BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LINDA TRUMBLEE,

Claimant,

vs.

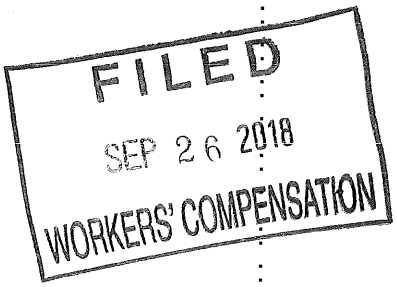
WALMART,

Employer,

and

NEW HAMPSHIRE INSURANCE CO.,

Insurance Carrier,
Defendants.



File No. 5058568

ARBITRATION

DECISION

Head Note Nos.: 1803, 3001, 3002

STATEMENT OF THE CASE

Linda Trumblee, claimant, filed a petition in arbitration seeking workers' compensation benefits from Walmart and its insurer, New Hampshire Insurance Company as a result of an injury she sustained on June10, 2015 that arose out of and in the course of her employment. This case was heard in Des Moines, Iowa and fully submitted on August 27, 2018. The evidence in this case consists of the testimony of claimant, Joint Exhibits 1 – 11, Claimant's Exhibits 1 – 4 and Defendants' Exhibits A – E. Both parties submitted briefs.

ISSUES

1. The extent of claimant's disability.
2. The commencement date of permanent partial disability benefits.
3. The claimant's weekly wage and the resulting weekly worker's compensation rate.
4. Whether an underpayment of benefits occurred.
5. Whether claimant is entitled to penalty benefits.
6. Assessment of costs.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, 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.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Linda Trumblee, claimant, was 64 years old at the time of the hearing. Claimant graduated from high school. Claimant received special education instruction in school. (Defendants' Exhibit E, pages 36, 40) Claimant's post high school education consists of receiving a certification to be a nurse's aide (CNA). Claimant testified that her CNA certification was current at the time of the hearing.

Claimant's work history is set forth in Exhibit 3. The exhibit shows claimant worked as a nurse's aide in the 1990's at the Oelwein Hospital. She injured her right shoulder and had surgery. Claimant was assigned to work at Covenant Medical Center after her surgery and performed clerical functions. Claimant was terminated from this position. (Exhibit 3, p. 8) Claimant worked briefly at a fast food restaurant and a department store before obtaining a job at Menards. She worked at Menards from 1995 through 2005. (Ex. 3, p. 9) Claimant injured her left and right shoulder at Menards. Claimant filed a claim for workers' compensation benefits against Menards, and her right shoulder was awarded for 125 weeks of permanent partial benefits. (Ex. E, p. 43) The arbitration decision noted that claimant's surgeon for her Menard's injury; Arnold Delbridge, M.D., provided restrictions of,

> Linda can lift from her knees to her chest, 15-20 lbs on an occasional basis. She should not lift above shoulder level or above her head at all. She should not lift with her right upper extremity by itself, but the two together will allow her to lift 15-20 lbs providing she does it close to her body. She can do standing or sitting type work and walk around without difficulty.

(Ex. E, p. 39)

Claimant worked briefly at Lowe's in 2005 and then started her employment with Walmart in November 2005. (Ex, 3, p. 9) Claimant was employed at Walmart at the time of the hearing. While still an employee, claimant had not worked at Walmart for some time.

At Walmart claimant has performed a number of jobs including stocking in the grocery department, working in the seasonal department and has worked a number of

years as a cashier. (Ex. A, p. 5) Claimant was earning about $11.25 per hour as a cashier in 2015. (Ex. C, p. 7) On June 10, 2015 claimant lifted a bag of salt for a customer at Walmart. Claimant felt her right shoulder pop. (Ex. A, p. 6) Claimant continued to finish her shift. The next day she reported her injury and was referred for medical care by defendants. Claimant was seen by Bridget Paris, ARNP on June 11, 2015. ARNP Paris noted claimant was having sharp arm pain that was aggravated by movement. (JEx. 4, p. 26) Claimant refused work restrictions at this time. (JEx. 4, p. 30) Claimant was seen at the Regional Medical Center on June 12, 2015 by Clinton Cummings, D.O. Dr. Cummings recommended no work with the right arm until she was evaluated by orthopedics. (JEx. 5, p. 38)

