BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEHKONTEE TARYON,

Claimant,

vs.

MARSDEN BUILDING MAINTENANCE, L.L.C.,

Employer,

and

XL SPECIALTY INSURANCE CO.,

Insurance Carrier,
Defendants.

File Nos. 5053596, 5053597, 5053598

ARBITRATION

DECISION

Head Notes: 1108, 1803

STATEMENT OF THE CASE

Dehkontee Taryon filed three petitions for arbitration seeking workers' compensation benefits from, the employer, Marsden Building Maintenance, L.L.C., (here after Marsden), and the insurance carrier XL Specialty Insurance Company.

The matter came on for hearing on November 18, 2016, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of Claimant's Exhibits 1 through 12; Defense Exhibits A through S (R was withdrawn); as well the sworn testimony of claimant, Dehkontee Taryon; and defense witness, Margarita Bernardina. Defendants objected to Claimant's Exhibit 7, an independent medical examination of Sunil Bansal, M.D., arguing that claimant had failed to disclose Dr. Bansal's opinions 120 days prior to hearing under Rule 4.19(b). The objection was overruled, although the record was held open to cure any possible prejudice to the defendants. After hearing, but before final submission, defendants submitted Defendants' Exhibit S, which was entered into evidence as set forth above.

It is further noted that after final submission the undersigned discovered that the defendants had submitted the First Injury Reports for all three files. (Defendants' Exhibit A, pages 18, 20, 22, 24) These reports are not evidence, and cannot be considered by the undersigned. Iowa Code section 86.11 (2015). Since the reports were accepted and the hearing record closed, they shall remain in the file.

Nevertheless, the reports were not considered by the undersigned. Based upon the briefing and arguments provided by counsel, it does not appear that either party relied upon these documents in any way. It appears the defendants simply routinely submitted them as part of claimant's personnel file. It would, however, be appropriate to seek Reconsideration, if either party believes they were prejudiced by my failure to consider these exhibits.

Tammy Guenther served as the court reporter and Catherine Deh interpreted the hearing in Krahn. The parties argued this case and the matter was fully submitted on January 13, 2017.

ISSUES AND STIPULATIONS

The parties submitted three Hearing Reports prior to hearing. These hearing reports were reviewed with the parties and approved on the date of hearing. The stipulations contained in those are binding and deemed enforceable at this time.

File No. 5053596:

It is stipulated by the parties that claimant sustained an injury which arose out of and in the course of employment on August 19, 2014. While the parties stipulate that this injury resulted in some temporary disability during a period of recovery, claimant has alleged the injury resulted in a permanent partial disability to body as a whole. The defendants dispute the injury resulted in any permanency. The claimant is seeking a running award of benefits, or alternatively, claimant is seeking payment of industrial disability benefits. Defendants deny that a running award or any permanent disability benefits are owed. The parties stipulate that the injury and any resulting disability, if found, is industrial. The parties have stipulated to a commencement date for payments, should any be owed, of November 18, 2014. Claimant seeks reimbursement for an independent medical examination under Section 85.39. All other issues, including the elements comprising the rate of compensation, are stipulated.

File No. 5053597:

It is stipulated by the parties that claimant sustained an injury which arose out of and in the course of employment on June 30, 2014. While the parties stipulate that this injury resulted in some temporary disability during a period of recovery, claimant has alleged the injury resulted in a permanent partial disability to both of her eyes. The defendants dispute the injury resulted in any permanency. The claimant is seeking no temporary disability benefits of any kind. Claimant is seeking payment of permanent partial disability for both eyes. Defendants deny that any permanent disability benefits are owed. The parties stipulate that the injury and any resulting disability, if found, is limited to a scheduled member, both eyes. The parties have stipulated to a commencement date for payments, should any be owed, of August 20, 2014. Claimant seeks reimbursement for an independent medical examination under Section 85.39. All other issues, including the elements comprising the rate of compensation, are

stipulated.

File No. 5053598:

It is stipulated by the parties that claimant sustained an injury which arose out of and in the course of employment on June 6, 2014. While the parties stipulate that this injury resulted in some temporary disability during a period of recovery, claimant has alleged the injury resulted in a permanent partial disability to her finger. The defendants dispute the injury resulted in any permanency. The claimant is seeking no temporary disability benefits of any kind. Claimant is seeking payment of permanent partial disability for industrial disability to her left index finger. Defendants deny that any permanent disability benefits are owed. The parties stipulate that the injury and any resulting disability, if found, is limited to a scheduled member index finger. The parties have stipulated to a commencement date for payments, should any be owed, of August 2, 2014. Claimant further seeks a penalty for the late payment of permanent partial disability benefits. All other issues, including the elements comprising the rate of compensation, are stipulated.

