BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TODD CAYLER, Claimant, vs. HYDRITE CHEMICAL CO., Employer, and CONTINENTAL INDEMNITY CO., Insurance Carrier, Defendants.	:	File No. 1654713.01 ARBITRATION DECISION Head Notes: 1108.50, 1402.40, 1803, 2907, 4000.2

STATEMENT OF THE CASE

Todd Cayler, claimant, filed a petition in arbitration seeking workers' compensation benefits from Hydrite Chemical Company, employer and Continental Indemnity Company, insurance carrier, as defendants. Hearing was held via Zoom in the Des Moines, Iowa venue on May 16, 2023.

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. The parties are now bound by their stipulations.

Claimant, Todd Cayler, was the only witness to testify live at trial. The evidentiary record also includes joint exhibits 1-5, claimant's exhibits 1-15 and defendant's exhibits A-B and D-K. Defendants' exhibit C was withdrawn because it was a duplicate of one of claimant's exhibits. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on June 9, 2023, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. The nature and extent of permanent partial disability benefits claimant is entitled to receive as the result of the stipulated August 12, 2018 work injury.
2. Whether an award of penalty benefits is appropriate in this case.
3. Whether defendants are responsible for past medical expenses.
4. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Todd Cayler, was 61 years old at the time of hearing. He began working for Hydrite Chemicals ("Hydrite") as an MBS Operator on October 8, 2012. Hydrite Chemicals is in the business of manufacturing chemicals. (Cl. Ex. 5, p. 50; Tr. pp. 20-21) There is no dispute that on August 12, 2018, Mr. Cayler sustained a work-related inhalation injury. The central dispute in this case is the nature and extent of permanent disability that he sustained as the result of the injury. (Hearing Report)

As an MBS Operator, Mr. Cayler's duties at Hydrite included gathering and adding raw materials into a reactor to manufacture various chemicals. This involved monitoring chemicals during the mixing process and providing samples to the laboratory to confirm the chemical was within specifications. Physically he was required to go up and down stairs 30 to 40 times per day to a mezzanine where control valves were located. The job required the ability to stand or walk for up to 10 hours in an 8–12-hour workday; lift and carry up to 100 pounds several times per day. The duties required the ability to climb ladders up to 30 feet in height on an occasional basis. He used a fork truck to pull approximately 20 super sacks. At times he would have to dump 50-pound bags by hand. He would also take samples to the lab for approval and then adjust the raw materials in the mix as needed. His job also included general housekeeping to keep areas clean. (Cl. Ex. 1, p. 2; Def. Ex. B, p. 11; Tr. pp. 21-23)

The stipulated date of the work injury in this case is August 12, 2018. On the weekend of August 11 and 12, Mr. Cayler was working to fix a chemical, CREST, that was rejected the prior weekend. At the direction of Mr. Cayler's supervisor air was being added to the tank where the chemicals were mixed which was "very unorthodox." (Tr. p. 25) There was a scrubber system that was designed to suck in all the fumes; however, the system was unable to keep up resulting in fumes and heavy air in the area. Mr. Cayler could tell something was not right because the air was heavier, smelled pungent, and several people asked if there was something they needed to do different. He estimates he was in this environment for 7-8 hours each day of the weekend; more than any other employee. He was not feeling well by the end of his shift on Sunday. (Tr. pp. 24-30)

By Tuesday August 14, 2018, Mr. Cayler felt even worse. He went to urgent care where he reported nausea, dizziness with cough, and headache starting the previous day. Examination noted wheezes and rales. Mr. Cayler was diagnosed with bacterial

bronchitis, which can take 2-3 weeks to resolve. He was prescribed a course of antibiotics. (JE 2, pp. 5-6)

It should be noted that on February 14, 2018, prior to the work injury, a Respirator Employer Report from Unity Point stated Mr. Cayler was able to use a respirator because he had no medical condition that would put him at an increased risk of material health impairment from using a respirator. He also had no medical condition that placed him at increased risk of material health impairment from exposure to hazardous materials. He had a normal physical exam. (JE1, pp. 1-3)

Mr. Cayler saw his primary care physician, Brian Sankey, D.O. on August 16, 2018. He reported cough, fevers, and chills despite the antibiotics. Examination noted rales in left lower lobe. Dr. Sankey diagnosed pneumonia and prescribed two new antibiotics. He took Mr. Cayler off work August 16 and 17. He could return to work on August 18 with restrictions of light duty in a well-ventilated area and no lifting greater than 25 pounds. (JE3, pp. 7-9) Mr. Cayler texted a copy of the return-to-work information to Hydrite. (Cl. Ex. 2, p. 26; Cl. Ex. 5, pp. 80-81)

On August 18, 2018, Mr. Cayler reported to Joe Horak, a supervisor, that he thought his condition was caused by exposure to the fumes and vapors of CREST at work. A few days later he also reported this to Damion Fischels, his direct supervisor. (Cl. Ex. 3, p. 37; Cl. Ex. 5, pp. 84-85; Tr. pp. 32-34) Mr. Cayler followed up with Hydrite to see if he should continue to treat with his own doctor or if they wanted him to see a workers' compensation doctor. He was advised to continue to treat with his own doctor because they were still investigating. (Cl. Ex. 5, p. 82; Tr. p. 44)