Claimant was referred to Richard Naylor, D.O. for treatment of her right shoulder. On June 22, 2015 Dr. Naylor examined claimant. Dr. Naylor provided a cortisone injection in her right shoulder. (JEx. 6, p. 41) On July 20, 2015 Dr. Naylor noted claimant had failed conservative treatment and recommended a diagnostic arthroscopy of the right shoulder. (JEx. 6, p. 45) Claimant was reassigned from her cashier position to a people greeter position at this time. (Ex. A, p. 7) On August 24, 2015 Dr. Naylor performed surgery on claimant's right shoulder. His post-operative diagnosis was,

> Right shoulder subacromial impingement, AC joint arthrosis, type I slap, 20-30% partial thickness rotator cuff tear in the supraspinatus and grade 2 and3 chondromalacia of the glenohumeral joint to the right shoulder.

(JEx. 9, p. 128)

Dr. Naylor released claimant to return to regular work on November 30, 2015. (JEx. 6, p. 53) Claimant continued working for Walmart and in January 2016 experienced additional pain in her right shoulder. Dr. Naylor recommended another diagnostic arthroscopy of claimant's right shoulder on February 16, 2016. (JEx. 6, p. 60) On March 25, 2015 Dr. Naylor "scoped" her right shoulder. Dr. Naylor's post-procedure diagnosis was,

1. Chondroplasty humeral head.

2. Subacromial decompression.

3. Debridement of type SLAP.

4. Debridement of partial thickness rotator cuff tear.

(JEx. 9, p. 134) On July 7, 2016 Dr. Naylor recommended the following restrictions,

> From a work standpoint, I know she would be from what she described to me, she would be able to do self checkout with no restrictions. Her other restrictions are these: no repetitive use at or above shoulder height, no lifting more than 10 to 15 pounds away from body, no

> more than 20 to 30 pounds close to body. As far as her FCE lifting from waist to floor, she can lift 25 pounds rarely, 20 pounds occasionally and 10 pounds frequently. From waist to crown, which [sic] I would not have [sic] do that because I would not have her do any lifting at or above shoulder height.
>
> Otherwise, those are her only restrictions. She can return to work with no repetitive use at or above shoulder height. No lifting more than 10 to 15 pounds away from body, no more than 20 to 30 pounds close to body.

(JEx. 6, p. 72) On July 17, 2016 Dr. Naylor provided a 9 percent whole person impairment rating for the right shoulder and adopted the restrictions from the June 13, 2016 functional capacity evaluation (FCE). (JEx. 6, pp. 73, 74; JEx. 11, pp. 141 - 149) Dr. Naylor performed a third "scope" on claimant's right shoulder on May 8, 2017. (JEx 6, p. 80) Farid Manshadi, M.D. described this procedure and care as:

> [s]ubacromial decompression, distal clavicle excision, arthroscopic debridement of partial thickness rotator cuff tear, and arthroscopic debridement of partial thickness biceps tendon tear. Again, after that surgery Ms. Trumblee had extensive outpatient physical therapy.

(Ex. 1, p. 4)

On December 6, 2017 Dr. Naylor said that claimant was at maximum medical improvement (MMI) for her right shoulder. Dr. Naylor noted claimant may need a shoulder replacement in the future. He provided restrictions of no lifting more than 5-10 pounds, no more than 1-5 pounds from the body, no more than 30 repetitions per hour, and no working at or above shoulder height on the right shoulder. (JEx. 6, p. 96) On January 3, 2018 Dr. Naylor provided claimant with a 19 percent whole person impairment rating. (JEx. 6, p. 97) I find that the claimant was at MMI as of December 6, 2017, the date Dr. Naylor found claimant at MMI.

On January 31, 2018 Walmart informed claimant she could not work as a cashier and that there was no reasonable accommodation available that would allow her to work as a cashier. (Ex, 2, pp. 6, 7) Claimant testified that she was told to go to another Walmart store (claimant could not remember the town where that Walmart was located) and apply for a job in that store as a people greeter. Claimant said when she told the managers at that store she was injured at the Independence Walmart store she was informed that they would not hire her. Walmart offered claimant a position as a people greeter on April 30, 2018. (Ex. B, pp. 2, 3) Claimant accepted the offer. The offer was made the day before this case was originally scheduled to go to hearing. Claimant has not been able to return to work as a people greeter, as she recently fell and broke her left arm. This was not a work-related injury.

On June 28, 2018 Dr. Naylor noted that he wanted to have an MRI of claimant's shoulder to determine the extent of the original rotator cuff tear. Testimony at the

hearing indicated the defendants had authorized the MRI, but it had not been performed.

