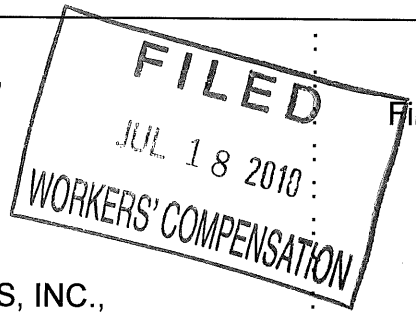
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



DWIGHT FRAZIER, Claimant, vs. FAREWAY STORES, INC., Employer, NATIONWIDE MUTUAL INSURANCE COMPANY, Insurance Carrier, Defendant.	File Nos. 5060201, 5060202, 5060203, 5060204, 5060205, 5060206, 5060207, 5060208, 5060209, 5062876 ARBITRATION DECISION Head Note Nos.: 1802, 2206, 2209, 2501, 2907, 4000.2

STATEMENT OF THE CASE

Dwight Frazier, claimant, filed petitions for arbitration against Fareway Stores, Inc. (hereinafter referred to as "Fareway") as the employer and Nationwide Mutual Insurance Company as the insurance carrier. An in-person hearing occurred in Des Moines on February 15, 2018.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed in either file. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 26, which were all received without objection. Defendants offered a separate set of exhibits marked as Defendants' Exhibits A through C. Defendants' Exhibit B was excluded upon claimant's objection. Defendants' Exhibits A and C were admitted into the evidentiary record.

Claimant testified on her own behalf and called Paul Crews to testify. No other witnesses were called to testify. The case was deemed fully submitted upon the filing of simultaneous post-hearing briefs on March 23, 2018.

Although defendants asserted a notice defense at the time of trial, this potential defense was considered and rejected in a ruling on defendants' motion for leave to file amended answers to assert notice defenses. Specifically, in a ruling filed February 7, 2018, the undersigned concluded that the proposed amendments should not be permitted. No factual findings or conclusions of law will be entered pertaining to the notice defenses. Defendants' counsel was clear that the affirmative notice defenses

were being asserted on the hearing report and at trial to ensure they were preserved for appellate review. Although the notice defense is listed as a disputed issue below, the merits of the notice defenses will not be considered in this decision given the February 7, 2018 ruling.

Claimant requested an opportunity to file a supplemental exhibit on the issue of the notice defenses and witnesses that were identified by defendants but ultimately not called at the time of trial to testify. Claimant's request was granted. Claimant filed a supplemental exhibit, identified as Supplemental Joint Exhibit 27 on February 21, 2018. Supplemental Joint Exhibit 27 is officially received into the evidentiary record.

At the commencement of the hearing, the parties were able to reach an amicable agreement as to reimbursement of claimant's independent medical evaluation. Although listed as a disputed issue below, defendants agreed at the commencement of the hearing to reimburse claimant for the cost of an independent medical evaluation (IME) performed by Daniel McGuire, M.D.

Claimant also sought mileage reimbursement for her travels to attend an IME sought by defendants through David Boarini, M.D. Again, defendants agreed to reimburse those mileage expenses to claimant without further dispute, evidence, findings, or decision by the undersigned. Defendants will be ordered to reimburse both the independent medical evaluation fee with Dr. McGuire and the mileage expenses related to claimant's attendance at an evaluation with Dr. Boarini.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained a series of injuries, a traumatic injury, or a cumulative injury on any of the alleged injury dates that arose out of and in the course of claimant's employment with Fareway.

2. The proper date or dates of injury.

3. Whether the alleged injuries caused temporary disability and, if so, claimant's entitlement to healing period benefits.

4. Whether claimant has achieved maximum medical improvement, or is entitled to a running healing period.

5. Whether the alleged injuries caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits, including a claim for permanent total disability.

6. Whether the alleged injury claims are barred because claimant failed to give timely notice of his injury or injuries.

7. Whether claimant has established entitlement to payment, reimbursement, or an order that defendants hold him harmless for all liens and subrogation claims pertaining to past medical expenses contained in the attachments to the hearing report.

8. Whether claimant has established entitlement to reimbursement for medical mileage, as delineate on the attachment to the hearing report.

9. Whether claimant is entitled to reimbursement of expenses and mileage to attend an independent medical evaluation pursuant to Iowa Code section 85.39.

10. Whether claimant is entitled to an award of alternate medical care, including specific requests to designate Richard A. Strickler, D.O. for medication management, John W. Rayburn, M.D. as an interventional pain management specialist, and Eyerly Ball for mental health issues, all as authorized treating medical providers.

11. Whether defendants should be ordered to pay penalty benefits for unreasonable delay in payment of weekly benefits pursuant to Iowa Code section 86.13.

12. Whether costs should be assessed against either party.

FINDINGS OF FACT

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

Dwight Frazier asserts a claim for benefits resulting from a low back condition and alleged mental sequela from the low back condition. Mr. Frazier has alleged ten dates of injury as potential injury dates. Realistically, he asserted at hearing that he is claiming one back injury, but the proper date of the injury is to be determined.

