

Pursuant to Iowa Code section 17A.15(2), the undersigned inquired of the parties whether they believed demeanor of a witness is a substantial factor in the case. The undersigned offered to hear those portions of the testimony again for which demeanor was considered a substantial factor. On March 5, 2020, claimant's counsel confirmed via e-mail to the undersigned that claimant does not believe demeanor is a substantial factor in this case and that he has no objection to the undersigned drafting an arbitration decision without further evidentiary hearing. On March 6, 2020, defense counsel similarly confirmed via e-mail that defendants do not have an objection to the undersigned proceeding to write this arbitration decision without rehearing all or portions of the testimony to assess witness demeanor. Therefore, pursuant to Iowa Code section 17A.15(2) and the Commissioner's Order of Delegation filed on March 2, 2020, the undersigned performs a review of the evidentiary record in this case and issues this arbitration decision at the direction of the Commissioner.

ISSUES

The parties completed a hearing report in which they submitted the following disputed issues for resolution:

1. Whether claimant's claim is barred by the statute of limitations, including a claim that defendants paid wages in lieu of worker's compensation weekly benefits extending the statute of limitations.
2. The extent of claimant's entitlement to temporary disability, or healing period, benefits.
3. Whether the January 15, 2007 injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability.
4. The proper commencement date for permanent disability benefits, if any.
5. Whether claimant is entitled to payment or reimbursement for past medical expenses, including specific medical transportation expenses.
6. Whether claimant is entitled to reimbursement of her independent medical evaluation charges.
7. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

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

David Ramsey, claimant, sustained an admitted work injury on January 15, 2007, while in the employment of the City of North Liberty. On that date, Mr. Ramsey fell on ice located on his employer's premises. When he fell, Mr. Ramsey struck his head. He

testified that he was paralyzed for a period of time after he fell. Once he regained some movement, he called his employer and was transported via ambulance to the hospital.

Mr. Ramsey remained hospitalized until January 18, 2007. His care was subsequently transferred to an occupational medicine physician, Henri Cuddihy, M.D. Dr. Cuddihy diagnosed claimant with a mild traumatic brain injury, vertigo and left cervical pain. (Joint Ex. 2, p. 159) However, Dr. Cuddihy permitted claimant to return to work part-time on January 26, 2007 and later full-time. Defendants issued a temporary total disability payment to claimant for his lost time through January 26, 2007. Defendants also filed a notice of commencement of benefits with the Iowa Workers' Compensation Commission on January 31, 2007.

Thereafter, Mr. Ramsey continued to receive medical treatment, including physical therapy and continued to work under restrictions. However, he had no additional lost time that was documented or paid as temporary disability under Iowa's worker's compensation statutes. By July 9, 2007, claimant reported significant improvement of his head and neck pain and Dr. Cuddihy released him to full-duty work. (Joint Ex. 2, p. 168) Dr. Cuddihy opined that claimant would achieve maximum medical improvement by approximately the end of July 2007 or the beginning of August 2007. He opined that claimant sustained no permanent impairment as a result of the work injury. (Joint Ex. 2, p. 168)

Unfortunately, Mr. Ramsey's symptoms and conditions persisted and did not fully resolve. Following medical recommendations, claimant tried various medications, sought treatment through occupational medicine physicians, a neurosurgeon, a pain clinic, and submitted to neuropsychological evaluations, injections, psychiatric evaluations, neurological consultations, chiropractic care, pain clinic consultations, and a spinal stimulator trial. Unfortunately, Mr. Ramsey testified that his symptoms, including debilitating headaches, continued to escalate, especially after 2015.

Mr. Ramsey testified that he became irritable and had difficulties managing his subordinates at the City of North Liberty because of his symptoms. He testified that he continues to have daily headaches. Claimant developed anxiety and required the assistance of his wife on weekends to continue to complete his job duties for the City of North Liberty. Ultimately, claimant retired from his job at North Liberty when faced with disciplinary action, including probable termination, as a result of his actions toward subordinates.