Mr. Cayler went to Mercy One on August 28, 2018, where he saw Jessica Sherman, ARNP. He reported continued cough, shortness of breath, and wheezing. He is constantly clearing his throat and coughing due to irritation. He provided the history of the fumes at work and provided MSDS sheets to ARNP Sherman. Listed under inhalation on the MSDS are dizziness, cough, shortness of breath, sore throat, irritation and esophageal irritation. ARNP Sherman did not note any wheezing but did note that his lungs sounded a little tight, mildly decreased air movement. Mr. Cayler was referred to David Visokey, D.O. in pulmonology. (JE3, pp. 10-12)

Dr. Visokey saw Mr. Cayler that same day. He prescribed an inhaler, Prednisone, and Robutussin. He was to return in one week. (JE3, pp. 13-15) On August 29, 2018, Dr. Visokey issued a note stating Mr. Cayler needed to be on light duty with no chemical exposure until reevaluated on Tuesday, September 4, 2018. This was due to a chemical exposure that caused an irritated respiratory tract. (JE3, pp. 16-17) Mr. Cayler provided a copy of this note to Hydrite. (Cl. Ex. 2, pp. 28-29)

On September 4, 2018, Mr. Cayler returned to Dr. Visokey. He reported feeling approximately 50 percent better. He still has a cough, but it is less. He feels he has a hard time getting air out. Dr. Visokey noted a cough and toxic inhalation injury. The doctor noted that this all fit for a work-related exposure and inhalation injury. He was to

continue the treatment plan and light duty with no chemical exposure until his next appointment. (JE3, pp. 18-21)

Mr. Cayler saw Dr. Sankey on September 11, 2018, he reported that he was slowly improving. He was off the prednisone but still used the Breo inhaler. His work was limiting his exposure. The assessment was toxic inhalation injury. Mr. Cayler was instructed to continue with the Breo 200 daily. He was to continue work with restrictions and return in one month. (JE3, pp. 22-25)

On October 9, 2018, Mr. Cayler returned to Dr. Visokey. He reported he was doing better. He does have a hard time with certain smells and fumes. He has no trouble with inhaler. Mr. Cayler was instructed to continue with his Breo inhaler and given a prescription for a rescue inhaler for his wheeze. Dr. Visokey issued a note stating that Mr. Cayler needed to continue with respiratory limitations. No exposure to fumes, gases, or smells until patient is seen back on November 5, 2018. (JE3, pp. 27-30)

On November 8, 2018, Mr. Cayler saw Dr. Visokey. He reported he was feeling much better than when he first saw him. He had no respiratory complaints, but he did have a sore throat. He did not have any cough or issues with the inhaler. His spiro/complete pulmonary function test was normal. Dr. Visokey's assessment included cough and toxic inhalation injury. Mr. Cayler was released to return to work with no restrictions. He was advised to wear respiratory protection per protocol. Dr. Visokey felt this was due to an inhalational injury from work. (JE3, pp. 31-33)

Due to side effects, Mr. Cayler tried to wean himself off the medication prescribed by Dr. Visokey. The side effects included agitation and irritability. However, his breathing became worse. (Tr. p. 51)

On June 13, 2019, Mr. Cayler returned to Dr. Sankey. He reported that since he was released by Dr. Visokey he has had a lower threshold for developing wheezing and cough and feels he always has a chronic cough. Dr. Sankey noted that his symptoms could be related to a chemical exposure that was now hiding as sensitivity to certain things. A chest x-ray revealed poor inspiratory volume with crowding of the bronchovascular markings bilaterally. There was no evidence of an acute cardiopulmonary abnormality. He recommended a referral to an ENT. (JE3, pp. 34-36)

Mr. Cayler saw Benjamin Erhardt, M.D., an ENT, on June 25, 2019. Dr. Erhardt noted Mr. Cayler had a history of a toxic inhalation injury in August 2018 and subsequently developed chemical pneumonitis. His lung issues improved with inhalers, but he has always suffered from a chronic cough and deep throat irritation. Dr. Erhardt adjusted Mr. Cayler's medications. (JE3, pp. 37-39)

On April 28, 2020, Mr. Cayler, through his counsel, sent a missive to defendants advising that claimant had retained counsel. The letter requested information from the defendants regarding his workers' compensation claim. (Cl. Ex. 7, pp. 132-133) Defendants, through their counsel, responded with a missive on May 18, 2020, stating it

appeared to defendants that claimant has sustained a respiratory condition due to a bacterial infection not related to work. (Cl. Ex. 7, p. 134) Claimant, through his counsel, responded to defendants in a June 3, 2020 letter. Claimant advised he felt his condition was work related. Claimant also advised that he did not know the extent of his permanent impairment or the extent to which he would require future medical treatment. (Cl. Ex. 7, p. 136)

After November 2018 Mr. Cayler had minimal treatment. Mr. Cayler admitted he did not realize his breathing was not 100 percent until 2020. At that time he requested additional treatment through workers' Compensation. Defendants sent him to see Gregory A. Hicklin, M.D.(Tr. pp. 51-52)