Mr. Frazier has a history of low back problems that significantly pre-date the alleged injury dates. Medical records in evidence demonstrate claimant complained of severe back pain as far back as 2003. Those same records demonstrate that claimant sought medical treatment for his low back symptoms several times between 2003 and 2015, including treatment following a motor vehicle accident in 2007. (Joint Exhibit 4)

Claimant acknowledged prior back symptoms and treatment during his direct examination at trial. Interestingly, however, he was asked about this history of back injuries during a deposition in this case. His responsive testimony during the deposition was evasive at best. He testified that he would ache once in a while but required no treatment for his back. (Joint Ex. 18, page 45)

I am troubled by this deposition testimony in light of the various medical records documenting ongoing treatment. With further questioning at the deposition, claimant did

reluctantly concede some prior back treatment. However, his initial reaction was to deny prior back treatment, clearly without justification. Claimant appears to have been trying to minimize his pre-existing low back condition.

Claimant's testimony during his deposition perhaps could be excused. He testified that he does not sleep well and had difficulties with memory since his low back injuries. Yet, during cross-examination, Mr. Frazier's testimony was often evasive, vague, or simply not believable.

For instance, when questioned about a patient questionnaire claimant completed at Iowa Orthopaedics on June 24, 2016, claimant's responses were evasive. (Joint Ex. 5, pp. 1-2) He did not volunteer information that was clearly contained on the document and that he conceded he wrote. When specifically questioned about having recorded a history of having back pain for five years, claimant declared it to be an error and blamed it on his pain at the time. (Transcript, p. 116) Given the pre-existing medical records, claimant's response was not credible.

Mr. Frazier also denied doing any work on cars or working in the dirt since the alleged work injuries. After denying that he performed any mechanic work or digging in dirt, defense counsel asked claimant about his dirty finger nails. (Tr., p. 104) Indeed, my observation was that claimant's fingernails were quite soiled with oil, grease, and/or dirt. Claimant clearly had been working with something that had left black under his fingernails.

However, when asked about his fingernails, claimant became sarcastic. The colloquy went as follows:

> Q: Have you done any digging or mechanic work or anything?
>
> A: Mechanic work? No, no digging. Mechanic work, no.
>
> Q: It looks like you got some grease under your nails.
>
> A: I don't know. You got to take a sample. I don't know. Maybe it's just dirt.

(Tr., p. 104) Claimant's testimony in this regard was unbelievable. Claimant most certainly should know what he was doing in the very recent past that caused him to have dirt, oil, and/or grease under his fingernails. Suggesting he had no idea and that defense counsel would have to "take a sample" was sarcastic. Claimant offered no real or viable explanation why his fingernails were dirty at the time of the hearing. His denial of all mechanic work or working in the dirt simply did not ring true with my visual observations. Claimant is more active than he voluntarily acknowledged at trial.

Claimant significantly damaged his own credibility on cross-examination. Questions that were answered relatively straight-forward on direct examination became evasive answers. Claimant significantly slowed his response time to questions from direct to cross-examination. Mr. Frazier's memory loss and confusion affected his

ability to respond on cross-examination much more than it did on direct examination. I find that claimant was not credible during much of his testimony.

Nevertheless, claimant continued to work full-time from 2003 through 2015. He had no permanent work restrictions for his low back or as a result of mental health issues prior to May 2016. Mr. Frazier clearly had pre-existing low back and mental health symptoms for which he required periodic medical care. Yet, there is no evidence he lost time from work, lost job opportunities, or suffered any loss of earning capacity as a result of his low back condition prior to May 2016.

Mr. Frazier began his most recent stent working as a meat cutter for Fareway in July 2015. He performed a wide-range of job duties that included manual cutting of various meat cuts, use of saws and grinding of meat, as well as customer service at Fareway's meat counter in Norwalk.

Claimant testified that approximately one and a half weeks prior to June 8, 2016, he slipped on a wet floor at Fareway. He described experiencing low back pain after that fall. However, he did not specifically report that fall or seek medical treatment after the May 2016 fall. Instead, claimant continued to work with his intermittent back pain.

On June 8, 2016, claimant was working at the Fareway meat counter and helping a customer. The customer requested a piece of meat from the front of the display case. Claimant was leaning into the meat case and was slightly twisting his upper body when he experienced spasms in his left leg. He testified that his leg was bouncing off the floor as he was leaning into the meat case to retrieve the customer's desired purchase.

After he assisted the customer, claimant reported his back and leg symptoms. He requested the opportunity to go to his doctor on June 8, 2016, and his supervisor permitted him to seek medical attention. Claimant was medically restricted from work on June 8, 2016 and June 9, 2016. He returned to full-duty and full-time work at Fareway's meat counter after those two days.

Dr. Strickler's medical record of June 8, 2016 records that claimant had back pain for a month prior to his evaluation. (Joint Ex. 4, p. 17) Claimant denies the accuracy of this medical record. (Tr., p. 113) Nevertheless, Dr. Strickler referred claimant to an orthopaedic surgeon, Todd J. Harbach, M.D. on June 14, 2016. (Joint Ex. 4, p. 17)

A physician assistant evaluated claimant on June 24, 2016. The physician assistant recorded that claimant had back pain over the past five years that comes and goes. He also recorded that the pain had progressed over the past three weeks. (Joint Ex. 5, p. 3) An injection was administered at this evaluation but did not prove to provide long-term relief for claimant.

On July 11, 2016, claimant returned to Iowa Orthopaedics and was again evaluated by the physician assistant. The injection was repeated and provided some immediate relief for claimant's symptoms. (Joint Ex. 5, p. 7)

Mr. Frazier continued to work at the Fareway meat counter until July 20, 2016. On that date, Mr. Frazier slipped on a piece of bacon on the floor. He was able to catch himself before he fell to the floor. However, his low back symptoms increased significantly after this event. He described having significant difficulties even getting into and out of his car after his work shift on July 20, 2016.

