BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CLAUDIO MARTINEZ-CEDENO,

Claimant,

vs.

MURPHY INSULATION, INC.,

Employer,

and

COLUMBIA INSURANCE GROUP,

Insurance Carrier,
Defendants.



File No. 5054999

ARBITRATION DECISION

Head Note Nos.: 1803, 3000, 4000

## STATEMENT OF THE CASE

Claudio Martinez-Cedeno, claimant, filed a petition in arbitration seeking workers' compensation benefits from Murphy Insulation, Inc. (Murphy) and its insurer, Columbia Insurance Group, defendants, as a result of an injury he sustained on June 4, 2015 that arose out of and in the course of his employment. This case was heard in Des Moines Iowa, and fully submitted on March 13, 2017. The evidence in this case consists of the testimony of claimant, Claimant's Exhibits 1 – 11 and Defendants' Exhibits A – I. Both parties submitted briefs. The hearing was interpreted.

## ISSUES

Whether the alleged injury is a cause of permanent disability and, if so;

The extent of claimant's disability.

Claimant's gross income and his weekly workers' compensation rate.

Penalty.

Costs.

## STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of

those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

## FINDINGS OF FACT

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

Claudio Martinez-Cedeno, claimant, was 44 years old at the time of the hearing. At the time of his stipulated work injury he was married and entitled to 5 exemptions. Claimant attended middle school in Mexico. He has not had any formal education since then. Claimant's primary language is Spanish and he has only a rudimentary ability to read, write and speak English. In the last few months he has been taking English lessons. Claimant has a valid driver's license.

When claimant lived in Mexico he had four different jobs. He worked assembly in a factory, sewing pants, assisted in painting cars and as a carpenter's helper. All except the sewing jobs required heavy physical work. Claimant came to the United States in 2003. He was employed for two years in California assembling and taking down tents for parties and events. He moved to the Sioux City area in 2005. He worked three different jobs, all related to meatpacking. (Exhibit 8, page 99) He worked primarily in cleaning the meat processing equipment at the meatpacking plants. He also moved boxes of meat and prepared spice/rub mix. Claimant testified that all of his work in the United States involved hard physical labor.

Claimant had his right knee scoped before he worked for Murphy. Claimant testified that he had no restrictions and could work and play soccer without pain.

Claimant started working for Murphy on May 12, 2015 as a laborer. (Ex. 7, p. 96) He worked for Murphy for about a month before his injury. Claimant's work at Murphy was to install insulation in both residential and commercial buildings. Murphy would install insulation in the Midwest and Wyoming. Claimant testified that in his job with Murphy he would often carry items of 50 pounds or greater. He would climb up to 4 flights of stairs and would also use ladders.

On Thursday, June 4, 2015, claimant was driving his employer's pick-up with other crew members in Iowa on interstate I-80. A tire blew out and the pick-up crashed and rolled. Claimant was wearing restraints. Claimant testified that he injured his right knee, right shoulder and neck. Claimant and other crew members went to the Emergency Department. Claimant received prescriptions on that day. Claimant retuned on Monday, June 8, 2015. Claimant initially received chiropractic treatment. He eventually saw a physician who performed an MRI of the shoulder. Claimant said that the MRI showed a torn tendon, however the doctor told him that surgery would not improve his condition. Claimant went to physical therapy for a number of months. Claimant said he was having a difficult time at work and that he was asked to work

beyond his restrictions. Claimant worked until he had surgery on his neck on November 5, 2015.

Claimant returned to Murphy two times and called once after his surgery to return to work. Murphy has never contacted him about returning to work, although he has not been officially terminated. Claimant has not looked for work other than at Murphy since his neck surgery.

Claimant applied for unemployment benefits and was denied, although the specific legal reason for the denial was not put in evidence.

Claimant testified that his right knee causes him pain and can swell. He cannot play soccer. Claimant testified that he does not believe the neck surgery was successful as he still has pain and numbness in his right arm and hand. Claimant has difficulty in raising his right arm and he cannot climb ladders. Looking up or down for more than two minutes causes him pain. Claimant has not received active treatment for his work injuries for over a year.