Since his retirement, claimant has qualified for and receives Social Security disability benefits. However, he has applied for alternate employment. He testified that he interviewed for and received a job offer from the City of Sioux City. Unfortunately, claimant testified that in his initial meeting to understand the job duties, he was unable to focus and had to decline the job offer. Mr. Ramsey obtained part-time employment working for a car dealership, but quit after a few weeks because he was unable to handle the job pressures due to his symptoms.

Joseph Chen, M.D. provided claimant pain clinic care at the University of Iowa Hospitals and Clinics. Dr. Chen ultimately recommended ongoing medication management for claimant's condition through a psychiatric medicine specialist. On November 9, 2018, Dr. Chen opined that claimant sustained a 14 percent permanent impairment of the whole person as a result of his mental status resulting from the 2007 work injury. (Joint Ex. 1, p. 147) Don St. John, PA-C, at the University of Iowa Hospitals and Clinics Adult Psychiatry Clinic diagnosed claimant with major depressive disorder and insomnia as a sequela of his 2007 head injury. (Joint Ex. 1, pp. 141-143)

Claimant obtained a psychiatric independent medical evaluation performed by Kunal Patra, M.D. Dr. Patra evaluated claimant on January 17, 2019. Dr. Patra diagnosed claimant with significant deficits in memory and attention. He noted severe clinical depression and a severe generalized anxiety disorder. (Claimant's Ex. 1, pp. 23-24) Dr. Patra attributed these conditions to claimant's work injury in 2007 and the resulting post-concussive syndrome. (Claimant's Ex. 1, pp. 24-31)

Dr. Patra opined that claimant sustained a 22 percent permanent impairment of the whole person as a result of the 2007 head injury. (Claimant's Ex. 1, pp. 34-35) Dr. Patra opined that claimant has resulting moderate cognitive limitations that would preclude him from the demands of working in a dynamic workplace. Dr. Patra recommended against any return to work unless and until claimant's depression, anxiety, pain, fatigue, and ability to concentrate improved. (Claimant's Ex. 1, p. 35)

Claimant testified that he experiences daily headaches with significant and debilitating exacerbations occurring several times per week. He testified that the exacerbations come on randomly and are not predictable. His headaches make it difficult for him to drive a vehicle and he limits his driving to local driving. Mr. Ramsey was not working at the time of the hearing. It is unlikely that he will return to employment in the foreseeable future unless his symptoms are further addressed medically and significantly improve.

Defendants assert that claimant's claim for benefits is barred by the statute of limitations. With respect to this defense, I find that defendants paid claimant temporary total disability benefits from the date of injury through January 26, 2007. (Defendants' Ex. A & C) Defendants paid no additional weekly worker's compensation benefits to Mr. Ramsey after January 26, 2007. (Defendants' Ex. C) Defendants electronically filed a notice of commencement of weekly benefits with the Iowa Workers' Compensation Commission on January 31, 2007 and the report was acknowledged and accepted by this administrative agency on February 2, 2007. (Defendants' Ex. B)

Mr. Ramsey asserts that, although defendants did not pay weekly benefits, he did miss additional time from work after January 2007. Mr. Ramsey testified that he was told by human resources for the City of North Liberty to simply record regular work time for all work time he missed due to treatment or symptoms resulting from his 2007 work injury. Claimant asserts that the City of North Liberty paid him regular wages in lieu of paying temporary disability, or healing period, benefits for all time he lost after January 26, 2007.

However, Mr. Ramsey is not able to identify specific dates he was absent for which he was paid normal wages, other than for his attendance at medical appointments. In 2017, claimant was taken off work by Dr. Hartley and received sick leave benefits through the employer's benefit package. However, with respect to any lost time prior to 2017, Mr. Ramsey conceded throughout his testimony that his memory is not good. Mr. Ramsey also conceded at trial that the employer never told him that they were paying wages in place of worker's compensation benefits. (Tr., p. 92)

The employer's human resource director, Debra Hilton, testified that the City had no intention to pay wages in lieu of weekly worker's compensation benefits. (Tr., p. 110) Ms. Hilton further testified that the City of North Liberty does not ever pay worker's compensation benefits directly to employees. All worker's compensation weekly benefits are paid through its insurance carrier. (Tr., p. 107) Ms. Hilton concedes that the City does pay lost wages when an employee attends a medical appointment because such wages and direct payment are, by her understanding, required by law. (Tr., p. 108)