On July 22, 2016 claimant returned to Iowa Orthopaedics. He reported progression of his pain down his legs. He reported slipping on a piece of fat (bacon) at this evaluation. (Joint Ex. 5, p. 9) Following this evaluation, claimant was given a work release. (Joint Ex. 5, p. 11)

Fareway advised claimant that he could not return to work as a meat cutter until he received a full-duty release. (Joint Ex. 2, p. 5; Joint Ex. 19, p. 1) Claimant has not received a full-duty release since July 21, 2016. He remained off work between July 21, 2016 and the date of the arbitration hearing. No physician has declared that claimant is capable of performing substantially similar employment since July 21, 2016.

Ultimately, the parties obtained competing medical opinions as to whether claimant's low back condition arose out of and in the course of his employment with Fareway. Dr. Harbach offered various reports and opinions as the treating orthopaedic surgeon. On an FMLA form dated August 5, 2016, Dr. Harbach did not indicate claimant's condition was an "injury" or "work related." Instead, he indicated that it was an "illness." (Joint Ex. 5, p. 17)

Claimant's counsel initially sent a letter and requested that Dr. Harbach offer a causation opinion. In a report dated November 4, 2016, Dr. Harbach stated that it was a "very reasonable and logical deduction that a patient who lifts approximately 60 boxes per day that weigh from 20 to 75 pounds of meat products will aggravate the degenerative conditions" in his low back. (Joint Ex. 5, p. 29)

Defense counsel requested clarification of these opinions. In a report prepared by defense counsel and signed by Dr. Harbach on January 19, 2017, Dr. Harbach states that claimant has a degenerative condition in his spine that is more likely than not related to his 30-year history of smoking and his underlying genetic makeup. Dr. Harbach further opines that the natural progression of claimant's degenerative spine condition was "not caused by or accelerated by his work duties at Fareway." (Joint Ex. 5, p. 39)

This sparked further questions and inquiry by claimant's counsel. In a report signed by Dr. Harbach on May 8, 2017, he opines that his January 19, 2017 report did not contradict his prior opinion offered on November 4, 2016 and specifically that "Dwight Frazier's job in the Fareway meat department materially aggravated and lit up the degenerative condition in his lumbar spine." (Joint Ex. 5, p. 47) Dr. Harbach opined that he continued to opine that the Fareway work duties performed by claimant "continued to aggravate or worsen his lumbar spine condition up until July 20, 2016, the last day he worked in the Fareway meat department." (Joint Ex. 5, p. 47)

Following the supplemental report elicited by claimant's counsel, defense counsel sought yet another conference and report with Dr. Harbach. In a report signed by Dr. Harbach on August 18, 2017, he opined that the aggravation he opined occurred in the May 8, 2017 report was only a temporary aggravation. (Joint Ex. 5, pp. 57-58)

Claimant's counsel obtained another responsive report from Dr. Harbach, signed on January 18, 2018. In that report, Dr. Harbach notes that he does not know claimant's current condition but states "in general work related aggravations are more often than not temporary in nature." (Joint Ex. 5, p. 61)

Again, in a report signed on January 31, 2018, Dr. Harbach opines that the work activities could cause a temporary aggravation of symptoms that would have resolved within three to four weeks. (Joint Ex. 5, p. 59) At the end of this report, Dr. Harbach hand wrote an opinion that states, "I do not believe that the work the patient performs is the predominant factor of his current condition." (Joint Ex. 5, p. 60) (emphasis in original).

Dr. Harbach issued one final report, which he signed on February 9, 2018. In that report, Dr. Harbach opined that work-related activities do not cause pre-existing degeneration, but he acknowledged that work-related activities can aggravate pre-existing degeneration. (Defendants' Ex. A, p. 1) In a final opinion, Dr. Harbach opined that "Dwight Frazier's work at Fareway did not materially aggravate his pre-existing degenerative back injury." (Defendants' Ex. A, p. 2)

I have a difficult time rectifying Dr. Harbach's final opinion that the claimant's work at Fareway did not materially aggravate his underlying degenerative back condition. He was previously asked about this, and offered some nuances to explain his opinions. However, his final report actually contradicts his statements at Joint Exhibit 5, page 29, Joint Exhibit 5, page 47, and Joint Exhibit 5, page 57, in which he acknowledged that claimant's work activities at Fareway were aggravating factors. Ultimately, I have a difficult time accepting Dr. Harbach's opinions because of the nuances and ultimate contradiction of his own opinions.

Mr. Frazier sought an independent medical evaluation with an occupational medicine physician, which was performed by Robin L. Sassman, M.D., on August 8, 2017. (Joint Ex. 11) Dr. Sassman did not author her report until October 12, 2017. She appears to have been provided subsequent medical reports authored by David Boarini, M.D. and Daniel McGuire, M.D., both discussed below.