At the request of the defendants, Mr. Cayler saw Dr. Hicklin for an independent medical evaluation (IME) on June 19, 2020. Dr. Hicklin opined that Mr. Cayler had occupational asthma and acute airway injury brought on by exposure to chemicals in the workplace in August 2018. Dr. Hicklin felt his condition had been undertreated and stated Mr. Cayler should contact his personal physician about further treatment for his occupational asthma. He also felt Mr. Cayler had obstructive sleep apnea and evidence of some variable extrathoracic airway obstruction, consistent with accessory oropharyngeal soft tissue. He recommended that Mr. Cayler speak with his sleep doctor and have adjustment of his positive airway pressure to treat his sleep apnea. Dr. Hicklin stated that Mr. Cayler's exposure resulted in the need for a rescue inhaler and the treatment provided by Dr. Visokey. He indicated that when Mr. Cayler was on medication, at the time of his pulmonary function testing in November 2018, it seemed like he was at maximum medical improvement. However, since he reduced his medication, he has deteriorated, and Dr. Hicklin felt he was not currently at MMI. Dr. Hicklin cited that AMA Guides, Fifth Edition and assigned 10 percent impairment of the whole person. Dr. Hicklin felt he could improve with more treatment and the treatment is related to the work injury. He felt that Mr. Cayler also had some conditions, including severe untreated sleep apnea, that were not related to the work injury. (Def. Ex. K, p. 93; JE4, pp. 59-63)

Mr. Cayler returned to Dr. Visokey on August 18, 2020. He reported that since his last visit he had been diagnosed with prostate cancer and was septic. He had only been on the Symbicort for a few days before this occurred. After his hospitalization, they did not restart his Symbicort, so he has not been taking it. Dr. Visokey recommended he go back on Symbicort and return in 6 weeks. Dr. Visokey noted that the inhalation injury led to this asthma. (JE3, pp. 44-46)

On September 29, 2020, Mr. Cayler returned to Dr. Visokey. Since his last visit the Symbicort has made a significant difference. His wheezing is resolved, and his cough is much improved. He is not feeling as short of breath, and he has not had any issues with his inhaler. He reported it has been a long time since he felt like this. Dr. Visokey felt his response to Symbicort is consistent with asthma. Dr. Visokey opined that Mr. Cayler has asthma due to toxic inhalational injury. He recommended follow-up in six months. (JE3, pp. 47-49)

Mr. Cayler returned to Dr. Visokey on October 6, 2021. Since his last visit he has been doing extremely well. He has been using Symbicort with no issues or side effects. He has not used his rescue inhaler at all. No missed days of work, no wheezing, no sputum production. The doctor's assessment was moderate persistent asthma without complication. No changes were made to his medications. He was to return in one year. (JE3, p. 50-52)

Mr. Cayler saw Dr. Sankey on December 21, 2021 for an annual exam. He denied any chest pains or shortness of breath. (JE3, pp. 54-55)

On August 3, 2022, Mr. Cayler returned to Dr. Visokey. He had been compliant with his inhaler and has had no problems. He was to follow-up in one year. (JE3, pp. 56-58)

At the request of his attorney, Mr. Cayler saw Sunil Bansal, M.D. for an independent medical examination on August 12, 2022. As the result of that examination and review of records provided to him Dr. Bansal issued a report over seven months later, on April 5, 2023. At the time of the exam, Mr. Cayler reported he was using Symbicort daily. He experiences shortness of breath when climbing a flight of stairs or rushing. He tries to take things slowly. He can walk about 7500 yards without experiencing shortness of breath. At the time of the examination, Mr. Cayler was no longer working for Hydrite. His current job involves operating heavy equipment and driving trucks. He is not exposed to any fumes at his new workplace. Mr. Cayler has decided to avoid the chemical aspect of his prior work and focus solely on driving. He currently does not have to load or unload. Dr. Bansal diagnosed occupational asthma which he opined developed from his acute exposure to a chemical mixing procedure. Dr. Banal stated he developed chemical pneumonitis followed by occupational asthma necessitating steroid inhaler use. He placed Mr. Cayler at MMI as of August 12, 2022, the date of his evaluation. Dr. Bansal cited Tables 5-9 and 5-10 of the Fifth edition of the AMA Guides and assigned 12 percent whole person impairment. He felt Mr. Cayler would require maintenance pulmonary treatment with steroid inhalers. He could have flare ups which require additional inhaler treatment with a rescue inhaler. Additionally, he would require maintenance follow up with a pulmonologist. Dr. Bansal permanently restricted Mr. Cayler to no carrying greater than 25 pounds, 20 yards. No prolonged walking more than 30 minutes at a time. He is also to avoid multiple steps, stairs, ladders, or hills. Additionally, any work environment must be free of air contaminants such as dust and extreme heat or cold as well as fumes relating to the CREST chemical compounds such as phosphoric acid, citric, and lactic acid. (Cl. Ex. 1)

On September 6, 2022, at the defendants' request, Mr. Cayler attended an IME with Jason Mohr, D.O., a board-certified pulmonologist. Dr. Mohr opined that Mr. Cayler has mild intermittent reactive airway disease that is a direct result of his exposure in 2018. He believed the work exposure resulted in the need for a long-acting beta agonist and inhaled corticosteroid as well as a short acting inhaler. He felt Mr. Cayler had reached MMI on his current medications. Dr. Mohr stated, "[w]ith regards to permanent pulmonary impairment based upon the AMA guidelines for respiratory assessment of impairment, his diffusion capacity on his pulmonary function testing to

qualify him in class I indicating up to a 10% impairment." (JE4, p. 66) He assigned permanent restrictions as follows: no exposure to potential aerosols that may trigger his disease this may be broadened and expanded to dusts as well. He felt future treatment could involve admission to hospital for acute exacerbation of his reactive airway disease that may be brought on either by exposure to chemicals or respiratory infection. (JE4, pp. 64-66)

