BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEN HASS, Claimant, vs. EXIDE TECHNOLOGIES, Employer, and AMERICAN ZURICH INSURANCE CO., Insurance Carrier, Defendants.	FILED JAN 03 2019 WORKERS' COMPENSATION	File Nos. 5048470, 5059048 ARBITRATION AND REVIEW- REOPENING DECISION Head Note Nos.: 1800, 2905

STATEMENT OF THE CASE

In file no. 5048470, claimant, Kenneth Hass, filed a petition seeking review-reopening of an agreement for settlement approved by this agency on July 2, 2015. The agreement for settlement followed an arbitration decision dated June 11, 2015 and concerning a date of injury of March 23, 2012, involving claimant's right foot, right leg, right hip and low back.

In file no. 5059048, claimant filed a petition in arbitration seeking workers' compensation benefits from his employer and their workers' compensation insurance carrier alleging injuries to his bilateral shoulders, neck, and back that arose out of and in the course of his employment on June 21, 2017.

The defendants in both file nos. 5048470 and 5059048 are the same.

The files proceeded to hearing together on June 29, 2018. The parties filed post-hearing briefs and the matter was considered fully submitted on August 6, 2018.

The evidentiary record consists of Joint Exhibits JE1 through JE6, Claimant's Exhibits 1 through 6 and Defendants' Exhibits A and B. Claimant provided testimony at hearing. The undersigned takes administrative notice of the June 11, 2015 arbitration

decision involving file no. 5048470, and the subsequent agreement for settlement approved on July 2, 2015.

The parties filed separate hearing reports for each file at the commencement of the hearing. On the hearing reports, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

File no. 5048470, Date of Injury: March 23, 2012

1. Entitlement to review/reopening of the July 2, 2015 agreement for settlement and extent of industrial disability.

2. Independent medical examination (IME) reimbursement, Iowa Code section 85.39.

3. Alternate Medical Care, Iowa Code section 85.27.

4. Costs.

File no. 5059048, Date of Injury: June 21, 2017

1. Whether claimant sustained an injury on June 21, 2017 that arose out of and in the course of his employment.

2. Whether the injury is to a scheduled member or the body as a whole.

3. Extent of permanent partial disability, if any.

4. Extent of credit against permanent partial disability.

5. Commencement date of permanent partial disability.

6. IME reimbursement, Iowa Code section 85.39.

7. Alternate Medical Care, Iowa Code section 85.27.

8. Costs.

FINDINGS OF FACT

Having considered all of the evidence and testimony in the record I find as follows:

At the time of the hearing, claimant was 58 years old. (Transcript page 10) He graduated from high school in 1979. (Tr. pp. 10-11) There was no evidence that claimant had any additional education.

Employment

The defendant employer, Exide Technologies, produces automotive and other batteries. Claimant began working for the defendant employer in 1985. (Tr. p. 11) He has worked there continuously except for the period from April, 2010 to December, 2010. (Exhibit 3, p. 17) Claimant was re-hired in December, 2010 and he was working for the defendant full-time at full-duty without restrictions at the time of the hearing. (Tr. pp. 42, 45)

Claimant worked at Exide Technologies for about the past 28 years in the finishing area, which involves working near the end of a conveyor line. (Tr. p. 11) The line is about 4 feet wide and about waist high. (Tr. p. 13) Batteries come down the conveyor line. They weigh about 45 pounds and the accompanying acid packs weigh about 35 pounds. Claimant's job involves standing at the end of the line and wrapping a battery and an acid pack together into a single package using cardboard. He then pushes the combined product off the conveyor and into a banding machine. He does this by extending his arms to push the product across the conveyor. The banding machine places two bands, or straps, around the product to secure them together. (Tr. pp. 19-21) He then pulls the product back onto the line and then pushes it and/or maneuvers the packaged product onto a pallet that is raised and lowered electrically. After claimant reported his work injury the employer changed the location of the banding machine. Before he reported his shoulder injury, the product was pushed all the way through the banding machine, which required claimant to extend his arms even farther to get the product through the machine. (Tr. pp. 25-27) Claimant stated that he typically processed about 650 batteries in an ordinary shift and up to 1,200 or 1,300 batteries during a twelve-hour shift. (Tr. p .28) Claimant worked a significant amount of overtime in the summer of 2017. (Id.)

Claimant agreed that his wages have increased since 2015. (Tr. p. 45) Claimant was earning about $21.00 per hour at the time of the hearing. (Id.)