Dr. Sassman provided a detailed medical history for claimant, which acknowledged and considered his pre-existing low back treatment and symptoms. Dr. Sassman also appears to have understood and recited a history that includes each of the three incidents described by claimant in May 2016, June 2016 and July 2016. Following her medical records review and evaluation of claimant, Dr. Sassman diagnosed claimant with low back pain with radiculopathy and depression. She deferred to James L. Gallagher, M.D.'s expertise on the mental health issues. (Joint Ex. 11, p. 11)

With respect to the low back, Dr. Sassman opined that the slip and fall in May 2016 and the slip on bacon on July 20, 2016 "caused a permanent aggravation of the degenerative changes in his lumbar spine." (Joint Ex. 11, p. 11) Dr. Sassman rationalizes that "prior to these instances his symptoms would be intermittent in nature. It was not until these incidents occurred that he noted a permanent worsening of his symptoms." (Joint Ex. 11, p. 11)

Dr. Sassman opines that claimant sustained a 13 percent permanent impairment of the whole person as a result of his low back injuries at Fareway. She further opines that he may have additional non-ratable impairment due to loss of endurance, loss of pain-free function, medication or pain-related interference with cognitive ability and stamina, sleep interference caused by pain, loss of coordination, and suggested that claimant would likely "need to miss work occasionally due to painful flare-ups." (Joint Ex. 11, p. 12) She specifically limited claimant to lifting, pushing, pulling or carrying no more than 10 pounds on a rare basis from floor to waist, occasionally from waist to shoulder, and rarely over shoulder. She imposed additional restrictions as delineated at Exhibit 11, page 13 and opined that "even with these restrictions, it is unlikely that Mr. Frazier would be able to perform work on a full-time basis (8 hours a day, 7 days a week) due to his symptoms." (Joint Ex. 11, p. 13)

Defendants obtained an independent medical evaluation performed by a neurosurgeon, Dr. Boarini on September 6, 2017. Dr. Boarini references only the May 2016 incident in which claimant slipped and fell. Dr. Boarini makes no reference to the incident where claimant's leg began to spasm or the third event in July 2016 when claimant slipped on bacon, although it appears he was subsequently made aware that claimant alleged multiple incidents at work. (Joint Ex. 12)

Regardless, Dr. Boarini had claimant's MRI available. He noted nothing of "great significance" and only "minor degenerative changes." He recommended against surgical intervention and opined that he found "nothing that in any way is related to a slip-and-fall." (Joint Ex. 12, p. 1) Similar to Dr. Harbach, Dr. Boarini opines that claimant sustained only a temporary aggravation when he slipped and fell. (Joint Ex. 12, p. 2) I have a difficult time accepting Dr. Boarini's opinions in this case because his history appears less than complete when he authored his initial report. His opinions also are not consistent with ongoing symptoms

Claimant also obtained an independent medical evaluation with a spine surgeon, Dr. McGuire. Dr. McGuire evaluated claimant on September 29, 2017. Dr. McGuire specifically acknowledged that claimant had three separate incidents within a short amount of time at work. He detailed each incident in a manner that is consistent with other credible evidence in this record. (Joint Ex. 13)

Dr. McGuire opines that claimant sustained an aggravation of underlying lumbar spondylosis and soft tissues. Dr. McGuire concurred with Dr. Harbach and Dr. Boarini that claimant is not a surgical candidate. Dr. McGuire opined that it is not logical for claimant to return to work eight hours per day on a consistent basis. He limited claimant to lifting 10 to 20 pounds but only on a rare basis. (Joint Ex. 13, p. 3)

In answering specific questions from claimant's counsel, Dr. McGuire opined that claimant's work duties at Fareway were "a substantial factor in cumulative gradually or progressively aggravating, accelerating, worsening, or lighting up the degenerative condition" in claimant's lumbar spine. (Joint Ex. 13, p. 4) While acknowledging that most patients recover and sustain only temporary aggravations, he opines that "a small but significant number of people have aches and pains that persist for months if not years after an incident. Unfortunately, Mr. Frazier has a material aggravation of his spine." (Joint Ex. 13, p. 4) Dr. McGuire further opined that the aggravation was permanent. (Joint Ex. 13, p. 4) He assigned a six percent impairment of the whole person to claimant's lumbar spine condition and completed a work restriction sheet detailing claimant's residual abilities. (Joint Ex. 13, pp. 4, 6)

Considering each of the medical opinions noted above, I find that each of the physicians believe claimant sustained some type of aggravation as a result of his work activities at Fareway. Although claimant's credibility suffers for the reasons outlined above, it does appear that his symptoms materially worsened after the three incidents at Fareway. Again, while I believe Mr. Frazier may exaggerate his symptoms and down-play his residual abilities, I do find that he sustained a permanent increase and aggravation of his underlying degenerative condition and ongoing symptoms.

I am not convinced by the opinions of Dr. Harbach and Dr. Boarini that claimant's symptoms were only a temporary aggravation. First, Dr. Harbach appears to use a predominant factor test that is not consistent with Iowa law. It is not apparent to me whether his predominant factor test affects his ultimate conclusions about whether the injury was temporary or permanent in nature.

Regardless, claimant continued to seek medical care and developed worsening depression as a result of his pain and loss of function after these injuries. Fareway clearly considered him to have ongoing symptoms and precluded a return to work. Ultimately, Fareway terminated his employment because of ongoing limitations. Therefore, I accept the causation opinions expressed by Dr. McGuire and Dr. Sassman and find that claimant has proven he sustained a permanent aggravation of his pre-existing and underlying degenerative spine disease.