FINDINGS OF FACT

Dehkontee Taryon is originally from Liberia. Her primary language is Krahn. She clearly speaks some English as well. She has taken English courses and she communicates at work in English. She testified live at hearing through the use of a Krahn interpreter. The translation process was difficult for claimant. She answered on many occasions in English even when instructed not to. Her testimony was somewhat challenging. She was a poor historian. It is difficult to sort out whether this is a result of the language barrier or whether claimant intended to confuse matters which did not benefit her case. Nevertheless, it is difficult to rely on her testimony by itself without corroborating documentation.

Ms. Taryon was 48 years old at the time of hearing. It is unclear whether she graduated from high school. She testified at hearing that she did not, however, she stated she did in her discovery answers and an employment application that she did. Since being in the United States, she has worked mostly in cleaning and janitorial positions, in addition to some other lighter, manual labor-type work. (Claimant's Exhibit 8)

Ms. Taryon was originally hired by Marsden to perform janitorial duties in May 2014. She was a part-time cleaner. (Def. Ex. A, p. 4) She left in September 2014, due to some personal issues. She returned to work for Marsden in February 2014. She suffered three stipulated work injuries in fairly rapid succession during the summer of 2014.

The first injury occurred on June 6, 2014. She testified that she crushed her left index finger between a door frame and the door. "I went in the closet to pick up the broom and dust pan. When I was getting out to open the door, in my mistake, my finger

went between the door frame and the door." (Tr., p. 18) This injury is fairly well-documented. An injury report was filled out right away by her supervisor. It was listed as a contusion and bruise. (Def. Ex. A, p. 19) She went to the Mercy Emergency Room on the day of the accident. The diagnosis listed was closed fracture of the distal phalanx of her left index finger. (Cl. Ex. 1) An x-ray was taken demonstrating the fracture which was described as an acute "tuft tip fracture." (Cl. Ex. 1, p. 2) She was also diagnosed with a subungual hematoma. (Cl. Ex. 1, p. 2)

The employer accepted this claim and referred her to Concentra for medical treatment. Concentra placed restrictions on her of no using her left hand and referred her for an orthopedic evaluation. (Cl. Ex. 2, p. 1) Jeffrey Rodgers, M.D., evaluated the claimant on one occasion. He noted her fracture, agreed with the Mercy Emergency diagnosis. (Cl. Ex. 5, p. 1) He took x-rays and noted her nail was falling off at the time due to the damage. "The patient has reached maximum medical improvement. An impairment rating will be given based upon today's measurements when requested." (Cl. Ex. 5, p. 1) No rating was ever requested. She has never received any additional treatment for this condition.

Ms. Taryon had some type of injury to her left index finger prior to this injury. In this record, it is not clear what the injury was, how it happened or what treatment she received. There is one medical report in the file from Broadlawns Medical Center from October 2010, stating that she had a previous injury with continued pain. (Def. Ex. C) Claimant admitted this injury at hearing. (Tr., pp. 43-44)

The second stipulated injury occurred on June 30, 2014. Ms. Taryon testified that a co-worker was spraying a towel with cleaner and some of the spray splashed into her eyes. (Tr., p. 20) The chemical was called "Glance." (Def. Ex. A, p. 21) She reported this injury and her supervisor prepared an accident report. She was seen at Broadlawns and given some eye drops. She was eventually referred for medical treatment at Physicians' Eye Clinic where "Chemical Conjunctivitis" and Punctate Keratitis" were diagnosed. (Cl. Ex. 4, p. 2) Ms. Taryon testified that she has ongoing vision difficulties which are now corrected with corrective lenses. (Tr., pp. 21-22)

Once again, however, she had been treated for a condition related to her eyes at Broadlawns Medical Center, prior to this work injury. In August 2011, she complained of decreased vision. (Def. Ex. D, p. 10) In June 2012, she was diagnosed with myopic astigmatism, presbyopia and trace macular drusen. (Def. Ex. D, p. 4) Claimant also has experienced vision difficulties related to her diabetes. (Def. Ex. N, p. 3; Def. Ex. E, p. 10; Def. Ex. F, p. 1)

The final stipulated injury occurred on August 19, 2014. On that date, Ms. Taryon was lifting trash when she felt pain in her low back and right shoulder. She immediately reported this injury. The claim was accepted, and again, her supervisor filled out an accident report. (Def. Ex. A, p. 25) She was initially seen at Broadlawns Medical Center the following day where she was diagnosed with a low back and right shoulder strain. (Cl. Ex. 3, p. 7) She was provided some medications and instructed to

heat, ice and massage the affected areas

She was eventually referred by her employer to Concentra for medical treatment. (Cl. Ex. 2, p. 3) On September 11, 2014, she was diagnosed with cervical, lumbar and shoulder strains and provided with temporary medical restrictions.