Claimant received an hourly wage and a per diem when he was on the road. In the three weeks before his work accident claimant received $454.00 in per diem reimbursement. (Ex. 8, p. 103; Ex. I, p. 14) Claimant testified under cross-examination that the per diem reimbursed him the costs of his meals when he was on the road. I find that the per diem is an expense reimbursement and is not included in claimant's rate calculation. Claimant, in his post-hearing brief, agreed that the per diem should not be included in the rate calculation. (Claimant's brief, p. 13)

Claimant testified he was on a work crew in Wyoming and was required to stay in Wyoming to work rather than be allowed to return home. According to the records claimant worked 78 hours the week ending June 5, 2016 as well as receiving a $330.00 bonus. (Ex. I, p. 2; Ex. I, p. 14) The claimant testified that he earned this money for working in Wyoming. The defendants offered no testimony that this was an irregular bonus retroactive pay or penalty pay. Based upon the testimony of claimant and the exhibits submitted I find the payment of the $330.00 was part of the wages claimant earned and should be used in calculating claimant's gross income.

Claimant was seen in the emergency department of St. Luke's Hospital in Sioux City, Iowa on June 5, 2015. The note of that visit states claimant was in a vehicle going about 70 miles per hour when it popped a tire and rolled three times. Claimant had neck and back pain. (Ex. 5, p. 69) He was discharged and prescribed ibuprofen and Flexeril.

Claimant underwent a series of chiropractic treatments from June 15, 2015 through July 1, 2015. (Ex. 6, pp. 75 – 90)

On July 1, 2015, claimant was seen by Tracy Pick, ARNP. ARNP Pick's diagnosis was, "1) Head Contusion 2) Cervical strain 3) Lumbar strain 4) R[ight] knee strain/contusion 5) Double vision" (Ex. 3, p. 51) On July 10, 2015, ARNP Pick wrote,

"His back is much better. He continues to have pain through the right upper shoulder region, right shoulder, right side of the neck with electrical pain and occasional numbness and tingling into the right middle finger." (Ex. 3, p. 48) ARNP Pick was most concerned about claimant's right knee and cervical spine at that visit. (Ex. 3, p. 49) On July 23, 2015, three separate MRIs were ordered for the claimant due to the seriousness on his injuries. (Ex. 3, p. 46)

ARNP Pick noted on July 30, 2015,

> An MRI of the right knee does show an irregular tear along the posterior horn of the medial meniscus with a predominant vertical component that extends through the posterior horn and body. There is a flipped meniscal fragment extending in the intercondylar notch and a buckle-type tear here. No evidence of ACL or ligamentous injury, according to the Radiology interpretation.
>
> The MRI of the cervical spine shows a C6/C7 right disk protrusion compressing the adjacent right C7 nerve root. No significant degenerative abnormalities or other abnormalities are identified on the cervical spine MRI.
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> An MRI of the right shoulder shows a small partial thickness articular surface tear of the anterior supraspinatus. The tendons of the shoulder also show evidence of tendinopathy. The patient's shoulder has some widening of the acromioclavicular joint and some fluid within the subacromial subdeltoid bursa.
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> A:
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> (1) C6/C7 disk protrusion with right middle finger radicular symptoms.
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> (2) Right shoulder acromioclavicular joint separation and partial supraspinatus rotator cuff tendon tear.
>
> (3) Right medial meniscal buckle tear.