Claimant stated that his seniority and bumping rights were affected as a result of being off work for 9 months in 2010, which would make moving to a different job more difficult. (Tr. p. 54) However, he also said that although he could potentially bid into a different job, he had no intention of doing so because he liked his current job. (Tr. p. 46) However, he also stated that he was not able to do his job at one hundred percent effort, although he agreed that he continued to work full-time, full-duty, and with no restrictions. (Tr. p. 51)

Injuries

File no. 5048470, Date of Injury: March 23, 2012

On March 23, 2012, claimant felt a pop in his right foot when he turned to push a battery at work. He had a burning sensation in his foot. (Arb. Dec. p. 2) On September 3, 2013, he was diagnosed with a fractured cuboid of the right foot. (Id.) Kelsey Harvey, DPM performed surgery on September 10, 2013, but was unable to remove any bone fragments and claimant understood the surgery to be unsuccessful. (Arb. Dec. p. 3)

On June 11, 2015, an arbitration decision was issued and the deputy found, based upon the expert opinions, that claimant sustained an injury that arose out of and in the course of his employment with defendant on March 23, 2012 resulting in an injury to the whole person. The deputy relied primarily on the opinion of Lloyd John Luke, M.D. who assigned 27 percent permanent impairment to the whole person involving the right foot, leg, hip and lower back. (Arb. Dec. p. 3)

After the arbitration decision was issued, the parties entered into an agreement for settlement, which was approved by this agency on July 2, 2015. The agreement for settlement provided that defendants pay 29.019 percent whole person impairment to claimant, which is 145.0928 weeks of compensation. (Agreement for Settlement, p. 1)

The parties stipulated in this review/reopening that claimant has been paid a total of 146.7 weeks of permanent partial disability benefits prior to the hearing. (Hearing Report, p. 2)

File no. 5059048, Date of Injury: June 21, 2017

For a few months prior to June 21, 2017, claimant noticed pain in his shoulders, and on June 21, 2017, claimant stated that his shoulders "locked up" at work. He reported this incident to the employer on the same date. (Tr. p. 29; Ex. JE3, p. 12)

Prior Medical Condition

File no. 5048470, Date of Injury: March 23, 2012

Before the agreement for settlement, Stanley Mathew, M.D., of UnityPoint Health, wrote a letter to claimant's counsel on January 13, 2015, following an IME. (Ex. 1, p. 1) Claimant reported that he returned to work in November 2013, and he continued to work full-time. (Ex. 1, p. 2) He complained of "pain throughout his right lower extremity and low back, right hip, knee and right ankle." (Id.) He also complained of weakness and instability in his leg. Dr. Mathew noted claimant had a "very antalgic gait," and stated that he has to be careful when ambulating because claimant feels that "he is at a high risk to fall." (Id.)

On February 11, 2015, Dr. Luke, the medical director of Occupational Health at UnityPoint, Allen Memorial Hospital, wrote a letter to defense counsel after reviewing Dr. Mathew's IME report of January 13, 2015, but without conducting an examination of his own. Therefore, Dr. Luke's letter did not provide any new information concerning claimant's condition at that time.

On April 20, 2015, Patrick Hartley, M.D., issued a report following a March 26, 2015 IME. (Ex. JE2, p. 3) At that time, claimant was "performing full unrestricted duty." (Ex. JE2, p. 7) However, he had an antalgic gait. He had good lumbar range of motion, but "decreased range of motion on internal and external rotation" and on "adduction and abduction of right hip," with "[m]ild tenderness to palpation over the right ischial tuberosity." (Ex. 2, p. 6) Concerning the right knee, claimant had mild tenderness to palpation at the lateral hamstring insertion. Regarding the right ankle, claimant had decreased range of motion, but no tenderness in the foot or ankle. He also had slightly decreased strength in the right lower extremity compared to the left. (Ex. JE2, p. 6)

At the initial hearing in April, 2015 claimant testified that he continued to work full-time, but he had daily pain in his right foot, leg, and hip. He stated that he had not pursued treatment for his right hip or low back at that time because he could not afford to take time off work. (Arb. Dec. p. 4)

File no. 5059048, Date of Injury: June 21, 2017

Claimant noticed pain in his shoulders in the months leading up to June 21, 2017, when he reported to his employer that his shoulders locked up. (Tr. pp. 29, 30, 47, 49; Ex. JE3, p. 12)

Post-Injury Medical Treatment

File no. 5048470, Date of Injury: March 23, 2012

Concerning the Review-Reopening matter, the agreement for settlement provided that defendants pay claimant 29.019 percent industrial disability, which is 145.0928 weeks of industrial disability. (Agreement for Settlement, p. 1) The parties agree that claimant was actually paid 146.7 weeks of permanency benefits prior to the recent hearing. (Hearing Report, p. 2)

The underlying arbitration decision dated June 11, 2015, made findings of facts and was not appealed.

I have taken administrative notice of the arbitration decision and agreement for settlement at the request of the parties.

Following the injury to claimant's right foot, claimant was diagnosed with a fractured cuboid of the right foot. (Arb. Dec. p. 2) He had surgery on September 10, 2013, which failed to remove any bone fragments. (Arb. Dec. p. 3)

Dr. Mathew opined that claimant sustained a 40 percent combined permanent impairment to his whole person due to the foot injury, right leg pain, right hip pain and lower back pain, noting claimant's antalgic gait. (Arb. Dec. p. 3; Ex. 1, p. 3)

Dr. Luke, opined that claimant sustained 27 percent impairment to the whole person. Dr. Luke's assessment of impairment was adopted by the deputy. (Ex. JE1, p. 2; Arb. Dec. p. 7)

On April 20, 2015, Dr. Hartley issued a report following an IME and found that claimant walked with an antalgic gait, had decreased range of motion in his right hip and decreased range of motion of the right ankle, along with pain in his right foot, knee and hip. (Ex. JE2, pp. 2, 6, 7) He assigned 3 percent permanent impairment of the whole person based only on chronic foot pain as a consequence of the fracture. (Ex. JE2, p. 7) Dr. Hartley declined to assign any impairment for the right knee or hip pain because he believed the knee and hip had not been fully evaluated. (Id.)

