

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RHONDA TUCKER THOMAS,

Claimant,

vs.

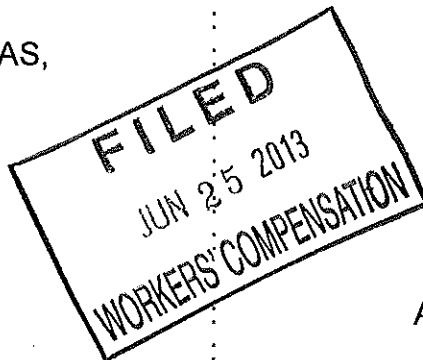
MENARD, INC.,

Employer,

and

PRAETORIAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.



File No. 5039347

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

This is a contested case proceeding in arbitration under Iowa Code chapters 85 and 17A. Claimant, Rhonda Tucker Thomas, sustained a stipulated work injury in the employ of defendant Menard, Inc., on December 5, 2011, and now seeks benefits under the Iowa Workers' Compensation Act.

In her petition, Tucker Thomas identified the proper insurance carrier on this claim as "unknown." At hearing, defendants were ordered to identify the proper carrier; counsel was unable to do so immediately, but two days later a responsive statement was filed identifying Praetorian Insurance Company as carrier on this claim. Praetorian Insurance Company is hereby included as a party defendant.

The claim was heard in Sioux City, Iowa, on January 23, 2013 and deemed fully submitted on February 6, 2013. The record consists of Tucker Thomas' exhibits 1-12, defendants' exhibits A-O, and the testimony of Tucker Thomas, John Thomas and Brian Krysl.

ISSUES

STIPULATIONS:

1. Tucker Thomas sustained injury arising out of and in the course of employment on December 5, 2011.

2. The injury caused both temporary and permanent disability.
3. Healing period entitlement is not in dispute.
4. Permanent disability should be compensated by the industrial method.
5. On the date of injury, Tucker Thomas was married with two exemptions.
6. The cost of disputed medical care was reasonable.
7. If called, providers of disputed care would testify that services were reasonable and necessary; defendants offer no contrary proof.
8. Defendants should have credit for benefits paid.

ISSUES FOR RESOLUTION:

1. Determination of the commencement date for permanency benefits.
2. Extent of industrial disability.
3. Determination of average weekly wage and the resulting rate of compensation.
4. Entitlement to medical benefits, including:
 - a. Whether disputed treatment was reasonable.
 - b. Whether the need for disputed treatment was caused by the work injury.
 - c. Whether disputed treatment was authorized.
5. Entitlement to alternate medical care.

At hearing, it was ruled that the correct date for commencement of permanency benefits is March 5, 2012 (following the end of healing period).

Tucker Thomas sought to claim penalty benefits under Iowa Code section 86.13 for the first time at hearing. This claim was barred as untimely raised.

FINDINGS OF FACT

Rhonda Tucker Thomas, age 52, accepted employment with Menard, Inc., a national hardware/lumberyard chain, on January 7, 1991, and is still so employed. Prior to the stipulated work injury on December 5, 2011, Tucker Thomas worked mostly in the freight department, but her duties included stocking shelves and waiting on customers. She is currently in the hardware department, but also works in the plumbing and paint departments.

Tucker Thomas sustained injury when she slipped and fell on her buttocks in an icy parking lot, then fell again as she tried to get up: this time hitting her head. Tucker Thomas experienced immediate onset of "huge" pressure around the eyes.

Although the incident was reported, Tucker Thomas did not seek medical attention until December 18, when she presented to physician's assistant Mike Bobier with these recorded complaints: "severe headache, neck pain and mid to low back pain. She denies any loss of consciousness, numbness or tingling in her lower extremities or

upper extremities." (Exhibit 1, page 1) Bobier did not record any mention of facial numbness. Tucker Thomas was "stable, so I do not think there is any possibility of head trauma involved." (Id)

Tucker Thomas returned to Bobier one week later with right sided back pain and new onset numbness and tingling in the right arm and hand. No mention of facial numbness was recorded. (Ex. 1, p. 2) A cervical MRI scan was ordered, following which Tucker Thomas returned to Bobier on January 5, 2012. Again, no record of facial numbness or pain was charted.