On April 12, 2023, Dr. Mohr issued a missive as a rebuttal to the opinion of Dr. Bansal. He reiterated that his opinions continued to be that Mr. Cayler has reactive airway disease secondary to his exposure, also defined as occupational asthma on August 11, 2018 to a chemical called CREST. Dr. Mohr updated his evaluation of impairment. He noted that at the time of his evaluation in April 2023 he was on Symbicort. Dr. Mohr felt that based on the AMA Guides this now placed Mr. Cayler in group 2 which changes his whole person impairment from his previously stated 10 percent to 11 percent. Dr. Mohr only partially agreed with the restrictions set forth by Dr. Bansal. He stated,

> I partially agree with the restrictions and that he needs to avoid any potential triggers for his asthma. However being that he is controlled on inhaled corticosteroid I find no reason to add restrictions to physical activity as this is nonspecific to his asthma and may be due to deconditioning, obesity or other contributing factors. Typically a patient with controlled asthma as he is has no limitations in terms of physical activity unless there is a potential trigger for bronchospasm in close proximity.

(Def. Ex. A, p. 1)

Dr. Hicklin, Dr. Bansal, and Dr. Mohr have all provided their opinions regarding permanent impairment. Based on the AMA Guides, fifth edition, table 5.9, Dr. Hicklin assigned 10 percent impairment of the person as a whole. Dr. Hicklin set forth the specific basis for his impairment rating. (JE4, p. 62) Dr. Bansal relies on the table 5.9 and table 5.10 to assign 12 percent whole person impairment. Dr. Bansal did not set forth his specific basis for his impairment rating. (Cl. Ex. 1, p. 15) In September 2022, Dr. Mohr assigned 10 percent impairment of the whole person. (JE4, p. 66) In April 2023, Dr. Mohr revised his rating to 11 percent of the whole person. (Def. Ex. A, p. 1) Unfortunately, Dr. Mohr did not specify which edition or which portion of the Guides he utilized. I find Dr. Hicklin's rating to carry the greatest weight. Thus, I find Mr. Cayler sustained 10 percent impairment of the whole person as the result of the August 12, 2018 work injury.

I find that Mr. Cayler also has permanent restrictions as the result of the work injury. I find the restrictions set forth by Dr. Mohr in April 2023 to be the most well-reasoned and consistent with the record as a whole. (Def. Ex. A, p. 1) Thus, I find, that as the result of the work injury, Mr. Cayler is permanently restricted to avoid potential triggers for his asthma.

At the time of the injury Mr. Caylor was paid $22.00 per hour, plus an additional $1.50 per hour for the weekend shift. He typically worked 12-hour shifts on the weekend shift, which was Friday, Saturday, and Sunday. When there was mandatory overtime, which happened often, he would work on Thursday. Working the weekend shift when his kids were younger allowed him to avoid daycare costs. (Cl. Ex. 5, p. 55; Cl. Ex. 9, pp. 146-47; Tr. pp. 23-24).

After the injury Mr. Cayler returned to work with Hydrite at the same hourly rate as he was paid at the time of the injury. There does not appear to be a dispute that he worked fewer overtime hours after the injury than he did prior to or at the time of the injury. Mr. Cayler testified that while he did receive some overtime after the injury, he was not offered as many overtime hours as he was prior to the injury. According to Mr. Cayler, there were times when he was not offered overtime, even when it was mandatory for other employees. Prior to the injury, overtime was a significant component of his earnings. (Cl. Ex. 8, p. 142; Tr. pp. 49-50) Thus, Mr. Cayler contends his total hours were less after the injury than they were at the time of the injury. (Tr. p. 50; Cl. Ex. 8, p. 141-142)

A review of the wage summary supports Mr. Cayler's unrebutted testimony that he was offered fewer overtime hours after the injury. (Cl. Ex. 9, p. 144) During the sixteen biweekly pay periods prior to the date of injury he worked overtime in all but two pay periods. During that same timeframe he averaged approximately $403.00 in overtime per pay period. (Cl. Ex. 9, p. 144) The pay statements indicate Mr. Cayler was paid overtime at the rate of $35.25 per hour. (Def. Ex. G) Thus, prior to the injury, claimant was averaging 11 hours of overtime per pay period. During the fifteen full pay periods after the injury, claimant worked overtime during only nine of the pay periods. During that same timeframe, he averaged approximately $238.00 in overtime per pay period. Thus, after the injury claimant was only offered approximately 6 hours of overtime per pay period. (Cl. Ex. 9, p. 144; Def. Ex. G) The evidentiary record demonstrates that his total hours after the injury were fewer than before the injury. I find that his overtime hours after the injury were approximately half of what they were prior to the injury. I also find that in the three weeks prior to his last day worked he was offered no hours of overtime. (Cl. Ex. 9, p. 144; Def. Ex. G) There is no evidence that the reduction in total hours was due to a slowdown in work, nor is there any evidence that claimant was offered any hours that he declined. The only evidence in this case is that Mr. Cayler was not offered as many overtime hours by the employer after the work injury. (Cl. Ex. 8, p. 142; Cl. Ex. 9, p. 144; Def. Ex. G; Tr. pp. 49-50) I find that after the work injury, Hydrite did not offer Mr. Cayler the same or greater hours as they did prior to the work injury.