Claimant stated that following the shoulder injury in June, 2017, he saw Kenneth McMains, M.D., who told him that a doctor in Iowa City could help him with his lingering right foot, leg and hip injury. (Tr. p. 56) Claimant was sent by defendants to see Jonathan Fields, M.D., who stated that claimant's right foot pain was idiopathic and not work related. (Tr. p. 56, 57) Significantly, Dr. Fields stated that claimant reported no change since 2012. Upon examination, Dr. Fields stated claimant had no pain to palpation and full range of motion of the right foot with a normal gait. (Ex. JE5, p. 36) A right foot MRI was recommended. (Id.) The MRI was obtained on November 22, 2017, showing "[m]ild subcutaneous edema lateral to base of fifth metatarsal, likely acute." (Ex. JE5, p. 39) Dr. Fields stated that the MRI was "normal" and claimant was walking without any issue. (Ex. JE5, p. 40) He found the right foot pain to be idiopathic based on the MRI results being normal and because there was no evidence of a fracture. (Ex. JE5, p. 42) Claimant was instructed to follow-up with his primary care physician concerning any ongoing "non-work related foot pain." (Id.)

Claimant stated that he would like to have further testing for his right foot, leg, hip and low back. (Tr. p. 55) He stated that he had not asked for any additional treatment for a few years because he "got tired of the doctors telling me, well, there's nothing we can really do." (Tr. p. 56)

Claimant is not presently receiving any treatment for the March 23, 2012 injury. (Tr. pp. 56, 57; Ex. JE5, p. 42)

File no. 5059048, Date of Injury: June 21, 2017

After claimant reported his shoulders locking up on June 21, 2017 and his pain in his shoulders, neck and back, his employer sent him to the company nurse on site, who claimant saw a few times. (Tr. p. 32) Claimant testified that after he filed a petition concerning this claim, he was told he could no longer have treatment on site with the nurse and he was sent by the employer to see Dr. McMains. (Tr. p. 31; Ex. JE3)

Dr. McMains saw claimant on July 28, 2017, who indicated that claimant's neck and shoulder complaints were work related. (Ex. JE3, p. 17) Dr. McMains prescribed physical therapy, which claimant stated provided very little relief. (Tr. pp. 33-34) Dr. McMains assigned restrictions of no working above shoulder height and limiting pushing, pulling and reaching with both arms. He was not assigned any lifting restrictions. (Id.) Claimant continued to work and did light duty, which still required lifting 20 to 30 pounds. (Tr. pp. 33-35, 38)

There is no evidence that claimant missed any time from work due to the June 21, 2017 alleged injury. I find that claimant continued working after June 21, 2017 and returned to work on June 22, 2017.

Claimant testified that after taking x-rays, Dr. McMains told him that his shoulders "were shot" and he would need shoulder replacements. (Tr. p. 35) Dr. McMains does note that surgery may be warranted in the future. (Ex. JE3, p. 24)

Dr. McMains returned claimant to full duty with no restrictions on August 28, 2017, with a "guarded" prognosis. (Ex. JE3, p. 26) Claimant was released with "no specific limitations [except] for try to work in a comfortable manner without pain on a daily basis," and "with a caveat of 'watchful waiting' to determine if on returning to work he has return of his shoulder pains, based on his day to day activities." (Ex. JE3, p. 24)

It is significant to the undersigned that Dr. McMains cautiously returned claimant to work. Although no specific restrictions were assigned, Dr. McMains anticipated that claimant's return to work could aggravate and increase his pain and symptoms.

Dr. McMains stated that claimant had excellent results from PT regarding his cervical spine and claimant had "essentially full range of motion of his neck." (Ex. JE3, p. 24)

Dr. McMains discharged claimant and "closed" his case on August 29, 2017. (Ex. JE3, p. 24) Claimant stated that he told Dr. McMains when he was released that he still had problems with his shoulders and that his shoulders had not improved. (Tr. pp. 38-39)

Claimant has worked regular duty with no restrictions since being released by Dr. McMains. (Tr. p. 43)

On November 26, 2017, Stanley Mathew, M.D. wrote a letter/report to claimant's counsel following an IME of claimant concerning the June 21, 2017 incident. (Ex. 1, p. 4) Dr. Mathew reviewed medical records and conducted a physical examination of claimant. He stated that although claimant had been released to return to work by Dr. McMains, he "continues to have neck, mid back, and bilateral shoulder pain, the left slightly worse than right." (Ex. 1, p. 5) Concerning claimant's neck complaints, he opined that claimant had chronic neck pain and cervical dystonia. (Ex. 1, p. 6) He further concluded that the work activities at Exide and the reported injury of June 21,

2017, were "a substantial contributing factor in causing, aggravating, and accelerating Mr. Hass' present neck injury." (Ex. 1, p. 7)

Dr. Mathew assigned 10 percent whole person impairment "as a result of his neck injury." (Id.) He assigned a lifting restriction of 10 pounds, along with avoiding repetitive overhead activities, cervical rotation, flexion and extension. (Id.)