The MRI scan disclosed disc protrusions at multiple levels with foraminal stenosis and compression/displacement of the cervical cord at C5-6. (Ex. 2)

On January 10, 2012, some thirty-six days after injury, Tucker Thomas complained of "numbness in face, ache in neck, middle back pain" on an intake sheet prepared for Tri-State Specialists, LLP. (Ex. 3, p. 2) On January 19, 2012, orthopedist W.O. Samuelson, M.D., recorded this history:

She has a history of neck pain with radicular symptoms since 12/5/11 when she was a [sic] work and fell in the parking lot and developed increasing neck, upper back and shoulder pain exacerbated by range of motion of her head and neck as well as headaches.

(Ex. 3, p. 4)

Dr. Samuelson did not chart any mention of facial numbness, but found the mechanism of injury consistent with those signs and symptoms presented. (Ex. 3, p. 12) Tucker Thomas' complaints of facial neuralgia were clearly inconsistent or nonexistent early on in her recovery and causal nexus of those complaints to her injury remain disputed issues. Likewise, Tucker Thomas contends that her ongoing and beneficial use of the medication gabapentin should be awarded as a matter of alternate medical care.

In any event, Dr. Samuelson administered a cervical epidural injection and ordered physical therapy. After Tucker Thomas complained of "increased pressure sensation in her eyes while doing the home cervical traction exercises," from "following her fall when she struck her head." Dr. Samuelson recommended referral to his colleague, neurologist Leonel Herrera, M.D., to whom she first presented on February 16, 2012.

According to Dr. Herrera's notes, Tucker Thomas gave this history:

Patient reports her greatest concern is for her headaches that are of her face and surround her eyes. She states these headaches occurred immediately after her second fall on 12/5/11 at Menard's [sic]. Patient reports she had 2 falls. In the first fall, she fell on her bottom, then as she was getting up, she fell back on the back of her head and had pain around

her eyes. She reports the pain at that time was a 12/10 and she reports there was a period of loss of consciousness. She states the person who was with her reports she had a loss of consciousness for about 7 minutes and he woke her up. Patient states that she chose not to go to the emergency room and did not seek help for another 2 weeks and she simply treated with ibuprofen at home. . . .

Patient reports she has some numbness and tingling that comes and goes and lasts for about a minute or two involving both arms distally around the wrist and dorsum of the hand. Right equal to left. These spells of tingling will last about a minute or two and then resolve spontaneously.

Patient reports she also had some numbness and tingling of her face but this is better since her epidural steroid injection 2 weeks ago.

. . . .

Patient reports pain is present on a daily basis, worse in the p.m. Patient identifies headaches that occur on a daily basis.

. . . .

Patient's pain diagram identifies pain across the forehead and numbness on the mid face with pain along the midline of the posterior cervical spine and tingling of the left arm.

(Ex. 3, pp. 8-9)

Tucker Thomas next saw Dr. Herrera on March 1, 2012, but was not improved. Dr. Herrera charted this diagnostic impression:

1. Degenerative joint disease, degenerative disc disease of the cervical spine with exacerbation from a fall at work striking her head with a loss of consciousness by history.
2. Neurologically intact.
3. Normal nonfocal neurologic examination.
4. TMJ [temporomandibular joint] syndrome with limited opening of her mouth suggestive of a displaced disc in the TMJ.
5. Ill responses to ibuprofen 800 mg tid.
6. Lesser occipital nerve neuralgia producing her headache related to her fall.

(Ex. 3, p. 15)

Dr. Herrera approved Tucker Thomas for a return to work with restrictions, including a 10-pound lifting limit, with followup in two weeks. Tucker Thomas did so,

with duties of "paperwork" and customer service. Upon returning to Dr. Herrera on March 15, 2012, Tucker Thomas reported:

that she is worse since she has been going to Sioux City Physical Therapy and has noted a tingling sensation on the right half of her face after she undergoes manual stretching by a therapist. Patient clearly identifies forehead and lower face involvement along with numbness and tingling involving the entire skull posteriorly.