Ms. Hilton testified that claimant was a manager for the City. As a manager, Mr. Ramsey knew that the City required medical documentation for any lost time from work as a result of a work injury. (Tr., pp. 111-112) Yet, claimant did not obtain or submit medical documentation for any lost time between January 2007 and June 2017. Most damaging for Mr. Ramsey was his admission that he would notify his subordinates if he was adjusting work hours due to symptoms but that he never told his superiors he was losing time prior to June 2017. (Tr., p. 55)

Claimant's direct supervisor, Ryan Heiar, also testified. Mr. Heiar testified that claimant was paid sick leave after Dr. Hartley removed him from work in June 2017. However, Mr. Heiar denied that claimant ever reported he was missing work time as a result of the 2007 work injury prior to June 2017. (Tr., p. 125)

Ultimately, I find that Mr. Ramsey was paid regular wages for time he missed to attend medical appointments after his 2007 work injury. After June 2017, claimant was paid sick leave benefits by the employer pursuant to its sick leave policy. However, I find that prior to June 2017, claimant did not notify his employer that he was losing time as a result of symptoms or as a result of the 2007 work injury. I find that the employer did not know it was paying wages for time not worked due to the 2007 work injury and that it had no intention of paying wages in lieu of worker's compensation weekly benefits. I accept the City's evidence that it did not pay wages to employees; but rather, all such payments were made through its worker's compensation insurance carrier.

Finally, I find that the payments made to claimant after Dr. Hartley took him off work in June 2017 were pursuant to the terms of the City's sick leave policy and not paid as wages in lieu of benefits. In fact, when claimant inquired in July 2017, the City clarified that he was no longer entitled to worker's compensation weekly benefits. I find that the City did not pay wages in lieu of weekly worker's compensation benefits.

I find that the last (and only) weekly worker's compensation benefit payment made to claimant was in January 2007. Claimant did not file his original notice and petition in this case until May 7, 2018.

Mr. Ramsey also asserts a claim for past, unpaid medical mileage and parking expenses totaling \$211.47. (Claimant's Ex. 8, pp. 109-110) No contrary evidence was introduced on this issue. I accept claimant's affidavit of mileage and find the amounts contained therein are accurate. I find that claimant incurred medical mileage and parking fees. I find that he has not been reimbursed for \$211.47 in medical mileage and parking fees for medical treatment causally related to the 2007 work injury.

Claimant also asserts a claim for reimbursement of his independent psychiatric medical evaluation performed by Dr. Patra on January 17, 2019. Dr. Patra charged \$4,680.83 for his medical services. I find those charges are reasonable under the circumstances, longevity, and complexity of this case.

CONCLUSIONS OF LAW

The initial dispute submitted by the parties is whether this claim for benefits is barred by the statute of limitations. The legal standards and statute of limitations for weekly benefits and medical benefits differ. See Iowa Code section 85.26(1)-(2). Therefore, claimant's claim must be considered in two parts. First, I must determine whether his claim for weekly benefits is barred by the statute of limitations. Next, I must determine whether his claim for medical benefits is barred.

The initial determination is whether the statute of limitations bars claimant's claim for additional weekly benefits.

The Iowa Workers' Compensation Act imposes time limits on injured employees both as to when they must notify their employers of injuries and as to when injury claims must be filed.

Iowa Code section 85.26(1) requires an employee to bring an original proceeding for benefits within two years from the date of the occurrence of the injury if the employer has paid the employee no weekly indemnity benefits for the claimed injury. If the employer has paid the employee weekly benefits on account of the claimed injury, however, the employee must bring an original proceeding within three years from the date of last payment of weekly compensation benefits.

That the employee failed to bring a proceeding within the required time period is an affirmative defense which the employer must plead and prove by a preponderance of the evidence. See Dart v. Sheller-Globe Corp., II Iowa Industrial Comm'r Rep. 99 (App. 1982).

The evidence is not really in dispute about defendants' payment of weekly benefits. The undisputed evidence demonstrates that defendants paid one week of temporary disability benefits more than three years prior to the filing of claimant's

original notice and petition. If Iowa Code section 85.26(2) is read literally, any claim for weekly benefits is barred by the statute of limitations.