Regarding claimant's shoulder condition, Dr. Mathew diagnosed claimant with enthesopathy of the shoulders and rotator cuff tendonitis. (Ex. 1, p. 6) He opined that the June 21, 2017 reported work injury was a substantial contributing factor aggravating and accelerating any shoulder injury and he assigned a 5 percent whole person impairment rating to each shoulder based on the "AMA guides fifth edition using table 16-18." (Ex. 1, p. 7) He assigned restrictions in addition to those for the cervical spine of avoiding repetitive pushing and pulling. (Id.)

Concerning claimant's mid-back complaints, Dr. Mathew stated that his work activities at Exide "that occurred on 06/21/17 were substantial contributing factor[s] in causing and aggravating and accelerating Mr. Hass' mid [b]ack injury," which he diagnosed as chronic mid back pain and enthesopathy of the thoracic spine. (Ex. 1, p. 7)(emphasis added) Dr. Mathew assigned an impairment of 5 percent of the whole person based on "AMA guides fifth edition, table 15-4, in regards to his thoracic spine." (Ex. 1, p. 8) Dr. Mathew did not add any additional restrictions for the thoracic spine. (Id.)

On March 6, 2018, James Milani, D.O. conducted an independent medical evaluation (IME) at the direction of defense counsel. (Ex. A, pp. 1-2) Dr. Milani opined that concerning the June 21, 2017 date of injury, claimant's work activities were not a substantial or material aggravating factor in the development of the bilateral shoulder and neck conditions. (Ex. A, p. 9) Dr. Milani essentially attributed claimant's problems to simply getting older and general wear and tear.

Concerning the review-reopening claim, Dr. Milani found no evidence of a worsening of claimant's condition. (Ex. A, p. 9)

On April 4, 2018, Dr. Mathew authored a letter to claimant's counsel after reviewing the IME of Dr. James Milani. (Ex. 1, p. 10) Dr. Mathew reaffirmed his opinion that claimant's "neck pain and shoulder pain are directly related to overuse and repetitive use of his upper extremities," and that "it is well correlated throughout medical literature that repetitive use, repetitive lifting, bending, twisting, pushing, and pulling can lead to soft tissue injury as well as degenerative changes of the joint in question, in this case, his cervical spine as well as both of his shoulders." (Id.) Dr. Mathew referred to claimant's 33 years of work at Exide doing manual labor, pushing, pulling and lifting batteries weighing up to 85 pounds. (Id.)

On May 9, 2018, Dr. Mathew again wrote a letter to claimant's counsel critical of Dr. Milani's IME report and reiterating his own previously stated opinions concerning

causation. Regarding impairment he stated that the total applicable impairment is 25 percent to the whole person. This is based on 5 percent for each shoulder, 5 percent for the cervical spine, and 5 percent for the thoracic spine. (Ex. 1, p. 14) This is a change from his prior assessment of 10 percent for the cervical spine. (Ex. 1, p. 7) It is not at all clear to the undersigned how Dr. Mathew arrives at 25 percent to the whole person based on the above. Using the ratings assigned by Dr. Mathew for the cervical, mid—back and bilateral shoulders (a total of 4 separate 5 percent whole person ratings) I find that using the Combined Values Chart of the AMA Guides, fifth edition, page 604, that claimant's permanent impairment to the whole person is 19 percent.

Current Condition

File no. 5048470, Date of Injury: March 23, 2012

Dr. Fields reported that claimant had no change in his condition since 2012. He had no pain to palpation and full range of motion of the right foot with a normal gait. (Ex. JE5, p. 36) The November, 2017 right foot MRI was read as "normal" and claimant was walking without any issue. (Ex. JE5, p. 40) Despite Dr. Fields' finding of claimant having a normal gait, claimant thought his gait was "a little bit worse" than it was at the time of the previous arbitration hearing. (Ex. JE6, p. 54) However, claimant went on to explain his symptoms more in terms of a feeling that his foot/ankle might give out rather than a deterioration of his gait. (Id.)

Dr. Milani found no evidence of a worsening of claimant's condition. He found the foot to be stable and also noted that the November, 2017 MRI showed no significant abnormalities. (Ex. A, p. 9)

File no. 5059048, Date of Injury: June 21, 2017

Regarding his bilateral shoulders, neck and upper back claim, claimant testified that he has restricted movement of his shoulders, he cannot lift his arms to shoulder level, and he has continued pain in his shoulders. He stated that after his work shift, he typically goes home and uses ice and ibuprofen to treat the pain, and that the ache in his shoulders can keep him awake at night. (Tr. pp. 41-42) Claimant stated that his shoulders hurt all the time, regardless of whether or not he is working. Even when he is on vacation, his shoulder pain does not subside. (Tr. p. 53, 55)

Dr. Milani agreed that claimant had reduced range of motion in his shoulders, but he did not attribute it to any specific injury. (Ex. A, p. 9) I note that claimant has alleged a cumulative injury, not an acute injury.