(Ex. 3, p. 17)

Dr. Herrera changed his diagnostic impression in one particular:

6. Lesser occipital nerve neuralgia producing her headaches related to her fall and it is this lesser occipital nerve neuralgia which I believe is also producing her dysesthesias.

(Ex. 3, p. 17)

Two weeks later, on March 29, 2012, Tucker Thomas complained that she was "worse," with shooting pains down the arm every fifteen minutes around the clock, but that numbness on the right side of the face "is gone and has not returned." (Ex. 3, p. 18) Dr. Herrera again altered his diagnostic impression:

6. Lesser occipital neuralgia, producing her headaches; however, the sensation that she feels [a "feeling of fullness"] in her chin does not seem to be neurologic in origin.

(Ex. 3, p. 18)

On April 5, 2012, Tucker Thomas presented again to Dr. Samuelson. Following discussion, he recommended an anterior discectomy and two-level fusion at C4-5 and C5-6 to address herniation and spinal stenosis at those levels. (Ex. 3, p. 20) Dr. Samuelson also recommended specific activity restrictions: occasional lifting to 10 pounds, occasional bending, twisting, squatting, kneeling, climbing, gripping and pinching, and no pushing/pulling or reaching above shoulder level. (Ex. 3, p. 22)

In any event, Tucker Thomas subsequently requested and obtained a second surgical opinion. This was with orthopedic surgeon Eric Phillips, M.D., to whom she presented on May 21, 2012 with this history:

At first she developed pressure behind her eyes and tightness in her jaw. She then developed shooting pains in the neck, and shoulders. Approximately a month ago she developed shooting pains into the webbed spaces on the left hand. She reports some traction and this has

improved the symptoms in her fingers. Tramadol seemed to help her neck spasms. She now complains mainly of a tightness throughout her jaw with intermittent pressure behind her eyes and numbness on the right side of her face. She denies any upper extremity symptoms. Her left shoulder blade bothers her.

(Ex. 8, p. 1)

Dr. Phillips concluded:

The patient demonstrates cervical spondylosis C5-6 with disc protrusion, central disc herniation C4-5. She has very minimal symptoms of cervical myelopathic complaints. Objective findings are limited on testing for myelopathy. The patient has complaints of facial pain and headaches. She did have one epidural that did give her some relief of these symptoms. She is nicotine dependent.

....

In summary, I do not feel that I would offer her surgery unless she [sic] off nicotine products and had a reasonable clearance by neurology. I also did not feel that it was with a high level of probability that we would be able to get rid of her facial pains and headaches unless there was some evidence of on repeated injections these would go away.

We will see her back on a prn [return as necessary] basis if she wishes to proceed with surgical intervention and has been compliant with no nicotine products a rule we have regarding cervical spine surgeries.

(Ex. 8, pp. 5-6)

In agency experience, disinclination or outright refusal to offer surgery to nicotine-dependent patients is by no means unusual. On the referral of her family physician, Tucker Thomas next presented to rheumatologist Michael G. Feely, M.D., on August 31, 2012. Tucker Thomas did not seek or obtain authorization from defendants for Dr. Feely's care, even though this case had already been in litigation since January 2012 and had been scheduled for hearing since April 3, 2012. Dr. Feely concluded:

Ms Tucker Thomas's paresthesias have persisted. She has a positive ANA, though has no other features suggestive of a connective tissue disease. I will have her titrate her gabapentin upwards to see if this provides her with any additional benefit. If this does not provide her with any additional benefit, I will have her taper off of this medication. She will work on doing stretching exercises and I have suggested that she may find massage to be beneficial. Follow-up has been arranged in 3 months and She will contact me in the interim with questions or concerns.

(Ex. 9, p. 6)

It is noted that Dr. Feely does not address the cause of Tucker Thomas' symptoms and that Dr. Feely offers no criticism of the authorized medical care provided Tucker Thomas to that date.

On September 26, 2012, Tucker Thomas presented at defendants' request for an independent medical evaluation by occupational physician D.M. Gammel, M.D. Dr. Gammel concluded:

Assuming Ms. Tucker Thomas opts not to cease smoking and proceed with surgical intervention, it is my opinion she reached maximum medical improvement on 21 May 2012 having exhausted other conservative measures. . . .