(Ex. 3, p. 43)

Claimant was examined by Ryan Meis, M.D., for his right shoulder and right knee on August 14, 2015. Dr. Meis compared an MRI of the right knee form March 2015 to the July 1, 2015 injury and did not see any difference. Dr. Meis was unable to see the bucket handle tear. He did see a partial thickness tear of the right rotator cuff. (Ex. 2, p. 27) Dr. Meis's assessment was, "1. Right shoulder pain due to rotator cuff strain and mild AC joint injury (grade 1). 2. Exacerbation of pre-existing right knee osteoarthritis." (Ex. 2, p. 27) He did not believe that surgery would aid his right knee and that with conservative care and injections claimant would return to baseline. (Ex. 2, p. 27)

Claimant was returned to ARNP Pick for additional care. On September 18, 2015, ARNP Pick decided to refer claimant to Matthew Johnson, M.D., for his cervical issues and be re-evaluated by Dr. Meis as his shoulder had not improved. (Ex. 3, p. 31)

On October 20, 2015, Dr. Johnson examined claimant and recommended a single-level anterior cervical discectomy, fusion and plating. (Ex. 2, p. 24) On November 5, 2014, Dr. Johnson performed an ACDF at C6-7 for right-sided radicular pain. (Ex. 2, p. 23) On December 15, 2015, Dr. Johnson wrote claimant could return to work full duty from his neck surgery, but was still treating for his shoulder. (Ex. 2, p. 20; Ex. C, p. 1; Ex. D, p. 1) On February 16, 2016, claimant was found to be at MMI and released to return to work at a light duty level based upon the functional capacity (FCE) "estimate." (Ex. 2, p. 16)

On February 11, 2016, claimant had an FCE. The FCE had inconsistent results and was deemed not valid. (Ex. B, p. 1) The report recommended, an estimated physical work ability of light medium work. (Ex. B, pp. 1, 15) Light medium work was defined as in the report as:

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|---|---|
| 35 lbs | rare |
| 30 lbs | infrequent |
| 25 lbs | occasionally |
| 18 lbs | frequent |
| 7 lbs | constant |

(Ex. B, p. 15)

On May 31, 2016, Douglas Martin performed an independent medical examination (IME). (Ex. A, pp. 1 – 11) Dr. Martin wrote, "As Mr. Claudio Martinez-Cedeno has had a prior arthroscopy intervention with his right knee, which presumably was done by Dr. Samuelson, we have been unable to obtain that information at the time of the creation of this report. That may be helpful in confirming or solidifying the current situation regarding this right knee." (Ex. A, p. 1) Dr. Martin noted claimant had an increase in the amount of right knee pain since the injury and also concluded, based upon Dr. Meis's examination, that no internal structural damage occurred as a result of his accident. (Ex. A, p. 6) Dr. Martin provided impairment ratings based upon the AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition. (Ex. A, p. 7) For claimant's neck injury he found a 10 percent whole person impairment. (Ex. A, p. 8) For the shoulder injury he assigned a 3 percent upper extremity rating. He did not assign any additional rating for claimant's knee. He assigned a 12 percent total whole person impairment for claimant's work accident. (Ex. A, p. 9) Dr. Martin acknowledged that the FCE had placed estimated restrictions, but did not believe that claimant should have any permanent restrictions. Dr. Martin

noted that claimant was out of the workforce for several months. He was concerned about claimant being able to re-enter the workforce. (Ex. A, p. 10)

On November 27, 2016, Jacqueline Stoken, M.D., issued her IME. (Ex. 1, pp. 1 – 12) Dr. Stoken used the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition for her impairment ratings. For claimant's cervical neck injury she found a 28 percent whole person impairment. For the right shoulder she found an 8 percent whole person impairment. She found a 20 percent impairment to claimant's knee. Using the combined values chart in the AMA Guides for three injuries she found claimant had a 39 percent whole person impairment. She adopted the FCE restrictions. (Ex. 1, p. 10) Dr. Stoken stated the neck and right shoulder injuries were a result of the work accident. She did not say that the claimant's right knee impairment was related to the work accident. (Ex. 1, p. 11)

Claimant asserted at the hearing his average weekly rate should be based upon his four weeks of employment of $2,666.40, plus $454.00 in per diem and a $300.00 bonus. Based upon an average weekly wage of $862.60 claimant asserts his weekly rate is $581.77. (Ex. 8, pp. 101, 102) Defendants have paid a weekly rate of $353.00. (Ex. F, p. 1) It is not clear from the record how they calculated claimant's average weekly wage. (Ex. I, pp. 13, 14) There is not notice evidence in the record that defendants provided notice to claimant about how the rate was calculated before the hearing.