Claimant testified that the pain has caused him to stop playing basketball, baseball, and bowling, and his only exercise now is walking. (Tr. p. 54)

Claimant has not had treatment since his release from Dr. McMains, although he wants to have treatment. (Id.) He reported that he has daily pain associated with his job. (Tr. p. 41)

Additional Findings:

Considering causation regarding the June 21, 2017 injury, I note that Dr. McMains on July 28, 2017, indicated that claimant's neck and shoulder complaints were work related. (Ex. JE3, p. 17) After conservative treatment, Dr. McMains returned claimant to full duty with no restrictions on August 28, 2017. (Ex. JE3, p. 26) However, Dr. McMains gave only a "guarded" prognosis, advising that claimant "try to work in a comfortable manner without pain on a daily basis." (Ex. JE3, p. 24) Dr. McMains further described claimant's return to full duty work as "watchful waiting" to see if returning to work would result in an increase in shoulder pain. (Id.) On August 15, 2017, Dr. McMains described claimant's condition as a likely exacerbation of a chronic condition. (Ex. JE3, p. 18) On August 30, 2017, Dr. McMains stated that claimant continued to report discomfort with reduced range of motion, and he described his condition as "chronic bilateral shoulder pain." (Ex. JE3, p. 24) He also stated that claimant may need to have surgery in the future to address his shoulder condition. (Id.)

Despite Dr. McMains' opinions of a guarded return to work and an apparent expectation that returning to work could aggravate his shoulders, he nevertheless advised claimant to follow-up with his primary care provider because claimant's condition was "not due to any specific industrial injury." (Ex. JE3, p. 19) This leads the undersigned to conclude that Dr. McMains appeared to be looking for a specific, acute injury, rather than considering a cumulative injury. I give Dr. McMains' causation opinion little weight.

Dr. Mathew, claimant's IME physician, noted claimant continued to have neck, mid-back, and bilateral shoulder pain, and he concluded that claimant's work at Exide was a substantial contributing factor in causing, aggravating, and accelerating claimant's mid-back, neck, and bilateral shoulder injuries. (Ex. 1, pp. 5, 7) Dr. Mathew assigned permanent impairment, which I have found above to be properly calculated as 19 percent of the whole person.

Dr. Milani, defendants' IME physician, opined that concerning the June 21, 2017 date of injury, claimant's work activities were not a substantial or material aggravating factor in the development of the bilateral shoulder and neck conditions. (Ex. A, p. 9) Dr. Milani essentially attributed claimant's problems to simply getting older and general wear and tear. However, Dr. Milani did not discuss the wear and tear on claimant's body as a result of his employment of 28 years or more working full-time pushing, pulling and forcefully extending his arms repetitively. Dr. Milani concluded that although claimant clearly had impairment due to reduced range of motion in his shoulders, the impairment is not assignable to a specific injury. (Id.) This notion of a "specific injury" is concerning to the undersigned, such that it appears Dr. Milani is looking for an acute injury, and not considering a cumulative injury that developed from claimant's employment, which required repetitive pushing and pulling 85-pound battery packs. I give Dr. Milani's causation opinion little weight.

Dr. Milani responded to the question of whether claimant sustained any permanent impairment by stating: "[n]o, when it comes to a specific injury. There is no specific injury to place an impairment rating to." Dr. Milani acknowledged that claimant, did in fact have functional impairment due to loss of range of motion, but suggested that it was not attributable to a specific injury, and could be improved with exercise. (Id.) Therefore, he assigned no impairment. This again leads the undersigned to conclude that Dr. Milani was looking for an acute injury and did not consider a cumulative injury. I give little weight to Dr. Milani's opinion regarding impairment.

On April 4, 2018, Dr. Mathew stated that "it is well-correlated throughout medical literature that repetitive use, repetitive lifting, bending, twisting, pushing, and pulling can lead to soft tissue injury as well as degenerative changes of the joint in question, in this case, his cervical spine as well as both of his shoulders." (Ex. 1, p. 10) I find that claimant's job required repetitive pushing, pulling, and reaching consistent with Dr. Mathew's description above.

I find the opinion of Dr. Mathew concerning causation and impairment to be the most persuasive and I therefore find that claimant sustained a cumulative injury to his bilateral shoulders, neck and mid-back, which arose out of and in the course of his employment with the defendant employer. This is supported by claimant's history of the injury and the medical records in this case.

I further find that claimant sustained 19 percent functional impairment to the whole person due to the June 21, 2017 cumulative injury, based on the opinion of Dr. Mathew. (Ex. 1, p. 14)

Dr. Mathew assigned work restrictions of no lifting over 10 pounds, and avoiding repetitive overhead activities, cervical rotation, flexion and extension, and repetitive pushing and pulling. (Ex. 1, pp. 7-8) However, claimant returned to work in August, 2017, and worked in excess of these restrictions for about 10 months prior to the hearing in this matter, thereby demonstrating his ability to work beyond these restrictions for a considerable period of time. I therefore give Dr. Mathew's opinion of permanent restrictions little weight.

Considering claimant's industrial disability regarding the June 21, 2017 work injury, factors such as his age, limited education, functional impairment of 19 percent and his limited work experience would suggest a higher industrial disability. I must also consider the combined impact of the prior March 23, 2012 injury, which the parties agree caused a 29.019 percent industrial loss.