Based on the medical records reviewed, it is my opinion Ms. Tucker Thomas sustained an 8% whole person impairment rating of the cervical spine secondary to herniated nucleus pulposus and radicular symptoms. . . .

Home exercise and continued medications for symptomatic treatment is recommended. In the absence of smoking cessation, no further medical evaluation, diagnostic testing or surgical intervention is recommended.

(Ex. B, pp. 11-12)

On the same date, Tucker Thomas underwent a physical capacity evaluation at Dr. Gammel's request. The detailed findings appended to his report, which Dr. Gammel adopted as permanent recommended activity restrictions, include occasional lifting to 20 pounds, push/pull occasionally to 35 pounds, no use of the hands for pushing/pulling arm controls [this limitation is not well understood], no frequent flexion or rotation of the neck, no climbing ladders, only some squatting/crouching/crawling, only occasional bending/stooping, kneeling and stair climbing, and no working at heights or operation of heavy machinery. (Ex. B, pp. 15-16)

Dr. Gammel's original report did not address Tucker Thomas' complaints of facial paresthesias. In a supplemental report dated January 17, 2013, Dr. Gammel added:

Based on the medical records reviewed, including those from Westroads Medical Group from 29 May 2012 through 30 November 2012, it is my opinion Ms. Tucker Thomas' complaints of right-sided facial numbness and need for prescribed Gabapentin is causally unrelated to her 5 December 2011 work-related injury involving C4-5 degenerative disc disease and C5-6 herniated nucleus pulposus.

(Ex. B-1, p. 1)

In another supplemental report dated January 21, 2013, Dr. Gammel included a dermatomal diagram by way of further explanation:

It remains my opinion Ms. Tucker-Tomas' [sic] complaints of right facial nerve paresthesias is causally unrelated to her 5 December 2011 work-related incident as her subjective complaints do not [sic] correlate with medically documented dermatomal patterns nor objective medical findings.

(Ex. B-2, p. 1)

Tucker Thomas continues to work at Menard, although she claims it is only with accommodation, and with fear of adverse personnel action as the result of this litigation. General manager Brian Krysl, however, credibly testified that Tucker Thomas is a good employee and that she is not performing an accommodated job. Menard also asserts that Tucker Thomas lacks credibility, pointing to a number of particulars. None of these is impressive except one: Tucker Thomas told Dr. Feely that she was knocked unconscious for 7 minutes according to an associate. This is doubtful, since Tucker Thomas continued to work that day and did not seek medical attention for weeks afterward. Tucker Thomas does not persuade that her job is truly in danger. She may not have formal accommodation in the sense of a dedicated job, but is able to call for assistance when required by her medical restrictions, does not do freight and mostly now works in customer service. These are minor accommodations, however, and there is little reason to believe that other retail positions cannot be found with comparable physical requirements.

Tucker Thomas is currently 52 years old. She has only an 11th grade education, but did earn GED certification. Her employment experience includes unskilled nursing home work, employment as a receptionist, and a retail position in another hardware store before starting with Menard in 1991. She also worked one holiday season in a clothing store. (Ex. K)

At Menard, Tucker Thomas worked in freight, stocking shelves, and direct customer service, with lifting requirements up to 45 pounds. She has worked in the hardware, plumbing and paint departments during 22 years of service.

Currently, Tucker Thomas complains of tightness in the shoulder, a "knot" in the shoulder blade, and tightness in the neck, as well as facial numbness on the right side and occasionally in the upper extremity. She has reduced ability to participate in some activities of daily living, such as housework and playing with grandchildren, and uses a heating pad on a daily basis for symptomatic relief.

CONCLUSIONS OF LAW

First to consider is whether Tucker Thomas' facial neuralgias/headaches as treated by Drs. Herrera and Feely have been established as injury-related. Under Iowa

law, claimant has the burden of proving by a preponderance of the evidence 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. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980). The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

A treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187 (Iowa 1985).