Defendants do not argue that Mr. Cayler's total hours remained the same or greater after the injury. Rather, defendants argue that if one considers claimant's gross wages combined with bonuses, then claimant's average weekly pay increased after the work injury. For the reasons set forth below, I do not find this argument to be persuasive. I find that after the work injury, the employer did not offer the claimant the same or greater salary, wages, or earnings than he did prior to the work injury.

Mr. Cayler voluntarily resigned from Hydrite on March 9, 2019. Mr. Cayler testified that after his injury he was treated differently by Hydrite. After the injury, in an attempt to avoid chemical exposure, Mr. Cayler applied for three different positions at Hydrite. He was not offered any of these positions; they were offered to individuals with less seniority than he had. According to Mr. Cayler, he was given a lame excuse why he was not offered any of the three positions he applied for after the injury. Additionally, Mr. Cayler testified that Hydrite stopped offering him overtime, even when it was mandatory for the other employees. He resigned from Hydrite in March 2019 after he realized Hydrite would not move him to a position that would allow him to avoid chemical exposure. Mr. Cayler also admitted he left Hydrite to get off the weekend shift so he could be more involved with his family. (Tr. pp. 47-59)

At the time of the hearing, Mr. Cayler continued to struggle with breathing and had difficulty going up and down stairs multiple times. He also had difficulty with bending down too many times, walking inclines, or walking fast. He needs to be upwind of heavy fumes, bonfires, burning leaves, grills/smokers, and dust. He has more difficulty breathing in humid weather. He needs to take breaks while doing tasks such as yard work. (Tr. pp. 53-56)

After voluntarily resigning from Hydrite, Mr. Cayler began working full-time as a production operator for ConAgra in March 2019. His job involved running a machine that filled and sealed sunflower seeds. He was paid $20 per hour. He was able to perform his job duties without difficulty. Unfortunately, he was terminated two months later for excessive absences during his probationary period due to a family tragedy. (Tr. pp. 59-60; Cl. Ex. 8, p. 142, Ex. B, p. 8)

Mr. Cayler obtained his Commercial Driver's License (CDL) in 2019. He believed obtaining his CDL would allow him to avoid physical activities that cause him to become winded, and to avoid environmental irritants that flare up his symptoms. (Tr. p. 61)

In October 2019 Mr. Caylor went to work for Watco Transloading, a company that transloads vehicles and cargo ship containers and ships them back and forth. He works as a driver/heavy equipment operator. Most of his time is spent driving a semi-truck. The only time he operates heavy equipment is if he needs to change out some attachments and move snow around. His job does not require much physical activity and he is in clean air. He does not get much overtime, maybe two hours here or there. At the time of hearing, he was still working for Watco and was earning $19.50 per hour. (Tr. pp. 59-62; Cl. Ex. 8, p. 142; Def. Ex. F, p. 36)

Mr. Cayler is a high school graduate. He earned a certificate in massage therapy from the Carlson College of Massage Therapy in 1996. In 2000 he earned an intermediate EMT certificate from Hawkeye Community College. He also has a EMT license, but has never worked as an EMT. (Cl. Ex. 8, pp. 138-39; Testimony, pp. 17-18) Mr. Cayler has little computer experience, does not have any training on programs such as Microsoft Word or Excel, and types with one finger. (Tr. p. 18)

Prior to working for Hydrite, Mr. Cayler worked for John Deere in 2012. He worked in the foundry and was paid $17-$18 per hour. That employment ended because he did not enjoy working in the foundry. He does not believe he could physically return and perform this type of work due to the dust and fumes he would be exposed to in this job. From 2010-2012, Mr. Cayler worked at Flint Hills Resources, an ethanol plant, as a distillation operator and was paid $18.25 per hour. He does not believe he could physically perform this job because it involved a lot of walking and stairs. From 2008-2010 Mr. Cayler worked as a delivery driver for Sadler Power Train. He delivered parts and was paid $12.50 per hour. He does not believe he could physically perform this work because he was required to help in the shop to rebuild brakes and he could not handle the brake dust and it involved extensive walking. From 2007-2008, Mr. Cayler worked as a bartender and cook at a Pub. He believes he could perform this work because smoking is no longer allowed indoors. He earned $400 per week. He has worked as a massage therapist and even owned his own massage therapy business. He does not believe he could return to this type of work due to the amount of bending required. Additionally, he let his license lapse. He has experience working in a plumbing warehouse as a picker. He does not believe he could perform this type of work because he would need to be on a fork truck and the job also requires a lot of bending. He also has experience working in a grocery store for 8 to 9 years. He started as a part-time night stocker and advanced to assistant manager. He does not feel he is physically capable to stocking shelves, performing heavy lifting, or walking. He does believe he could perform the assistant manager work. Mr. Cayler's work history is set forth in his answers to interrogatories. (Cl. Ex. 8, pp. 139-142; Tr. pp. 62-67)

At the time of the injury and after the injury Mr. Cayler was paid $22.00 per hour, plus $1.50 for the weekend shift, plus overtime hours. Following the injury he returned to work and performed his job for approximately several months. He voluntarily left that employment. I find his restrictions preclude him from a significant number of jobs that he previously performed. I also find that he has sustained a loss of future earning capacity as a result of the work injury. Unfortunately, he has restrictions. He has lost access to a portion of his pre-injury employment opportunities. Through his continued employment he has demonstrated a willingness to work and retraining.