On February 28, 2018 Dr. Manshadi performed an independent medical examination of the claimant. Dr. Manshadi's diagnosis and recommended restrictions were,

> At this point the diagnosis is right-sided shoulder pain with reduced range of motion, status post three surgeries by Dr. Naylor since her work injury of 06/10/15 related to rotator cuff tear, as well as arthroscopic distal clavicle excision due to arthritic changes. Also in the last surgery there was debridement of a partial thickness biceps tendon tear as well.
>
> Currently Ms. Trumblee remains with right-sided shoulder pain with reduced range of motion in relation to her rotator cuff tear, as well as a SLAP tear, as well as worsening of her underlying right shoulder degenerative arthritis and chondromalacia.
>
> . . . .
>
> I do not agree with Dr. Naylor's permanent work restrictions. My recommendation would be to avoid lifting of no more than 5-10 pounds with the right upper extremity, and to avoid lifting at all above the head, and to avoid any activity which requires repetitious reaching or overhead activities.

(Ex. 1, p. 5) Dr. Manshadi assigned a 24 percent impairment rating for the claimant's right shoulder injury. (Ex. 1, p. 5)

There was no testimony by claimant about her wages. The parties relied upon one exhibit to itemize claimant's hours worked and wages earned at Walmart at the relevant period prior to her June 10, 2015 injury. (Ex. C, p. 7)

Claimant was recently informed that she would be allowed to work for Walmart as a people greeter. Claimant has accepted this position and will resume her work at Walmart after her left wrist resolves enough for her to return to work. Claimant has an extremely limited labor market given her limitations, education and vocational experience. I find claimant has an 80 percent loss of earning capacity.

RATIONALE AND CONCLUSIONS OF LAW

Defendants have stipulated claimant has an injury to her right shoulder that arose out of and in the course of her employment at Walmart. Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere

'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

In assessing an unscheduled, whole-body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

Claimant was earnest in her desire to return to work at Walmart. Claimant is unsophisticated. Claimant has a limited education. She was able to obtain a CNA certificate, but is now unable to perform CNA duties. She has a long work history and is motivated to work. Walmart determined that she could no longer perform her work as a cashier. She has been allowed to return to Walmart as a people greeter.

Claimant has had three surgical procedures on her shoulder as a result of her June 10, 2015 injury. Claimant had significant lifting limitations before her injury at Walmart. She had two shoulder procedures before her injury at Walmart and had limits on lifting.

Claimant was able to work as a cashier, stocking shelves and in the seasonal department, with the restrictions she had due to her shoulder injuries before she worked for Walmart. Claimant can no longer perform those duties. She has significant limitations now, and the only position that she qualifies for now is the sedentary position of people greeter. The range of jobs claimant can now perform in her labor market is extremely limited. Claimant's age and education are not positive factors in obtaining retraining for employment. Claimant took special education class in school.

Considering all the factors of industrial disability I find that claimant has an 80 percent industrial disability, which entitles claimant to 400 weeks of permanent partial disability benefits. This award is made acknowledging the fact that claimant was still employed at Walmart at the time of the hearing.

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

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

Calculation of claimant's represented wages for the 13 weeks preceding the injury is made somewhat obscure by the records submitted and the dearth of evidence explaining the wage records found in Defendant's Exhibit C. The parties submitted the following charts as to what was used in calculating wage records.

Defendant provided the following chart:

Week	Date	# Hours	Hourly Rate	Weekly Pay at Straight Rate
1	06/05/15	39.55	$11.25	$444.94
2	05/29/15	34.51	$11.25	$388.24
3	05/15/15	32.8	$11.25	$369.00
4	05/08/15	39.63	$11.25	$445.84
5	05/01/15	34.17	$11.25	$384.41
6	04/24/15	37.09	$11.25	$417.26
7	04/17/15	39.66	$11.25	$448.43
8	04/03/15	37.09	$11.25	$417.26
9	03/27/15	42	$11.25	$472.50
10	03/20/15	34.94	$11.25	$393.08
11	03/18/15	39.12	$11.25	$440.10
12	03/06/15	39.63	$11.25	$445.84

13	02/27/16	37.4	$11.25	$420.76
			TOTAL	$5,517.65*
			)13=	$424.43*
			Work Comp Rate (8-1)	$272.20*