Specifically, I find that claimant sustained a series of injuries, but that the effects of his injuries were not significant when considered separately. Claimant continued to have intermittent symptoms and returned to work after both the May 2016 and June 2016 incidents. Only after the July 20, 2016 incident was claimant rendered unable to return to work as a meat cutter at Fareway. Therefore, I find that it was the cumulative effect of the successive injuries that caused claimant's ultimate injury. I find that the ultimate work injury was a cumulative injury that manifested when claimant slipped on a piece of bacon and was unable to continue working for Fareway on July 20, 2016.

I find that the series of events and cumulative injury caused claimant to be off work on June 8, 2016 and June 9, 2016. He returned to work at Fareway and continued to work his normal hours until the incident on July 20, 2016. Claimant has been off work

since July 21, 2016 and has not been capable of returning to substantially similar employment since July 21, 2016.

I find that claimant sustained physical injuries to his low back as a result of the cumulative injuries. I also find that claimant sustained mental injuries, including material aggravations of underlying depressive and anxiety symptoms.

I find that claimant requires permanent physical restrictions as a result of the low back injury. I find that claimant sustained permanent impairment and permanent disability related to his low back injury.

However, I also find that claimant sustained mental injuries as sequela of his low back injuries at Fareway. On December 7, 2016, claimant submitted to a psychological evaluation performed at the request of the Social Security administration relative to a claim for disability submitted by claimant. Arthur H. Konar, Ph.D. evaluated claimant. (Joint Ex. 9)

Dr. Konar ultimately diagnosed claimant with major depressive disorder as well as generalized anxiety disorder. Dr. Konar noted that claimant had some underlying psychological issues. However, he noted Mr. Frazier "was able to keep things together until he got hurt in the summer of 2016. He clearly is in pain and has some loss of functioning and has developed a catastrophic emotional reaction." (Joint Ex. 9, p. 4)

Dr. Konar opined that claimant was only partially cognitively able to maintain concentration and carry out instructions. He opined that claimant was not able to interact appropriately with supervisors, co-workers or the public in his mental state. Dr. Konar also opined that claimant could not use good judgment or react to changes in the work place. (Joint Ex. 9, pp. 4-5) Although not asked directly, Dr. Konar appears to have attributed claimant's mental health struggles and diagnoses to his work and loss of employment with Fareway.

On January 24, 2017, claimant sought evaluation at Eyerly Ball Community Mental Health Services. He was evaluated by a social worker, Monica VanHorn. Claimant reported at that initial evaluation that he had been taking Lexapro and Trazodone for approximately two months for depression, anxiety and mood instability. (Joint Ex. 7, p. 2) Mr. Frazier reported feeling depressed, with low energy levels and lowered motivation.

Ms. VanHorn scheduled claimant to be evaluated by a nurse practitioner for a medication check. Steven Stokes, ARNP evaluated claimant via telemedicine on February 1, 2017. He diagnosed claimant with major depressive disorder and increased both his Lexapro and Trazodone.

Mr. Frazier continued his counseling at Eyerly Ball through February 2018. Ultimately, his counseling was transferred to a different social worker, Kim Peterson. Ms. Peterson authored a report on February 2, 2018 in which she opined that claimant meets criteria for major depressive disorder and generalized anxiety disorder. (Joint Ex.

7, p. 38) Her notes from January 24, 2018 describe panic attacks and severe depression. (Joint Ex. 7, p. 39)

Claimant also obtained an independent medical evaluation with a psychiatrist, Dr. Gallagher. Dr. Gallagher evaluated Mr. Frazier on July 13, 2017. (Joint Ex. 10) Dr. Gallagher administered an MMPI-2 psychological test and performed a mental status evaluation on claimant. Dr. Gallagher opined that "the mental status findings reveal an anxious and unhappy man who, outside of living on his acreage, doesn't seem to know quite what to do." (Joint Ex. 10, p. 9)

Dr. Gallagher noted no evidence or report of malingering or feigning. He acknowledged that claimant's primary complaint or problem is the degenerative arthritis in claimant's low back. However, Dr. Gallagher opined:

> His current psychological and psychiatric treatment is mostly related to his work injury and sequelae. Although the injury did not cause his tendency towards anxiety and depression, it substantially aggravated it nonetheless.

(Joint Ex. 10, p. 11)

Dr. Gallagher diagnosed claimant with a major depressive disorder with an underlying dysthymic disorder and panic disorder. Dr. Gallagher opined that claimant "needs ongoing care or he will continue to isolate and deteriorate." (Joint Ex. 10, p. 12) Although he opined that claimant would have a difficult time working given his current psychological condition, Dr. Gallagher also opined that "with some enhanced treatment his symptoms could be reduced, although it is unlikely such could be completely resolved." (Joint Ex. 10, p. 11) Dr. Gallagher recommends treatment with a psychiatrist in a face-to-face setting as opposed to telemedicine. He recommends medication management to reduce claimant's symptoms. (Joint Ex. 10, 0. 13)

Perhaps most importantly, Dr. Gallagher opines that claimant's ongoing anxiety and depression affect claimant's coping skills and reduce his ability to tolerate pain associated with work tasks. (Joint Ex. 10, p. 12) Certainly, if claimant's depression and anxiety can be treated further, he may be able to develop and implement coping skills that will allow him to return to gainful employment. In other words, improvement of his mental health may result in improvement of his physical functional abilities. I find Dr. Gallagher's opinions to be reasonable and convincing. Therefore, I find that Mr. Frazier has not yet achieved maximum medical improvement with respect to his mental injuries.