Considering Mr. Cayler's age, educational background, employment history, ability to retrain, length of healing period, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that he has sustained a 25 percent loss of future earning capacity as a result of his work injury with the defendant employer. As stipulated by the parties, these benefits shall commence on November 8, 2018.

Next, Mr. Cayler alleges penalty benefits are appropriate in this case. I find claimant only missed two days of work following the injury and he was released to return to work without restrictions on November 8, 2018. (JE3, p. 33) There is no evidence in the record that Mr. Cayler made a claim for any indemnity benefits prior to his voluntary resignation. He continued to work for the defendant-employer without restrictions until he voluntarily resigned in March 2019. (Def. Ex. D) During this

timeframe, he had minimal medical treatment. Mr. Cayler admitted he did not realize that his breathing was not 100 percent until 2020. (Tr. pp. 51-52) I find that during this timeframe Mr. Cayler was not making a claim for any temporary or permanent indemnity benefits.

I further find payment of permanent partial disability (PPD) benefits was delayed. On July 14, 2020, defendants paid claimant 50 weeks of permanent partial disability benefits. (Def. Ex. J, p. 83) This payment was based on the impairment rating dated June 19, 2020 which was issued by Dr. Hicklin. I find defendants failed to contemporaneously convey the basis for the delay in payment to the claimant at the time of the delay.

Mr. Cayler is seeking payment of past medical benefits as set forth in claimant's exhibit 14. There is no dispute that defendants are entitled to a credit for payments made under a group health insurance plan. Defendants dispute liability for some of the expenses set forth in claimant's exhibit 14.

Defendants dispute that they are responsible for the expenses connected to the sleep study performed on November 28, 2018. (Cl. Ex. 14, pp. 161, 165, 186) These costs include the expenses associated with the visit with Dr. Visokey on November 28, 2018, as well as the PSG test cost at Mercy One Waterloo Medical on November 28, 2018. (Cl. Ex. 14, pp. 161, 186) Dr. Hicklin opined that Mr. Cayler's severe sleep apnea is not related to the workplace injury. (JE4, p. 63) Based on the opinion of Dr. Hicklin, I find that the work injury did not necessitate the evaluation and treatment of sleep apnea. Therefore, I find defendants are not responsible for these expenses.

Defendants also dispute responsibility for the November 11, 2020 CT of the thorax, which was necessitated due to a pre-existing lung nodule. (Cl. Ex. 14, pp. 162, 198). Dr. Hicklin noted that claimant's lung nodule and any heart issues were unrelated to the work injury. (JE4, p. 63) Based on the opinions of Dr. Hicklin, I find that the work injury did not necessitate the evaluation and treatment of the pre-existing lung nodule. Therefore, I find defendants are not responsible for these expenses.

I find that defendants are responsible for all remaining expenses contained in claimant's exhibit 14.

Finally, claimant is seeking an assessment of costs. I find that claimant was generally successful in his claim. I exercise my discretion and find that an assessment of costs against the defendants is appropriate in this case.

CONCLUSIONS OF LAW

The parties have stipulated that claimant sustained permanent disability as the result of the work injury. The central dispute in this case is the nature and extent of permanent partial disability benefits claimant is entitled to receive as the result of the work accident. Claimant contends he should be compensated on an industrial disability analysis. Defendants contend that claimant does not qualify for the industrial disability

analysis and that his compensation should be limited to permanent disability benefits based solely on the functional impairment method.

Both parties agree claimant should be compensated pursuant to Iowa Code Section 85.34(2)(v) which states:

> If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same of greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury and not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

In this case, claimant returned to work with the same employer until he voluntarily resigned on March 6, 2019. The central dispute is whether claimant's permanent disability benefits should be based on his functional impairment or loss of earning capacity. The parties dispute whether, prior to his voluntary resignation, Mr. Cayler was offered work for which he received or would receive the same or greater salary, wages, or earnings than he received at the time of the injury. Unfortunately, the Iowa Legislature did not provide any guidance as to how or when to measure whether the claimant is receiving or is being offered the same or greater salary, wages, or earnings than what he received at the time of the injury. Iowa Code section 85.34(2)(v) has been interpreted by the Commissioner in McCoy v. Menard, Inc., File No. 1651840.01 (App. Dec. April 9, 2021). McCoy stands for the proposition that the phrase "receives or would receive the same or greater salary, wages or earnings" must include both the hourly wage and the actual hours worked.

Based on the above findings of fact, I conclude claimant's total hours were less after the injury than they were at the time of the injury. I conclude that his overtime hours after the injury were approximately half of what they were prior to the injury. There is no evidence that the reduction in total hours was due to a slowdown in work, nor is there any evidence that claimant was offered any hours that he turned down. The only evidence in this case is that claimant was not offered as many overtime hours by the employer after the work injury. (Cl. Ex. 8, p. 141-142; Cl. Ex. 9, p. 144; Def. Ex. G; Tr. pp. 49-50) Thus, I conclude that after the work injury, the employer did not offer the claimant the same or greater hours as they did prior to the work injury.

