemption. The proper rate of compensation is therefore, $327.43.

The next issue for determination is whether claimant is entitled to penalty benefits under Iowa Code section 86.13 and if so, how much.

If weekly compensation benefits are not fully paid when due, section 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996).

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

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

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

If the employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall impose a penalty in an amount up to 50 percent of the amount unreasonably delayed or denied. Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

Claimant seeks an award of penalty benefits on the basis of an underpayment due to defendants' calculation of claimant's weekly rate of compensation. The parties stipulated and the evidentiary record demonstrates that defendants paid 44 weeks of permanent partial disability benefits at the weekly rate of $325.71. By this decision, the undersigned determined claimant's proper weekly rate to be $327.43. As indemnity benefits were paid at a lower rate than determined by this decision, there has been a delay in weekly benefits owed.

Although there has been an underpayment of benefits, resulting in a delay in claimant's receipt of his full entitlement to benefits, the undersigned finds no penalty award is appropriate. Defendants based their rate computation upon claimant's earnings in the 13 weeks immediately preceding the work injury. This approach is consistent with the plain language of section 85.36(6) and I find nothing unreasonable with defendants' approach. Although I ultimately excluded one such week from the calculation as unrepresentative, thus resulting in substitution of one week with higher earnings, defendants' calculation was reasonable and defendants' liability for benefits at

a higher compensation rate was fairly debatable. Therefore, no penalty benefits are warranted.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33.

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. Dec. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. Dec. 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. Dec. July 21, 2009).

Claimant requests taxation of the costs of: $100.00 filing fee and the $1,814.25 vocational expense fee of Mr. Jayne. The cost of filing fee is an allowable cost and is taxed to defendants.

With respect to taxation of the vocational report of Mr. Jayne, claimant is not permitted to receive reimbursement for the full cost of Mr. Jayne's vocational report as a practitioner's report under rule 4.33. Rather, the Iowa Supreme Court has ruled only the portion of the expense incurred in preparation of the written report can be taxed. Des Moines Area Regional Transit Authority v. Young, 867 N.E.2d 839 (Iowa 2015). The expense itemization completed by Mr. Jayne breaks his fee into two categories: printing costs in the amount of $14.25 and $1,800.00 attributable to review and analysis of multiple records, analysis of Mr. Karrow's report, and "rebuttal report." The itemization lacks specificity regarding what portion of the fee is attributable solely to report preparation. Therefore, consistent with the decision of LaGrange v. Nash Finch Co., File No. 5043316 (Appeal July 1, 2015), defendants are taxed with one-third of the portion of fee which includes report preparation. Defendants are taxed with $599.94 of Mr. Jayne's vocational fee (33 1/3 percent x $1,800.00 = $599.94).

Defendants are taxed with total costs of $699.94.

ORDER

THEREFORE, IT IS ORDERED:

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendants shall pay unto claimant two hundred twenty-five (225) weeks of permanent partial disability benefits commencing May 12, 2015 at the weekly rate of three hundred twenty-seven and 43/100 dollars ($327.43).

Defendants shall pay accrued weekly benefits in a lump sum.

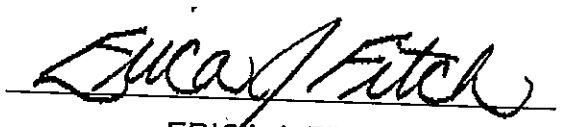
Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendants shall receive credit for benefits paid.

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

Costs are taxed to defendants pursuant to 876 IAC 4.33 in the amount of six hundred ninety-nine and 94/100 dollars ($699.94), as set forth in this decision.

Signed and filed this 7th day of February, 2017.



ERICA J. FITCH
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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.