However, claimant's increasing wages, his return to work without restrictions and his motivation to remain employed would lean toward a finding of lower industrial disability.

Considering the above and all other appropriate factors for consideration of the combined impact of the March 23, 2012 injury, in which the parties agreed that claimant

sustained slightly in excess of 29 percent industrial disability and the June 21, 2017 injuries, I find that claimant has sustained 50 percent industrial disability.

I also note the parties' stipulation in the Hearing Report in file no. 5059048 that claimant has been previously paid 146.7 weeks of permanent partial disability benefits prior to the hearing, which is 29.34 percent of the whole person (146.7 divided by 500 weeks = 29.34%).

CONCLUSIONS OF LAW

I will first address the review-reopening matter in file no. 5048470.

1. Is claimant entitled to an increase of compensation through a review-reopening?

In a proceeding to review-reopen an award for payments or agreement for settlement as provided by section 86.13, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon. Iowa Code section 86.14(2).

The Iowa Supreme Court has held that a claimant does not need to prove that the change in the condition was not contemplated at the time of the original decision(s). Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009). However, the party bringing the review-reopening proceeding has the burden of showing that the employee's condition has changed since the original award or settlement was made and that that change in condition relates back to the original injury. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability is not sufficient to justify a different determination on a petition for review-reopening.

To establish a compensable review-reopening claim, claimant must prove by a preponderance of the evidence that the current condition is causally related to the original work injury. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009). The principles of res judicata apply, and the agency should not reevaluate facts and circumstances that were known or knowable at the time of the original action. Id.

In this instance, the parties previously entered into an agreement for settlement stipulating that claimant sustained 29.019 percent industrial disability based on permanent impairment causally related to the March 23, 2012 work injury.

At the time of the agreement for settlement, claimant was employed by the defendant employer in the finishing area of the production facility. Claimant has continued to work in that same job through the time of the recent hearing and he earns more per hour now than he did at the time of the agreement for settlement. Claimant continues to work in this position without permanent restrictions.

At or near the time of the agreement for settlement, the medical records indicate that claimant complained of pain in his right foot, ankle, knee, hip and low back along with weakness and instability. (Ex. 1, p. 2) Dr. Mathew noted claimant had a "very antalgic gait." (Id.) Dr. Hartley in his April 20, 2015 report stated that claimant had decreased range of motion in his right ankle, mild tenderness to palpation at the lateral hamstring insertion, and slightly decreased strength in the right lower extremity. (Ex. JE2, p. 6) At the previous hearing in April, 2015, claimant testified that he had daily pain in his right foot, leg, and hip. (Arb. Dec. p. 4)

At the review-reopening hearing on June 29, 2018, claimant did not testify to any change in his condition concerning the March 23, 2012 injury. However, he stated in his deposition that the pain has gotten worse. (Ex. JE6, p. 52) But, claimant described the worsening condition primarily in terms of a feeling that his foot/ankle may give out or be unstable. (Id.) These symptoms of giving out are similar to his prior symptoms of weakness and instability recorded by Dr. Mathew in January 2015, before the agreement for settlement was obtained. (Ex. 1, p. 2)

In November, 2017 Dr. Fields reported that claimant's condition was unchanged since 2012 and claimant had no pain to palpation and full range of motion of the right foot with a normal gait. (Ex. JE5, p. 36) A November, 2017 right foot MRI was read as "normal" and claimant was walking without any issue. (Ex. JE5, p. 40)

Despite Dr. Fields finding of claimant having a normal gait, claimant thought his gait was "a little bit worse" than it was at the time of the previous arbitration hearing. (Ex. JE6, p. 54)

Dr. Milani found no evidence of a worsening of claimant's condition. He found the foot to be stable and also noted that the November, 2017 MRI showed no significant abnormalities.

Relying upon the findings of Dr. Fields and Dr. Milani and in light of the vague and generalized description of claimant's asserted worsening condition, I conclude that claimant has failed to carry his burden of proof that he has had sufficient change in his condition to warrant an increase in his compensation, which was previously agreed to by the parties in the agreement for settlement.

2. The second issue is claimant's request for reimbursement of an IME pursuant to Iowa Code section 85.39.

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).

The Iowa Supreme Court has stated that Iowa Code section 85.39 "does not expose the employer to liability for reimbursement of the cost of a medical evaluation unless the employer has obtained a rating in the same proceeding with which the claimant disagrees." Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 394 (Iowa 2010).

This review-reopening is a new and distinct proceeding separate from the prior arbitration action and agreement for settlement. Kohlhaas, 777 N.W.2d at 395.

The Iowa Supreme Court's decision in Dart v. Young, 867 N.W.2d 839 (Iowa 2015), clearly states that if no impairment rating has actually been provided by an employer retained physician prior to the occurrence of the claimant's IME, then the injured worker does not qualify for reimbursement for the IME under section 85.39.