Defendants do not argue that claimant's total hours remained the same or greater after the injury. Rather, defendants argue that if one considers claimant's gross wages combined with bonuses, then claimant's average weekly pay increased after the work injury. Unfortunately, the Iowa Legislature did not provide any guidance about bonuses in the context of Iowa Code section 85.34(2)(v). The undersigned is unaware of any decisions from this agency that address whether bonuses are to be considered in the context of Iowa Code section 85.34(2)(v). The undersigned acknowledges that this section uses the term "earnings" and not "gross earnings" or "spendable weekly earnings." The legislature set forth definitions of the latter two in section 85.61; unfortunately, there is no statutory definition of "earnings." Because there is no defined method to determine claimant's earnings after the injury and there is no indication in the statute whether bonuses should or should not be included in this determination, it is reasonable to look to other portions of chapter 85 for guidance.

Iowa Code section 85.36 sets forth the basis for calculating a claimant's gross earnings which then forms the basis for determining the weekly workers' compensation rate. The undersigned recognizes that the basis for a claimant's weekly workers' compensation is not designed to completely replace wages; rather it is designed to amount to roughly eighty percent of a claimant's average spendable weekly earnings. Nonetheless, the law surrounding how bonuses are to be treated can still provide guidance in this case. See Iowa Code section 85.34(2)(3), 85.31(1),85.37, 85.61. When calculating a claimant's gross earnings, irregular bonuses are to be excluded from the calculation. See Iowa Code section 85.61(3); See also Noel v. Rolscreen Co., 475 N.W.2d 666 (Iowa Ct. App. 1991); Burton v. Hilltop Care Center, 813 N.W.2d 250, 266 (Iowa 2012).

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

The evidence in this case surrounding the basis for any bonus is scant. According to a wage summary for pay dates January 11, 2018 through March 8, 2019, claimant received 5 bonuses. The only information provided is the date and the amount of the bonus. (Cl. Ex. 9, p. 144) There are three pay statements in evidence for three of the five bonuses. On pay date November 2, 2018, claimant was paid $1,500.00 for "Referral Bonus." (Def. Ex. G, p. 49) On pay date December 14, 2018, claimant was paid $1,500.00 for "Referral Bonus." (Def. Ex. G, p. 46). On pay date February 8, 2018, claimant was paid "Holiday Bonus" for 32 hours in the amount of $704.00. (Def. Ex. G, p. 42) There is no additional information surrounding the basis for these bonuses. I find there is not enough evidence in this case to determine if the bonuses received by claimant were regular bonuses. I conclude defendants have not demonstrated that the bonuses claimant received were regular bonuses. Therefore, I conclude the bonuses should not be included in determining whether claimant was offered work for which he received or would receive the same or greater salary, wages, or earnings than he received at the time of the injury. It is also noteworthy that the parties stipulated to the weekly rate of compensation in this case. A review of the rate calculation submitted by the parties reveals that there were no bonuses included in the calculation of the claimant's rate. (Def. Ex. H) It seems inherently unfair to exclude any bonuses when

determining claimant's weekly rate but include bonuses when determining post-injury earnings. Thus, I find that after the injury the claimant returned to work with the same employer, but he was not offered the same or greater salary, wages, or earnings that he received at the time of the injury. As such, claimant's compensation is not limited to his functional impairment.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

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

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.

Claimant returned to work for the same employer but did not make the same or greater wages, salary, or earnings as he did prior to the injury. He voluntarily left that employment in March 2019. He was hired by Con Agra as production operator. He was paid $20 per hour. He ran a piece of machinery that filled and sealed sunflower seeds. He was able to perform this job without difficulty. Unfortunately, due to a family tragedy, he had to miss work during his probationary period which resulted in his termination. Subsequently he obtained his CDL and was hired by Watco Transloading. At the time of hearing, he was still working full-time as a truck driver earning $19.50 per hour. At Watco he does not get much overtime; he will only get an hour or two of overtime here and there. (Tr. pp. 60-61)

Having considered claimant's age, proximity to retirement, educational background, employment history, ability to return to work or retrain, permanent impairment rating, permanent restrictions, motivation, and all other factors of industrial disability identified by the Iowa Supreme Court, I found that claimant proved a 25 percent loss of future earning capacity as a result of the August 12, 2018 work injury. This is the equivalent of a 25 percent industrial disability. Industrial disability benefits are paid as a percentage of 500 weeks. Iowa Code section 85.34(2)(v). Therefore, I conclude claimant is entitled to an award of 125 weeks of permanent partial disability benefits. As stipulated by the parties, these benefits shall commence on November 8, 2018.

Claimant is seeking penalty benefits in this case. Penalty benefits are governed by Iowa Code section 86.13(4), which 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.
> (c) In order to be considered a reasonable or probable cause or excuse under paragraph "b", an excuse shall satisfy all of the following criteria:
> (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
> (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.
> (3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

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).