(Ex. C. p. 6) [The correct total in defendants' chart should be $5,487.66 ÷ 13 = $422.12. Work comp rate would be $271.05]

Claimant offered the following chart:

Week	Date	# Hours	Hourly Rate	Weekly Pay of Straight Time
1-2	03-06-15	93.00	11.25	$1,046.25
3-4	03-20-15	90.13	11.25	$1,103.96
5-6	04-03-15	94.10	11.25	$1,058.63
7-8	04-17-15	87.63	11.25	$985.84
9-10	05-01-15	87.84	11.25	$988.20
11-12	05-15-15	87.50	11.25	$984.38
13-14	05-29-15	83.51	11.25	$939.49
			TOTAL	$7,106.75
			/14	$507.63
			Work Comp Rate 5/1	$320.54

(Ex. 5, p. 14)

The wage records submitted are for bi-weekly periods. (Ex. C, p. 7) I am unable to find the weekly hours that defendants refer to in their chart. I am not able to determine why defendants did not use the week of May 22, 2015 in their calculations. I

am not able to determine from the evidence how defendants calculate the hours used in their chart.

Exhibit C, page 6 has the bi-weekly payment records for claimant. In the HOURS column the hours are broken down to four categories; REG, OT, OTH and TOT. (Ex. C, p.7) Claimant used the TOT figure in calculating hours. Based upon the evidence presented the claimant's calculation appears to be an accurate representation of the claimant's wages in the period preceding her injury. There is a miscalculation in claimant's rate calculation however. It appears claimant transposed some numbers for the week ending March 20, 2015. Claimant used $1,103.96 rather than the correct number of $1,013.96 [90.13 hrs. x $11.25 = $1,013.96].

The chart below is the figures and calculations used to find claimant's weekly rate. I find it to be representative of claimant's wages and hours during the relevant period before her injury.

Week	Date	# Hours	Hourly Rate	Weekly Pay of Straight Time
1-2	03-06-15	93.00	11.25	$1,046.25
3-4	03-20-15	90.13	11.25	$1,013.96
5-6	04/03/15	9410	11.25	$1,058.63
7-8	04/17/15	87.63	11.25	$985.84
9-10	05-01-15	87.84	11.25	$988.20
11-12	05-15-15	87.50	11.25	$984.38
13-14	05-29-15	83.51	11-25	$939.49
			TOTAL	$7,016.75
			/14	$501.20
			Work Comp Rate	$316.51

Claimant's total earnings for the relevant period are $7,016.75. I find using the Iowa Workers' Compensation Manual ("rate book") with effective dates of July 1, 2014 through June 30, 2015 in effect at the time of her injury with claimant being single and entitled to one exemption and claimant's gross weekly wage of $501.20 and her weekly workers' compensation rate is $316.51.

I find that defendants have underpaid claimant $48.34 each week defendants paid healing period and permanent partial disability benefits ($320.54 - $272.20 = $48.34). Defendants shall make corrective payments for all underpayments.

Claimant has requested penalty for improper rate and underpayment of permanent partial disability. Under Iowa's worker's compensation scheme, penalty benefits may be imposed against an employer pursuant to Iowa Code section 86.13(4) under certain circumstances. Iowa Code section 86.13(4) provides:

> a. If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.
>
> b. The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:
>
> (1) The employee has demonstrated a denial, delay in payment, or termination in benefits.
>
> (2) The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.

In Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996), and Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996), the supreme court said:

> Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."

Christensen, 554 N.W.2d at 260.

The supreme court has stated:

> (1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a

reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.

(2) If no reason is given for the delay or if the "reason" is not one that a reasonable fact-finder could accept, we will hold that no such cause or excuse exists and remand to the commissioner for the sole purpose of assessing penalties under section 86.13. See Christensen, 554 N.W.2d at 261.

(3) Reasonable causes or excuses include (a) a delay for the employer to investigate the claim, Christensen, 554 N.W.2d at 260; Kiesecker v. Webster City Meats, Inc., 528 N.W.2d at 109, 111 (Iowa 1995); or (b) the employer had a reasonable basis to contest the claim the "fairly debatable" basis for delay. See Christensen, 554 N.W.2d at 260 (holding two-month delay to obtain employer's own medical report reasonable under the circumstances).

(4) For the purpose of applying section 86.13, the benefits that are underpaid as well as late-paid benefits are subject to penalties, unless the employer establishes reasonable and probable cause or excuse. Robbennolt, 555 N.W.2d at 237 (underpayment resulting from application of wrong wage base; in absence of excuse, commissioner required to apply penalty).