In the case at bar, on November 26, 2017, Dr. Mathew, authored a letter following an IME that he conducted at claimant's request, which did not address the March 23, 2012 right foot injury. (Ex. 1, pp. 4-9) In fact, on April 4, 2018, Dr. Mathew declined to comment on the right foot injury stating that he has not addressed any injuries involving the right foot. (Ex. 1, p. 10) Therefore, Dr. Mathew's IME was not related to the March 23, 2012 review-reopening cause of action and cannot be compensated hereunder. I also note that no prior opinion of a physician retained by the employer existed in this new and separate review-reopening case before Dr. Mathew's opinion was obtained by claimant, and therefore, even if Dr. Mathew's opinion discussed the March 23, 2012 injury, which it does not, it would still not be reimbursed, as there was no prior employer retained physician opinion.

Claimant's request for IME reimbursement in this matter is denied.

3. Alternate Medical Care, Iowa Code section 85.27.

Claimant seeks alternate care in the form of additional medical evaluation and treatment, arguing that additional medical care was denied following the report from Dr. Fields, who found that claimant's symptoms were idiopathic and not related to his original work injury.

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

> [T]he employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words "reasonable" and "adequate" appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable" and "adequate" as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long; 528 N.W.2d at 124; Pirelli-Armstrong Tire Co.; 562 N.W.2d at 437.

The 2015 Arbitration Decision granted claimant alternate care of neurodiagnostic testing as suggested by Dr. Mathew, to potentially rule out neuropathy in claimant's right lower extremity. Dr. Mathew also suggested physical therapy. (Arb. Dec. p. 9) I note that although Dr. Milani did not believe claimant had a worsening of his symptoms regarding the March 23, 2012 injury, he did endorse stretching and exercise as a means of regaining mobility, which is consistent with Dr. Mathew's recommendation for physical therapy. (Ex. A, p. 9)

Defendants argue that claimant has not asked for medical care. I conclude that defendants have been made aware of claimant's desire for alternate care through this litigation and hearing, and have not provided any at the present time.

Entitlement to medical treatment was established in the agreement for settlement. Dr. Fields opined that claimant's ongoing symptoms are idiopathic and unrelated to the March 23, 2012 work injury. I find Dr. Fields' opinion on this matter unpersuasive. There has been no intervening cause identified that would explain why the relatively steady symptoms that claimant has had since 2012 are now suddenly unrelated to the original work injury. In fact, Dr. Fields himself stated that claimant's right foot pain has been unchanged since 2012. (Ex. JE5, p. 36)

I conclude that defendants have abandoned claimant's medical care relating to the March 23, 2012 work injury and the same is unreasonable. I further conclude that claimant is entitled to alternate medical care in the form of neurodiagnostic testing and physical therapy as suggested by Dr. Mathew and ordered in the prior arbitration decision issued June 1, 2015. (Arb. Dec. p. 9)

File no. 5059048, Date of Injury: June 21, 2017

4. Concerning file no. 5059048, the first issue is whether claimant sustained an injury on June 21, 2017 that arose out of and in the course of his employment.

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 Elec. 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).

I have found above based on the opinion of Dr. Mathew, claimant's testimony and the medical records, that claimant sustained a cumulative injury to his bilateral shoulders, neck and mid-back, which arose out of and in the course of his employment with the defendant employer.

5. Whether the injury is to a scheduled member or the body as a whole, extent of disability and applicable credit.

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 extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Comm'r. Report 281 (App. 1982), a torn rotator cuff was found to cause disability to the body as a whole.

I note that "when there is injury to some scheduled member and also to parts of the body not included on the schedule, the resulting disability is compensated on the basis of an unscheduled injury." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, at 16 (Iowa 1993).

I conclude that claimant's bilateral shoulder, neck and mid-back injuries are unscheduled, industrial claims to the body as a whole. Consequently, this agency must measure claimant's loss of earning capacity as a result of this impairment.

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).

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured worker's present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W.2d 614 (Iowa 1995).

A showing that claimant had no loss of his job or actual earnings does not preclude a finding of industrial disability. Loss of access to the labor market is often of paramount importance in determining loss of earning capacity, although income from continued employment should not be overlooked in assessing overall disability. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Bearce v. FMC Corp., 465 N.W.2d 531 (Iowa 1991); Collier v. Sioux City Community School District, File No. 953453 (App. February 25, 1994); Michael v. Harrison County, Thirty-fourth Biennial Rep. of the Industrial Comm'r, 218, 220 (App. January 30, 1979).

In this case, claimant had a prior work injury on March 23, 2012, with the same employer for which claimant was previously compensated. This invokes the "Successive Disabilities" provisions contained in Iowa Code section 85.34(7). This subsection requires that this agency assess the combined disability from the two injuries and then give credit in terms of the percentage of disability for previously compensated disability. The parties agreed that the credit for the past payments of permanent

disability benefits for this prior injury is equivalent to 146.7 weeks, which I determine to be 29.34 percent of industrial disability (146.7 divided by 500 = 29.34 percent). (Hearing report, p. 2)

I found above that claimant suffered a 50 percent loss of his earning capacity as a result of the combined effect of the 2012 and 2017 work injuries. After giving credit for the 29.34 percent industrial loss previously paid, the remaining 20.66 percent needs to be compensated in this proceeding. A 20.66 percent industrial loss entitles claimant to 103.3 weeks of permanent partial disability benefits as a matter of law under Iowa Code section 85.34(2)(u), which is 20.66 percent of 500 weeks, the maximum allowable number of weeks for an injury to the body as a whole in that subsection.