Claimant paid the filing fee of $100.00 and is requesting reimbursement. (Ex. 10, p. 108)

I find that claimant is limited to the restrictions recommended in the FCE and in Dr. Stoken's report. Other than on jobs in Mexico, claimant has worked in jobs that require heavy physical activity. I find claimant has a 65 percent loss of earning capacity.

## CONCLUSIONS OF LAW

The first issue to determine is whether claimant has a permanent injury. The evidence is overwhelming that claimant has permanent injury to his neck and shoulder due to the work injury of June 4, 2015. He had a fusion surgery on his neck and a partial tear to his rotator cuff. The IME of Dr. Miller and IME of Dr. Stoken find permanent impairment. I find that claimant has proven by a preponderance of the evidence that he has an industrial disability from his work accident of June 4, 2015.

Claimant's testimony was credible about pain and limitation in his right knee. He has not shown that he sustained a permanent injury in his right knee. Dr. Meis and Dr. Martin found that his knee had no permanent injury due to the work accident. Dr. Stoken did not offer an opinion as to causation for the right knee. Claimant has not proven a permanent injury to his right knee.

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.

Dr. Stoken included the neck, right shoulder and right knee for her rating. Using the combined values chart on page 604 of the AMA Guides, Fifth Edition, the combined value of the neck and right shoulder under Dr. Stoken's ratings is 34 percent to the whole person. Dr. Martin's IME report relied upon the AMA Guides, Sixth Edition for his impairment ratings. This agency has adopted the AMA Guides, Fifth Edition. 876 IAC 2.4. Dr. Martin found that claimant had an industrial disability, albeit a lower rating than Dr. Stoken.

A defendant brought out at hearing that claimant applied for and was denied unemployment insurance. Iowa Code section 96.5 (5)(2) provides that claimant's workers' compensation payments would be considered as to his eligibility for unemployment and if they exceeded his unemployment benefit amount he would not be eligible. As claimant was receiving workers' compensation, he most likely would not be eligible for unemployment. See also, Iowa Code section 96.6(4) (The fact claimant was denied unemployment is not a finding that is conclusive for any matter in this case.)

Claimant has a limited education. His English skills are very modest. For almost all of his adult life claimant has engaged in heavy physical work. Murphy has not offered to provide work to claimant. Claimant has significant lifting limitations. Claimant has a modest level of education. He has neck pain if he keeps his head looking up or down for more than a few minutes. I found claimant had a 65 percent loss of earning capacity. I find claimant has a 65 percent industrial loss. This entitled claimant to 325 weeks of permanent partial disability benefits.

85.36 Basis of computation.

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

In the case of an employee who is paid on a weekly pay period basis, the weekly gross earnings.

. . . .

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

7. In the case of an employee who has been in the employ of the employer less than thirteen calendar weeks immediately preceding the injury, the employee's weekly earnings shall be computed under subsection 6, taking the earnings, including shift differential pay but not including overtime or premium pay, for such purpose to be the amount the employee would have earned had the employee been so employed by the employer the full thirteen calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation. If the earnings of other employees cannot be determined, the employee's weekly earnings shall be the average computed for the number of weeks the employee has been in the employ of the employer.

Iowa Code 85.61(3) provides;

> *"Gross earnings"* means recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits.

Claimant's rate is calculated after first determining his gross earnings. Iowa Code section 85.61(3) defines gross earnings as recurring payments by the employer to the employee for employment, before any authorized or lawfully required deduction or withholding. The calculation of gross wages under the section excludes irregular bonuses, retroactive pay, overtime, penalty pay, employer's contribution for welfare benefits, and, for purposes of this decision, "reimbursement of expenses, expense allowances."