Two physicians have offered opinion on this issue, although, surprisingly, Dr. Feely is not one of them. Dr. Herrera, early on, had this diagnostic impression: "Lesser occipital nerve neuralgia producing her headaches related to her fall and it is this lesser occipital nerve neuralgia which I believe is also producing her dysesthesias." (Ex. 3, p. 17) Subsequently, however, on March 29, 2012, Tucker Thomas reported that her facial numbness "is gone and has not returned." (Ex. 3, p. 18) As a result, Dr. Herrera deleted that reference from his diagnostic impression, which has not been altered since. Dr. Gammel specifically found that the dysesthesias were not injury related due to the dermatomal pattern. In essence, this opinion is now unrebutted. Tucker Thomas does not meet her burden of proving causation with respect to her facial/head symptoms now treated by Dr. Feely.

The parties agree that Tucker Thomas has permanent disability, but dispute the commencement date (by eight days: March 5 versus March 13, 2012). Claimant is entitled to weekly benefits for temporary total disability or healing period under Iowa Code sections 85.33 and 34(1) for her absences from work during a recovery period until claimant returns to work; until claimant is medically capable of returning to substantially similar work to the work she was performing at the time of injury; or, until it is indicated that significant improvement from the injury is not anticipated, whichever occurs first. It has long been held that a healing period may be intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986) A healing or temporary total period may terminate and then begin again. Willis v. Lehigh Portland Cement Co., I-2 Iowa Industrial Commissioner Decisions 485 (1984); Clemens v. Iowa Veterans Home, I-1 Iowa Industrial Commissioner Decisions 35 (1984); Riesselman v. Carroll Health

Center, III Iowa Ind. Commissioner Report 209 (App. 1982); Junge v. Century Engineering Corp., II Iowa Industrial Commissioner Report 219 (App. 1981). See also, Lawyer & Higgs, Iowa Practice, Workers' Compensation, Section 13-3.

Neither date offered by the parties is of obvious significance. It was on April 5, 2013, that Dr. Samuelson imposed work restrictions that were eventually used in Tucker Thomas' return to work; this was not the day she returned to work, but does qualify as the date she was capable of returning to substantially similar employment. Healing period ends on April 5, 2013.

What is the extent of disability? Permanent partial disability that is not limited to a scheduled member is compensated industrially under section 85.34(2)(u). Industrial disability compensates loss of earning capacity as determined by an evaluation of the injured employee's functional impairment, age, intelligence, education, qualifications, experience and ability to engage in employment for which the employee is suited. Second Injury Fund of Iowa v. Shank, 516 N.W.2d 808, 813 (Iowa 1994), Guyton v. Irving Jensen Co., 373 N.W.2d 101, 104 (Iowa 1985), Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

The concept of industrial disability is similar to the element of tort damage known as loss of future earning capacity even though the outcome in tort is expressed in dollars rather than as a percentage of loss. The focus is on the ability of the worker to be gainfully employed and rests on comparison of what the injured worker could earn before the injury with what the same person can earn after the injury. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258, 266 (Iowa 1995), Anthes v. Anthes, 258 Iowa 260, 270, 139 N.W.2d 201, 208 (1965).

Impairment of physical capacity creates an inference of lessened earning capacity. Changes in actual earnings are a factor to be considered but actual earnings are not synonymous with earning capacity. Bergquist v. MacKay Engines, Inc., 538 N.W.2d 655, 659 (Iowa App. 1995), Holmquist v. Volkswagen of America, Inc., 261 N.W.2d 516, 525, (Iowa App. 1977), 4-81 Larson's Workers' Compensation Law, §§ 81.01(1) and 81.03. The loss is not measured in a vacuum. Such personal characteristics as affect the worker's employability are considered. Ehlinger v. State, 237 N.W.2d 784, 792 (Iowa 1976). Earning capacity is measured by the employee's own ability to compete in the labor market. An award is not to be reduced as a result of the employer's largess or accommodations. U.S. West v. Overholser, 566 N.W.2d 873, 876 (Iowa 1997), Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 617 (Iowa 1995).