6. Commencement date of permanent partial disability.

The next issue is the commencement date of permanent partial disability benefits.

The Iowa Code provides in section 85.34(2) that: "[c]ompensation for permanent partial disability shall begin at the termination of the healing period provided in subsection 1." Healing period is discussed in Iowa Code section 85.34(1) and terminates when one of the following occurs: the employee returns to work; the employee reaches MMI; or the employee is medically capable of returning to substantially similar employment that he/she was engaged in at the time of the injury.

I have found above that claimant continued to work following the injury date of June 21, 2017 and returned to work on June 22, 2017.

The Iowa Supreme Court in Evenson v. Winnebago Industries, Inc., No. 14-2097 (Iowa 2016) concluded that the claimant's return to work established the commencement of PPD benefits, which was not precluded by the fact that claimant might later be entitled to temporary benefits. Evenson v. Winnebago Ind., Inc., No. 14-2097, at 22 (Iowa 2016).

Therefore, I conclude that the appropriate commencement date for permanency benefits is June 22, 2017, the day after the injury, when claimant returned to work, and thus was the first triggering event that commenced permanent partial disability.

7. The next issue is claimant's request for reimbursement of an IME pursuant to Iowa Code section 85.39.

The law on this matter has been stated above under file no. 5048470 and will not be restated here.

As stated above, on November 26, 2017, Dr. Mathew, authored a letter following an IME conducted at claimant's request. (Ex. 1, pp. 4-9) Under the plain language of Iowa Code section 85.39, claimant failed to demonstrate the necessary condition

precedent of an employer retained physician opinion concerning permanent impairment, and therefore, claimant's request for IME reimbursement in this matter is denied.

I reiterate here that the Iowa Supreme Court's decision in Dart v. Young, 867 N.W.2d 839 (Iowa 2015), clearly states that if no impairment rating has actually been provided by an employer retained physician prior to the occurrence of the claimant's IME, then the injured worker does not qualify for reimbursement for the IME under section 85.39. In the case at bar, no such prior opinion existed when Dr. Mathew conducted his IME.

8. Alternate Medical Care, Iowa Code section 85.27.

The applicable law is stated above under file no. 5048470 and will not be restated here.

Claimant seeks evaluation and treatment of his shoulder condition.

Claimant has denied compensability of the June 21, 2017 work injury. I have found the same to be compensable. Therefore claimant is entitled to reasonable medical care under Iowa Code section 85.27.

I find defendants denial of care to be unreasonable and conclude that claimant is entitled to reasonable evaluation and treatment with an appropriate medical provider designated by defendants. Defendants shall promptly identify and authorize an appropriate medical provider to address claimant's physical complaints related to the June 21, 2017 work injury.

9. Costs.

Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33.

Considering claimant's statement of costs at Claimant's Exhibit 6: I award the filing fee - $100.00; the service fee - $13.54; and, the cost of the deposition transcript of claimant - $59.20.

Claimant also seeks reimbursement for: Dr. Mathew's November 27, 2017 chart review - $225.30 and IME - $612.60 totaling $837.90 (Ex. 6, p. 49); Dr. Mathew's April 4, 2018 chart review - $225.30 and Letter - $125.00, totaling $350.30 (Ex. 6, p. 50); and, claimant also lists Dr. Mathew's May 1, 2018 chart review - $450.60 and IME - $612.60, totaling $1,063.20.

Claimant is not entitled to IME reimbursement as discussed above.

However, claimant may be awarded costs for a single report from Dr. Mathew, but not including the expense of the examination itself. Des Moines Regional Transit Authority v. Young, 867 N.W.2d 839, 846-847 (Iowa 2015). In this case it is appropriate to award the "[c]hart review" dated May 1, 2018 regarding the May 9, 2018 letter/report drafted by Dr. Mathew in the amount of $450.60. (Ex. 1, p. 12; Ex. 6, p. 51)

Therefore, defendants shall pay costs in the amount of $623.34, consisting of: the filing fee - $100.00; service fee - $13.54; deposition transcript of claimant - $59.20; and the May 1, 2018 chart review producing the May 9, 2018 report of Dr. Mathew - $450.60.

ORDER

IT IS THEREFORE ORDERED:

File No. 5048470

Defendants shall promptly provide alternate medical care in the form of neurodiagnostic testing and physical therapy as recommended by Dr. Mathew and previously awarded in the June 11, 2015 arbitration decision.

Claimant shall take nothing further.

File No. 5059048

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits, less a credit for the stipulated one hundred forty-six and seven tenths (146.7) weeks of benefits previously paid, beginning on June 22, 2017, until paid in full, at the stipulated rate of five hundred ninety-two and 73/100 dollars ($592.73).

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent, See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendants shall promptly provide alternate medical care identifying and authorizing an appropriate medical provider to address claimant's physical complaints related to the June 21, 2017 work injury.

Costs are taxed to defendants pursuant to 876 IAC 4.33 as set forth in the decision above.

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

Signed and filed this 3rd day of January, 2019.

TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.