This agency has held that the fact that the per diem payments were generous or exceeded his actual expenses did not change their character as expenses and not wages. Thompson v. Seed and Grain Systems, Inc., File No. 1059299 (App. December 28, 1998). However, the simple labeling of payments as expense allowances or per diem does not change their underlying nature. A label is not controlling, for example, where an employer labels an employee an independent contractor. The true nature of the employment relationship controls. The same is true where an employer labels payments as a per diem rather than compensation; the true nature of the payments will control over the label assigned to the payments. In addition, Iowa Code section 85.18 prohibits an employer from using any contract, rule or device which relieves the employer, in whole or in part, from any liability created by chapter 85 of the Code.

Even where the per diem arrangement appears to be designed to avoid income tax liability, that is irrelevant to the calculation of claimant's workers' compensation rate. Sexton v. Midwest Continental, File No. 5039407 (Arb. Dec. May 17, 2013).

Once a claimant has established a rate of earnings, the burden then shifts to the employer to establish the portion that represents reimbursement of expenses. McCarty v. Freymiller Trucking, Inc., File Nos. 729340 and 729341 (App. February 25, 1986).

For a payment to be a bona fide per diem or expense allowance, there must be some relationship between the amount of the allowance and the amount of the expenses for which it is purportedly related. Berst v. TTC, Inc., File No. 1053524 (Arb. Dec. August 3, 1994).

In this case the claimant's testimony was that his per diem was a reimbursement of his meal expense and only available when he worked away from home. There was

no credible evidence that the per diem was additional income. The evidence was that it was a direct reimbursement for expenses. As such, it is not included in calculating claimant's gross wages.

The parties also dispute as to whether the "bonus" payment of $330.00 should be used to calculate gross earnings.

The only testimony about the nature of this payment was claimant's. He testified that the "bonus" payment was made to him as he was required to work away from home during a holiday. He testified that it was payment of wages he earned for working. I find that it is not an irregular bonus, but was wages earned and should be included in calculating claimant's gross wages.

I find that the claimant's calculation of average wages is the most accurate in determining claimant's average weekly wage by using the four weeks before the accident and the "bonus" with the exception of including the per diem. His average weekly wage is $749.10. [$2,666.40 + $330.00 = $2,996.40 ÷ 4 = $749.10] Claimant was married and entitled to five exemptions. (Hearing Report) I find that using the rate book in effect at the time of injury his weekly workers' compensation rate is $512.27.

Claimant has asked for penalty for improper calculation of claimant's weekly rate. An improper rate of payment can be considered a delay or denial of benefits under Iowa Code section 86.13.

Iowa Code section 86.13 provides in part,

> 4. *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 of 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.

If weekly compensation benefits are not fully paid when due, section 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996).

Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It also is not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

If the employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall impose a penalty in an amount up to 50 percent of the amount unreasonably delayed or denied. Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

Claimant has proven an underpayment. Claimant has met his initial burden to claim a penalty. The defendants have the obligation to show:

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.

86.14(4)b.

Defendants did not submit any evidence other than wage records. Iowa law requires assessment of a penalty. As defendants did not provide notice for the incorrect payment, penalty is assessed.

No evidence was submitted that this employer or insurance carrier has a history of penalty assessments. Defendants were paying benefits, albeit at an improper rate.

Considering the above factors, I find that claimant is entitled to a 20 percent penalty for the underpaid benefits. Defendants underpaid $159.27 per week. [$512.27 - $353.00 = $159.27] Defendants shall pay $31.85 for penalty each week of underpayment.

ORDER

Defendants shall pay claimant three hundred twenty-five (325) weeks of permanent partial disability benefits commencing on May 23, 2016 at the weekly rate of five hundred twelve and 27/100 dollars ($512.27).

Defendants shall pat the claimant the correct weekly rate for the prior underpayments.

Defendants shall pay claimant the penalty set forth in this decision.

Defendants shall pay claimant costs of one hundred dollars ($100.00).

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

Signed and filed this 31st day of March, 2017.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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