There remain additional recommendations for claimant with respect to depression and anxiety. I find that those treatment recommendations are reasonable and appropriate for claimant's mental health conditions. I find that those treatments may have effects on claimant's functional abilities, including his ability to potentially return to work.

Although claimant is not currently capable of returning to work from a mental health standpoint, it is questionable whether he could do so from a physical standpoint.

Despite recommendations from the Iowa Vocational Rehabilitation Services, claimant has made no attempts to apply for work or return to the labor market. If claimant's mental health issues are able to be treated, there appears to be a possibility that it will help him cope with his physical ailments and symptoms such that he may be able to return to gainful employment in the future.

I find that it would be premature to determine the level of claimant's permanent disability at this time. Rather, I find that claimant has the opportunity to obtain additional mental health treatment and that such treatment should be undertaken before a determination of claimant's permanent disability.

Claimant requests alternate medical care for both physical and mental health issues. Claimant's request for authorization of Dr. Stickler is reasonable unless and until medication management is assumed by a psychiatrist. Claimant's request for authorization of Dr. Rayburn is reasonable for treatment of claimant's physical symptoms.

With respect to claimant's request for authorization of Eyerly Ball for treatment of claimant's psychological or mental injuries, I find that request to be reasonable with respect to ongoing counseling. However, Dr. Gallagher recommended transfer of care to a psychiatrist and that such examination and treatment occur in a face-to-face setting. He did not believe that Eyerly Ball had such treatment options available for claimant.

Given that there is superior care available, I do not find Eyerly Ball's offered treatment to date to be adequate or sufficient for treatment of the mental health issues. If Eyerly Ball can provide a psychiatrist for treatment on a face-to-face basis, such care should be retained at Eyerly Ball for consistency. However, if Eyerly Ball cannot provide the treatment recommendations made by Dr. Gallagher, defendants shall have the right to transfer care to a psychiatrist of their choosing to provide face-to-face treatment and medication management pursuant to the suggestions offered by Dr. Gallagher.

I acknowledge the existence of competing vocational reports in the file. Claimant has obtained a vocational report suggesting that he is permanently and totally disabled. There is reason to question that report given the recommendations offered by Iowa Vocational Rehabilitation Services and claimant's lack of cooperation and lack of motivation to return to the labor market. Perhaps claimant will be able to more completely cooperate and demonstrate motivation to return to the workforce once his mental health issues are more thoroughly and aggressively treated. However, that is an issue to be determined at a later date after the mental health treatment has been obtained.

Defendants produced a vocational report that provided an analysis of the claimant's loss of earning capacity from nothing to permanently and totally disabled. While the defendants' vocational expert efforts to identify and apply all of the competing medical restrictions is appreciated and often helpful, in this instance, it is not helpful until the results of further psychological counseling and treatment are completed. Therefore,

any further findings relative to claimant's loss of future earning capacity are reserved until after claimant completes additional mental health treatment.

Once that additional mental health treatment is completed, a determination of claimant's permanent disability will be ripe and possible. Claimant is encouraged to cooperate and make full efforts at returning to the labor market once his mental health treatment is completed or his condition stabilizes.

Claimant asserts a claim for reimbursement of medical expenses he paid out-of-pocket, as well as a request for award of past outstanding medical expenses and an award that requires defendants to satisfy and hold claimant harmless from such past medical expenses, including all claims for subrogation and any outstanding liens. I find that the medical expenses contained at Tabs C and D as attached to the hearing report are causally related to claimant's alleged July 20, 2016 work injury at Fareway. Defendants stipulated that the medical providers would testify as to the reasonableness of their treatment and charges and that the medical expenses claimed related to the contested injury claims and conditions. I specifically find that the medical treatment and charges contained in Tabs C and D of the hearing report are reasonable, necessary, and causally related to claimant's July 20, 2016 cumulative work injury at Fareway.

Similarly, I find that the medical mileage itemized at Tabs E and F of the hearing report are causally related to treatment obtained as a result of the July 20, 2016 cumulative injury sustained at Fareway.

The parties have stipulated that defendants did not pay any weekly benefits for the alleged work injury. (Hearing Report) Therefore, I find that claimant has established a delay in payment of weekly benefits. Claimant also introduced several letters sent by his counsel to defendants inquiring as to the basis of defendants' denial of benefits.

Defendants produced correspondence from its claims specialist dated September 8, 2016, noting the carrier was initiating an investigation and requesting certain items. Defendants also produced correspondence from its claims specialist to claimant dated September 12, 2016, noting the need for additional time to investigate the claim. No additional communications or explanation of delay or denial are contained within the evidentiary record until defense counsel notified another deputy commissioner that the defendants were denying liability for the alleged work injury on January 19, 2017.

Some period of investigation is reasonable and almost necessary. At a minimum, defendants had a period of four months to investigate the claim. They offered no explanation for their delays beyond September 12, 2016. Yet, on January 19, 2017, they produced a medical report in support of their denial. Arguably, the medical report produced from Dr. Harbach supports defendants' denial. I find that it was reasonable, at least at that time, to rely upon the opinion of Dr. Harbach to deny liability for this claim.