The last and only payment of weekly benefits to Mr. Ramsey occurred on January 26, 2007. The defendants properly and timely filed a notice of commencement of benefits pursuant to Iowa Code section 86.13(1) and 876 IAC 3.1(2). Accordingly, the statute of limitations for weekly benefits in this claim expired in January 2010.

Claimant, however, asserts that defendants paid him salary or wages in lieu of weekly worker's compensation benefits after January 2007 and that those payments extend the statute of limitations. Indeed, wages can be paid directly to an employee in lieu of weekly worker's compensation benefits. See 876 IAC 8.4. Given the agency's recognition that wages can be paid in lieu of weekly benefits, I conclude that payment of wages in lieu of benefits likely does extend the statute of limitations.

Claimant testified that the employer instructed him to report regular hours even if he missed time due to his work injury. Presumably, this means that claimant was reporting regular wages while missing hours or time due to symptoms. He also testified that he missed time for medical appointments and reported those lost hours as regular time.

Defendants countered with evidence demonstrating that claimant was not reporting specific lost time to his superiors to permit a determination by the employer about whether to pay worker's compensation benefits or wages in lieu of benefits. The employer also presented testimony that the City never paid wages in lieu of benefits and always paid worker's compensation weekly benefits through its insurance carrier. Claimant's direct supervisor also testified that claimant never reported missing work due to the 2007 injury between January 2007 and June 2017. Having considered all of the relevant evidence and testimony on this issue, I found that claimant failed to prove the wages he was paid by the City were paid in lieu of weekly worker's compensation benefits. Given that a reviewing court has not considered this issue specifically to determine whether the employee or employer bear the burden of proof on the issue of wages paid in lieu of weekly benefits, I offered a similar but opposite finding that the City proved it did not pay wages in lieu of benefits. Either way, I conclude that the City did not pay wages in lieu of benefits and that the statute of limitations for weekly benefits was not extended beyond January 2010.

Mr. Ramsey also alleged that the City paid him lost wages for all medical appointments he attended as a result of the 2007 work injury. The City's human resource director conceded that the City pays wages directly for lost time due to medical treatment, as she understood the law requires such payment of wages. Indeed, under circumstances that would apply to Mr. Ramsey in this claim, the employer is required to pay wages to an employee for lost time to attend medical appointments related to a work injury. See Iowa Code section 85.27(7). However, the statute specifically states, "Payments under this subsection shall not be construed to be payment of weekly benefits." Id.

Therefore, any lost time due to medical appointments would be categorized as medical benefits paid pursuant to Iowa Code section 85.27. Any payment of wages by the employer to compensate claimant for lost time to attend medical appointments would not extend the statute of limitations for weekly benefits.

Claimant failed to prove any specific dates when he lost time due to symptoms. Moreover, he failed to prove that his superiors knew he was losing time and that he should have been paid weekly worker's compensation benefits. Ultimately, I found that claimant was paid one week of temporary disability benefits in January 2007. No additional weekly worker's compensation benefits were paid to claimant. The employer did not intend to and could not have known that it was paying wages in lieu of weekly benefits under the facts presented.

I also found that defendants proved it complied with all necessary statutory provisions to ensure the statute of limitations commenced and expired. Specifically, I found that the employer timely filed its notice of commencement of benefits with this agency. Therefore, the statute of limitations commenced as of the filing of that notice of commencement and expired in 2010.

Having reached these findings of fact, I conclude that the employer proved that more than three years passed between its last payment of weekly benefits and the filing of claimant's original notice and petition. I conclude that claimant failed to establish that the payment of wages the City made to him constituted payment of wages in lieu of benefits. Stated to the contrary, if the burden is on the City, I find that the City proved it did not pay wages in lieu of weekly worker's compensation benefits. Therefore, although I am sympathetic to Mr. Ramsey given that this work injury has ultimately created a great hardship and catastrophic consequences upon him, I conclude that the statute of limitations for any weekly benefits expired before he filed his original notice and petition. Ultimately, I conclude that any claim for additional weekly benefits is barred pursuant to Iowa Code section 85.26(2).

Next, I must determine whether claimant has a viable claim for medical benefits, or if those have likewise been barred by the statute of limitations.