At age 52, with a high school (GED) education and 22 years of employment at Menard, Tucker Thomas seems unlikely to develop significant new skills or acquire significant further education. Her work experience is mostly in retail, including two national hardware stores. It is clear that her recommended activity restrictions will disable her from a substantial number of retail jobs because of stocking/lifting/shipping duties that will predictably exceed her physical limits – which were most thoroughly set forth pursuant to Dr. Gammel's functional capacity evaluation. Those recommendations

are accepted as best outlining Tucker Thomas' residual abilities. Other retail jobs, however, predictably will not. It is noted that some of Tucker Thomas' physical complaints have not been established as work related.

Considering those factors of industrial disability set forth above, it is concluded that, by reason of the work injury sustained December 5, 2011, Rhonda Tucker Thomas has experienced loss of earning capacity on the order of 40 percent of the body as a whole, or the equivalent of 200 weeks of permanent partial disability benefits. Permanency benefits commence April 6, 2012.

The parties also dispute the proper rate of compensation because some weeks used to calculate average weekly wage may be "unrepresentative." The rate of compensation for an hourly worker is determined under Iowa Code section 85.36(6), which provides:

The basis of compensation shall be the weekly earnings of the injured employee at the time of the injury. Weekly earnings means gross salary, wages or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the week or employment for which the employee was employed, computed or determined as follows and then rounded to the nearest dollar:

6. In the case of an employee who is paid on a daily, or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, not including overtime or premium pay, of the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

The fighting issue relates to weeks including holiday pay and vacation pay, weeks which Tucker Thomas thinks are representative but Menard does not. According to Tucker Thomas, holidays and vacations are normal, so weeks containing such payments must be representative. Key, however, is whether the "*hours of work in any particular workweek are representative of the hours typically or customarily worked by an employee during a typical or customary full week of work.*" Griffin Pipe Products Co. v. Guarino, 663 N.W.2d 862, 866 (Iowa 2003); Jacobson Transp. Co. v. Harris, 778 N.W.2d 192 (Iowa 2010).

As shown in her Exhibit 10, Tucker Thomas wishes to exclude weeks in which she worked 43.72, 33.75, 5.83, 42.55, 39.03, and 33.15 hours, plus 8 hours vacation or holiday pay in each of those weeks. As shown in the same exhibit, Tucker Thomas worked between 40.18 and 42.85 hours in the undisputed weeks. Only the weeks in which she worked 33.75, 5.83 and 33.15 are truly unrepresentative of the hours worked, and should be replaced. The weeks ending August 20, September 3, September 10, September 17, November 24, October 8, October 15, October 22, November 5, November 12, November 19, November 26 and December 3, 2011 will be used as representative weeks for determining average weekly wage. The average weekly wage for those thirteen weeks is \$543.59. The parties stipulated to marital status of single and two exemptions; on those facts, published agency rate tables yield a compensation rate of \$375.42, which is hereby adopted.

Medical expenses are also at issue, as well as a request for alternate medical care under Iowa Code section 85.27. Both issues relate to the facial paresthesias/headaches, which have not been established as related to this injury. Defendants prevail on both issues.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall recalculate healing period entitlement (otherwise identified in the hearing report as not disputed) using the correct rate of compensation: three hundred seventy-five and 42/100 dollars (\$375.42). Any arrearage shall be paid in a lump sum together with statutory interest.

Defendants shall pay two hundred (200) weeks of permanent partial disability benefits at the rate of three hundred seventy-five and 42/100 dollars (\$375.42) commencing April 5, 2012.

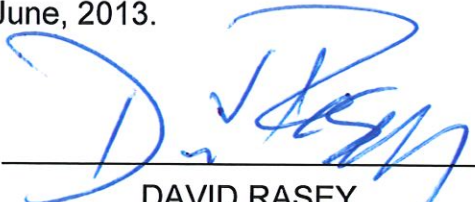
Defendants shall have dollar-for-dollar credit for benefits paid.

All accrued weekly benefits shall be paid in a lump sum together with statutory interest.

Defendants shall file subsequent reports of injury as required by this agency.

Costs are taxed to defendants.

Signed and filed this 25th day of June, 2013.



DAVID RASEY
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.