Additional communications occurred between counsel in May 2017. Claimant produced additional evidence and requested re-evaluation of the claim. Defense counsel appropriately explained the need for further investigation and the delay caused by claimant's family physician not willingly speaking with defense counsel. Defendants appear to have continued their investigation because there is evidence that they scheduled an evaluation with Dr. Boarini within a couple of months after this exchange.

I find that defendants established a reasonable basis for delay of payment of benefits through September 12, 2016 and realistically for a couple of months after that explanation of their delay. However, defendants' investigation continued for four months through January 19, 2017 without explanation to claimant as to the reasonableness or necessity of the ongoing investigation. I find that the four-month delay in investigating this claim was not reasonable. I further find that failing to contemporaneously convey the basis for ongoing delay or denial of benefits for four months beyond September 12, 2016 was not reasonable.

Certainly, a month or two to conduct additional investigation was reasonable. However, claimant was off work, and an ongoing investigation for over four months without production of additional evidence or an explanation of the reason for ongoing delay was not reasonable. Defendants offered no timeline of their investigation and certainly no evidence that they contemporaneously conveyed the basis for their ongoing investigation and denial of benefits to claimant.

I find the January 19, 2017 denial was based upon a medical opinion and reasonable at the time. Subsequently, the opinions of Dr. Harbach could be read in competing fashion and arguably supported defendants' position. Defendants sought additional evidence via an evaluation through Dr. Boarini. I find that claimant was aware of this ongoing investigation and constituted a contemporaneous conveyance by defendants. Therefore, I find that the only period of unreasonable delay or denial of benefits occurred between approximately mid-November 2016 and January 18, 2017.

As noted above, claimant was off work on June 8, 2016 and June 9, 2016 and again from July 21, 2016 through January 18, 2017. During this period of denial, 26 weeks and 2 days of benefits accrued but were not paid. At the stipulated weekly rate of $377.76, this resulted in an unreasonable denial of $9,929.80 in weekly benefits.

Defendants did provide some explanation of their delay. Defendants obviously did continue an investigation, though not as timely as would be desired or reasonable. Considering the purposes of the penalty benefits statute, I find that a penalty totaling $1,500.00 is sufficient to achieve the statutory goals of deterrence and punishment under this set of facts.

CONCLUSIONS OF LAW

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 Electric 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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition

of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

In this case, I found the medical opinions of Dr. McGuire and Dr. Sassman to be most convincing on the issue of whether claimant sustained a permanent aggravation of his underlying physical condition. I also accepted the medical opinions of Dr. Gallagher with respect to claimant's mental health conditions. Having found that claimant proved a material and permanent aggravation of his underlying low back condition, as well as a material aggravation of his mental health conditions, I conclude that claimant proved he sustained a work-related injury at Fareway.

Claimant produced evidence of three separate incidents occurring at Fareway. Realistically, none of the events standing alone are the cause of, or material aggravation of, claimant's condition. However, the cumulative effects of claimant's work activities, including each of the three events at Fareway, resulted in the development of a permanent low back injury to claimant. Claimant's mental health suffered as a sequela of the low back injury.

I conclude that claimant has proven a cumulative injury process that manifested in a cumulative injury to his low back on July 20, 2016. I further conclude that claimant has proven his subsequent mental health treatment and conditions were materially aggravated by and are a sequela of the July 20, 2016 cumulative low back injury at

Fareway. Therefore, I conclude that claimant has proven a compensable low back and compensable mental health injury as a result of his work activities at Fareway.

Mr. Frazier asserts alternative arguments. Initially, he contends that he is permanently and totally disabled. However, in the alternative, Mr. Frazier contends that he is entitled to a running healing period. Initially, I will consider the claim for healing period benefits.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

In this case, I found that claimant was off work on June 8, 2016 and June 9, 2016. I also found that claimant was off work from July 21, 2016 through the date of the arbitration hearing. Similarly, I found that claimant was not medically capable of performing substantially similar employment during those periods of time he was off work. Neither of these factors would terminate claimant's healing period.

Therefore, the healing period only terminates if claimant has achieved maximum medical improvement. There is evidence in the record that Mr. Frazier has achieved maximum medical improvement for his low back injuries. Claimant contends that he is permanently and totally disabled as a result of only the low back injuries and that permanent total disability should be awarded because claimant was declared to be at maximum medical improvement for the low back.

However, I found the mental health claims to be related to the low back injury and compensable. There is some evidence that claimant can improve symptomatically and in his ability to cope with his symptoms if further mental health treatment is undertaken. I found that Mr. Frazier was not at maximum medical improvement from a psychological standpoint. Therefore, I conclude that it is premature to assess permanent disability at this time. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010).

Instead, I conclude that claimant remains in a healing period. He continues to remain off work, unable to perform substantially similar employment, and has not achieved maximum medical improvement. Therefore, I conclude that healing period benefits should continue into the future until one of these three factors is achieved. Iowa Code section 85.34(1).

Mr. Frazier seeks an award for past medical expenses and past medical mileage. The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services

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

Having found that the medical expenses contained at Tabs C and D of the hearing report were reasonable, were for reasonable and necessary medical care, and were causally related to claimant's low back and mental health injuries caused by his work activities at Fareway, I conclude that claimant is entitled to award of the past medical expenses contained at Tabs C and D of the hearing report.

Similarly, claimant is entitled to reimbursement of medical mileage for reasonable and necessary medical treatment. Iowa Code section 85.27; 876 IAC 8.1. Therefore, I conclude claimant is entitled to award of the mileage reimbursement requested in Tabs E and F attached to the hearing report.