Where an award for payments or agreement for settlement for benefits has been made, an employee may bring an action seeking a determination and order as to the employee's entitlement to medical treatment pursuant to section 85.27 at any time. Likewise, if an employer makes weekly indemnity benefits to the employee and does not file a denial of liability with the commissioner and mail notice of that denial to the employee, both within six months of the commencement of weekly benefits, then the employee may bring an action seeking medical benefits under section 85.27 at any time. Iowa Code section 85.26(2).

Defendants introduced no evidence that it filed a notice of denial within six months of commencing weekly benefits. Therefore, I conclude that claimant's claim for past medical expenses remains viable and was not extinguished by the statute of limitations. Iowa Code section 85.26(2). In fact, claimant remains entitled to payment

of any causally related medical expenses for the remainder of his lifetime. Therefore, claimant maintains a viable claim for medical expenses that must be considered.

Claimant asserts a claim for medical transportation charges.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Pursuant to 876 IAC 8.1(2), claimant is entitled to mileage expenses for use of a private vehicle to obtain medical care. Having found that claimant's mileage affidavit and itemization at Claimant's Exhibit 8, pages 109-110 are accurate, I conclude that claimant has proved entitlement to reimbursement for medical mileage and parking fees totaling \$211.47. Iowa Code section 85.27(1).

Mr. Ramsey also seeks the award of his independent medical evaluation with Dr. Patra.

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

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

However, Iowa Code section 85.39 establishes pre-requisites that claimant must meet before reimbursement of an independent medical evaluation is required of the defendants. First and foremost, an evaluation of permanent disability must be made by a physician chosen by the defendants before claimant obtains his independent medical evaluation.

In this case, defendants obtained a permanent impairment rating pertaining to claimant's mental health condition by Dr. Chen on November 9, 2018. Claimant sought an independent medical evaluation with Dr. Patra on January 17, 2019. Dr. Patra rendered a permanent impairment rating as a result of his evaluation. Therefore, I

conclude that claimant established the pre-requisite of Iowa Code section 85.39 to obtain reimbursement of Dr. Patra's fees under that statute. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 843-844 (Iowa 2015).

I found the charges submitted by Dr. Patra were reasonable under the circumstances of this case. Having reached these findings and conclusions, I similarly conclude that claimant proved entitlement to reimbursement of Dr. Patra's independent medical evaluation charges pursuant to Iowa Code section 85.39.

Finally, claimant seeks reimbursement of costs associated with this case. Claimant seeks reimbursement of his filing fee, service costs, and the cost of his deposition transcript. Claimant also lists reimbursement for Dr. Patra's evaluation. Having awarded Dr. Patra's charges pursuant to Iowa Code section 85.39, I will not consider those charges as claimant's request for costs.

Defendants prevailed on the largest issue in dispute in this case, namely the statute of limitations defense. That being said, claimant did recover some past medical reimbursements, his independent medical evaluation, and established his entitlement to ongoing, causally related medical treatment for the injury. Given those recoveries, it was reasonable and necessary for claimant to file the petition with this agency. I conclude it is appropriate to assess claimant's costs in some amount.

I find it is reasonable to assess claimant's filing fee (\$100.00) pursuant to Iowa Code section 86.40 and 876 IAC 4.33(7). I assess claimant's service fees (\$13.34) pursuant to 876 IC 4.33(3). Defendants placed claimant's deposition transcript into evidence. Therefore, it was reasonable for claimant to order a copy of the transcript. I assess the cost of the transcript (\$392.50) pursuant to 876 IAC 4.33(2). In total, I assess claimant's costs totaling \$505.84 against defendants.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall reimburse claimant for medical mileage and parking fees in the amount of two hundred eleven and 47/100 dollars (\$211.47).


Defendants shall reimburse claimant for his independent medical evaluation performed by Dr. Patra in the amount of four thousand six hundred eighty and 83/100 dollars (\$4,680.83).

Defendants remain responsible for all future, causally related medical treatment related to this injury.

Defendants shall reimburse claimant's costs in the amount of five hundred five and 84/100 dollars (\$505.84).

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 9th day of April, 2020.


WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

M. Anne McAtee (via WCES)

Eric Bigley (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.