> If we were to construe [section 86.13] to permit the avoidance of penalty if any amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude section 86.13 is applicable when payment of compensation is not timely . . . or when the full amount of compensation is not paid.

Id.

(5) For purposes of determining whether there has been a delay, payments are "made" when (a) the check addressed to a claimant is mailed (Robbennolt, 555 N.W.2d at 236; Kiesecker, 528 N.W.2d at 112), or (b) the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235.

(6) In determining the amount of penalty, the commissioner is to consider factors such as the length of the delay, the number of delays, the information available to the employer regarding the employee's injury and

wages, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

(7) An employer's bare assertion that a claim is "fairly debatable" does not make it so. A fair reading of Christensen and Robbennolt, makes it clear that the employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." See Christensen, 554 N.W.2d at 260.

Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

Weekly compensation payments are due at the end of the compensation week. Robbennolt, 555 N.W.2d 229, 235.

Penalty is not imposed for delayed interest payments. Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa App. 1999). Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008).

When an employee's claim for benefits is fairly debatable based on a good faith dispute over the employee's factual or legal entitlement to benefits, an award of penalty benefits is not appropriate under the statute. Whether the issue was fairly debatable turns on whether there was a disputed factual dispute that, if resolved in favor of the employer, would have supported the employer's denial of compensability. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

The purpose of Iowa Code section 86.13 is both punishment for unreasonable conduct but also deterrence for future cases. Id. at 237. In this regard, the Commission is given discretion to determine the amount of the penalty imposed with a maximum penalty of 50 percent of the amount of the delayed, or denied, benefits. Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 261 (Iowa 1996).

In exercising its discretion, the agency must consider factors such as the length of the delays, the number of delays, the information available to the employer regarding the employee's injury and wages, and the employer's past record of penalties. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996).

In this situation, causal connection of claimant's injuries was admitted. There was no evidence presented as to how the defendants calculated the extent of claimant's disability. Dr. Naylor initially provided a 9 percent impairment and it appears, assuming the stipulation in the hearing report, reflects 45 weeks of permanent partial benefits and, that defendants paid that rating. Dr. Naylor subsequently provided a 19 percent rating, which would be 95 weeks, 60 additional weeks. This rating was issued on January 3, 2018 and there was no evidence that defendants have paid claimant any indemnity benefits from this rating. (Ex. D, pp. 9 – 33)

As of the date of the hearing the amount due was 26 weeks and 5 days based upon the latest rating. There is nothing in evidence that explains why defendants did not pay the additional weeks based upon this rating, a rating of their own treating physician. This is not reasonable. If defendants had a reason, they failed to contemporaneously convey that basis, as required by Iowa Code section 86.13(4)(b)(2).

Defendants communicated the rate to the claimant. While I found the defendants underpaid the rate, based upon this record, I cannot hold defendants were unreasonable in their calculation, and no penalty is awarded for underpayment of rate.

Having considered the relevant factors, the facts of this case, and the purposes of the penalty statute, I conclude that a section 86.13 penalty in the amount of $4,100.00 is appropriate in this case for failing, without reasonable cause or excuse that was conveyed to claimant, to pay the January 3, 2018 rating. A penalty of slightly less than 50 percent of benefits for the 26 plus weeks are awarded claimant of $4,000.00 [26 x $316.51 = $8,229.26 ÷ 2 =$4114.63]. Such an amount is appropriate to punish the employer for its failure to convey the bases of its denial and should serve as a deterrent against future conduct.

Claimant is entitled to an award of costs in the amount of $113.12 pursuant to 876 IAC 4.33.

ORDER

Defendants shall pay claimant four hundred (400) weeks of permanent partial disability benefits at the weekly rate of three hundred sixteen and 51/100 dollars ($316.51) commencing December 6, 2017.

Defendants shall pay claimant the underpayment as set forth in this decision.

Defendants shall pay claimant four thousand one hundred and 00/100 dollars ($4,100.00) in penalty benefits.

Defendants shall pay claimant costs of one hundred thirteen and 12/100 dollars ($113.12).

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 have a credit for payment of forty-five (45) weeks of indemnity benefits at the weekly rate of two hundred seventy-two 20/100 dollars ($272.20).

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 26th day of September, 2018.

JAMES F. ELLIOTT
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.