Claimant asserts that defendants unreasonably denied or delayed payment of weekly benefits in this case and urges assessment of penalty benefits against defendants as well.

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).

In this case, I found that claimant clearly established a delay or denial of weekly benefits. In fact, the parties stipulated that no weekly benefits were paid to claimant. (Hearing Report). However, I found that defendants did not establish a reasonable investigation or reasonable basis for ongoing delay or denial of benefits for the entire time between September 12, 2016 and January 19, 2017. Therefore, I conclude that award of penalty benefits in some amount is appropriate.

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). Defendants continued their investigation in this case. Although the delay was extended into four months and there was a lack of communication from defendants to claimant about the basis or reason for the ongoing delay, defendants ultimately generated a reasonable basis for their denial.

Although ongoing explanations were not provided, defendants appear to understand the obligation to convey their basis for delay or denial and did provide some explanation at the beginning of their investigation. The delay in this case certainly occurred and was not reasonable. However, this is certainly not the most egregious situation where a large penalty is required to serve the purposes of the statute.

Having considered the relevant factors and the purposes of the penalty statute, I conclude that a section 86.13 penalty in the amount of $1,500.00 is appropriate in this case. Such an amount is appropriate to punish the employer for delays in payment of benefits under these facts and should serve as a deterrent against future conduct. However, the facts of this case are not of such an egregious nature that an additional penalty is warranted.

Finally, claimant seeks assessment of his costs. Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion, I conclude that claimant's request for assessment of his costs should be granted.

Claimant seeks assessment of his filing fee ($100.00). This request is reasonable and the filing fee is assessed pursuant to 876 IAC 4.33(7). Similarly, claimant seeks the cost of service ($12.93) upon defendants. This request is also reasonable and service costs are assessed pursuant to 876 IAC 4.33(3)

Claimant seeks the cost of his deposition transcript ($178.50). Claimant's deposition transcript was introduced in its entirety into the evidentiary record. Therefore, I conclude that it is reasonable to assess this cost pursuant to 876 IAC 4.33(2).

Mr. Frazier also seeks the assessment of the cost of obtaining medical reports from Dr. Gallagher ($1,800.00) and Dr. Sassman ($2,172.50). Agency rule 876 IAC 4.33(6) permits the assessment of the cost of obtaining two medical reports. Claimant's request is limited to the cost of drafting the medical reports. Claimant's request is permissible under recent Iowa Supreme Court precedent. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015). I conclude it is appropriate to assess the cost of both Dr. Gallagher and Dr. Sassman's reports.

In total, I conclude it is appropriate to assess claimant's costs totaling $6,263.93 against defendants.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing in File Nos. 5060201, 5060202, 5060203, 5060204, 5060205, 5060206, 5060207, 5060208, and 5060209.

In File No. 5062876:

Defendants shall pay claimant healing period benefits from June 8, 2016 through June 9, 2016, and from July 21, 2016 through the present and continuing into the future until the occurrence of the first factor outlined in Iowa Code section 84.34(1).

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).

Wesley Rayburn, M.D. shall be an authorized physician for treatment of claimant's physical injuries moving forward, and defendants shall be responsible for providing all care recommended by or through Dr. Rayburn and for payment of all expenses related to that medical care.

Richard A. Strickler, D.O., shall be an authorized physician for purposes of providing medication management unless and until Dr. Rayburn assumes or directs such care for physical injuries or until such time as a psychiatrist or mental health professional assumes and manages any medications for mental health issues.

Defendants shall provide ongoing mental health counseling and treatment with a psychiatrist on a face-to-face basis pursuant to the recommendations of Dr. Gallagher.

Defendants shall authorize a psychiatrist through Eyerly Ball, if available. If not available, defendants shall select and authorize a psychiatrist of their choosing to provide face-to-face medical care for claimant.

Defendants shall reimburse claimant for all out-of-pocket medical expenses, shall pay or satisfy all outstanding medical expenses, liens, or subrogation claims, and shall hold claimant harmless for all medical expenses contained in or summarized in the attachments at Tab B of the hearing report.

Defendants shall reimburse claimant for all medical mileage, as summarized in the attachments behind Tabs E and F of the hearing report, totaling one thousand eight hundred thirty-nine and 32/100 dollars ($1,839.32).

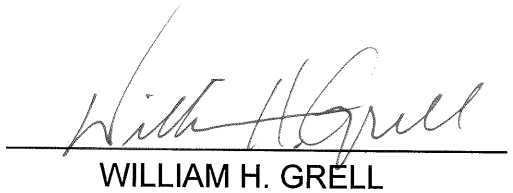
Defendants shall reimburse claimant for his independent medical evaluation fees from Dr. McGuire totaling two thousand dollars ($2,000.00), as reflected at the Tab A attachment to the hearing report.

Defendants shall reimburse claimant mileage expenses for him to attend an independent medical evaluation with Dr. Boarini in the amount of thirty-one and 57/100 dollars ($31.57), as reflected at the Tab A attachment to the hearing report.

Defendants shall pay claimant one thousand five hundred dollars ($1,500.00) in penalty benefits pursuant to Iowa Code section 86.13.

Defendants shall reimburse claimant's costs totaling six thousand two hundred sixty-three and 93/100 dollars ($6,263.93).

Signed and filed this 18th day of July, 2018.



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WHG/sam

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.