Claimant contends a penalty is appropriate because the PPD benefits were not paid until July 14, 2020. Defendants argue penalty benefits are not appropriate because claimant only missed two days of work and was released to return to work without restrictions on November 8, 2018. (JE3, p. 33) There is no evidence in the record that claimant made a claim for any indemnity benefits at that time. Claimant continued to work for the defendant-employer without restrictions until he voluntarily resigned in March 2019. (Def. Ex. D)

The Court of Appeals rejected the notion that an employer has an affirmative duty to determine whether there was an impairment rating where the employee made no claim for benefits and was released without restrictions. Davidson v. Bruce, 594

N.W.2d 833 (Iowa Ct. App. 1999). The Court of Appeals concluded that an assessment of penalty benefits is inappropriate until the employer has been informed that the claimant has reached maximum medical improvement and then delays seeking a rating. In this case, claimant was returned to work without restrictions and no claim for benefits was made. Therefore, I conclude that penalty benefits are inappropriate.

Claimant also contends penalty benefits are appropriate because the permanent partial disability (PPD) benefits that defendants paid were unreasonably delayed.

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).

In this case claimant contends penalty is appropriate because payment of permanent partial disability (PPD) benefits was unreasonably delayed. On July 14, 2020, defendants paid claimant 50 weeks of permanent partial disability benefits. (Def. Ex. J, p. 83) This payment was based on the impairment rating dated June 19, 2020 which was issued by Dr. Hicklin. The stipulated PPD benefits commencement date is

November 8, 2018. Thus, the first 50 weeks of paid PPD benefits were for the time period of November 8, 2018 through October 23, 2019 and had all accrued by the date the impairment rating was issued. I find that 50 weeks at the stipulated rate of $701.22 amounts to $35,061.00. I find that the July 14, 2020 payment was late[1].

In this case, I found that claimant proved a delay in the payment of PPD benefits. I conclude that defendants did not offer a reasonable excuse for the delay in payment of benefits. Iowa Code section 86.13(4)(b)(2). Defendants did not contemporaneously convey their bases for delay of benefits. Iowa Code section 86.13(4)(c)(3). Defendants bore the burden to establish a reasonable basis, or excuse, and to prove the contemporaneous conveyance of those bases to the claimant. Defendants failed to carry their burden of proof on the penalty issues, and a penalty award is appropriate. Iowa Code section 86.13(4).

The purpose of Iowa Code section 86.13 is both punishment for unreasonable conduct but also deterrence for future cases. Robbennolt, 555 N.W.2d 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 case, the 50-week delay of permanent disability benefits was not egregious and defendants voluntarily paid the impairment rating in full within weeks of receiving the rating.

Having considered the relevant factors and the purposes of the penalty statute, I conclude that a section 86.13 penalty in the amount of $1,000.00 is appropriate in this case. Such an amount is appropriate to punish the employer for delay in payment of benefits under these facts and should serve as a deterrent against future conduct.

As noted above, Mr. Cayler is seeking payment of past medical benefits as set forth in claimant's exhibit 14. There is no dispute that defendants are entitled to a credit for payments made under a group health insurance plan. Iowa Code section 85.38(2). Defendants dispute liability for some of the expenses set forth in claimant's exhibit 14.

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).

[1] The 50 weeks were paid at a higher, incorrect weekly rate of $704.79.

Based on the above findings of fact, I conclude the expenses associated with the visit with Dr. Visokey on November 28, 2018, as well as the PSG test cost at Mercy One Waterloo Medical on November 28, 2018 are not causally connected to the work injury. (Cl. Ex. 14, pp. 161, 165, 186; JE4, p. 63) Dr. Hicklin opined that Mr. Cayler's severe sleep apnea is not related to the workplace injury. Based on the opinion of Dr. Hicklin, I find that the work injury did not necessitate the evaluation and treatment of sleep apnea. Therefore, I find defendants are not responsible for these expenses.

Based on the above findings of fact, I conclude the expenses associated with the November 11, 2020 CT of the thorax, was necessitated due to a pre-existing lung nodule. (Cl. Ex. 14, pp. 161, 198). Dr. Hicklin noted that claimant's lung nodule and any heart issues were unrelated to the work injury. (JE4, p. 63) Based on the opinion of Dr. Hicklin, I find that the work injury did not necessitate the evaluation and treatment of the pre-existing lung nodule. Therefore, I find defendants are not responsible for these expenses. I conclude defendants are responsible for all remaining expenses contained in claimant's exhibit 14.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or the deputy hearing the case. 876 IAC 4.33. I conclude that an assessment of costs against the defendants is appropriate.

First, claimant seeks costs in the amount of $103.00 for the filing fee. I find this is an appropriate cost under 4.33 (7). Second, claimant seeks costs in the amount of $80.00 associated with obtaining a copy of claimant's deposition transcript. I find this is an appropriate cost under 4.33(2). Third, claimant seeks costs in the amount of $550.00, associated with obtaining a transcription of the recorded statement of Todd Cayler. I find that is an allowable cost under 4.33(2). Based on the above findings of fact, I conclude defendants are assessed costs totaling seven hundred thirty-three and no/100 dollars ($733.00).

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of seven hundred one and 22/100 dollars ($701.22).

Defendants shall pay 125 weeks of permanent partial disability benefits commencing on the stipulated commencement date of November 8, 2018.

Defendants shall be entitled to credit for all weekly benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendants shall pay penalty benefits in the amount of one thousand and no/100 dollars ($1,000.00).

Defendants shall pay these medical providers, reimburse claimant, reimburse all third-party payers, or otherwise satisfy and hold claimant harmless for medical expenses as set forth above.

Defendants shall reimburse claimant costs as set forth above.

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 31st day of August, 2023.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Benjamin Roth (via WCES)

Lindsey Mills (via WCES)

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