On September 16, 2014, Marsden Office Assistant, Margarita Bernardino terminated claimant in a letter.

> According to our records, you were excused from work from August 21, 2014 through September 4, 2014. At that point you received a release to return to work with restrictions. Marsden has work available within those restriction [sic] and you were informed of this.
>
> You have continued to fail to return to work as of September 16, 2014. We have not received any further updates from Concentra limiting your return to work. Based on your refusal to work we must consider you a voluntary quit.
>
> As we have not received updated documentation from Concentra to excuse further absence this letter is a request for additional documentation to determine your employment status at Marsden.
>
> If the additional medical documentation is not received by DATE, we will assume you do not intend to return to work and have voluntarily terminated your employment with Marsden

(Def. Ex. A, p. 1) Ms. Bernardino testified that she had specifically offered Ms. Taryon light-duty work within her restrictions prior to sending the termination letter out. (Tr., pp. 65-66) Ms. Taryon disputed this, stating that after she received the restrictions, Marsden intended to place her back to full-duty. (Tr., pp. 24-25) To the extent it is necessary to resolve this dispute, I tend to believe Ms. Bernardino.

On September 26, 2014, Ms. Taryon returned to Concentra and stated she was a little better. (Cl. Ex. 2, p. 6) On October 29, 2014, an MRI came back negative. (Def. Ex. L) She continued to receive some physical therapy throughout this period of time and the progress reports were generally good. Joanne Harbert, ARNP, noted the following:

> Dehkontee is a 46 year old female here for recheck with her interpreter. States he [sic] shoulder is completely healed and pain free. States her lumbar pain is greatly reduced and just having some spine pain but much better. States has been off work due to being terminated but feels she is ready to return to work.

(Cl. Ex. 2, p. 13) She was released to finish some physical therapy with no restrictions.

Ms. Taryon had a history of chronic lower back pain dating back to the 1990's. (Def. Ex. G) She apparently had not disclosed this history to any of her medical

providers. She received ongoing care for her low back from 2006 through 2012 at Broadlawns prior to her injury.

Ms. Taryon has worked several jobs since this time, all in manual labor. She worked for a temporary employment agency where she was assigned janitorial work for various clients. She worked at Johnson Brothers of Iowa, and shortly before hearing, she had started at Toys R Us. (Tr., pp. 21, 31, 33, 38) She sought further treatment for her shoulder and back in February 2016, receiving more treatment and home exercises through Broadlawns Medical Center. At that time, she described pain into her feet and legs. (Cl. Ex. 3, p. 14) She was diagnosed with poor core strength predisposing her to chronic lower back pain. (Cl. Ex. 3, p. 15)

In addition to the records of the treating providers, there are two expert opinions in the file. Dr. Bansal, performed a medical evaluation on behalf of claimant on August 19, 2016. He evaluated claimant and performed a thorough review of the records. He evaluated each specific injury as set forth above and provided opinions regarding medical causation and physical impairment.

Regarding the left index finger, he diagnosed a closed fracture of the left index distal phalanx. (Cl. Ex. 7, p. 13) He noted she is unable to flex it at the middle joint. After opining that the June 2014, work injury directly caused this condition, he assigned a 10 percent impairment rating to the left index finger pursuant to the AMA Guides to Evaluation of Permanent Impairment, Fifth Edition. (Cl. Ex. 7, p. 16) While this rating is not perfect for a variety of reasons, the rating itself appears quite reasonable. It reflects a fairly minor loss of function resulting from the work injury.

Regarding the claimant's chemical conjunctivitis injury to her eyes, he provided no impairment rating. (Cl. Ex. 7, p. 16) I find this opinion generally credible as well.

Regarding the back and shoulder injury, he diagnosed an aggravation of L4-L5 and L5-S1 facet arthropathy. (Cl. Ex. 7, p. 13) He opined this condition was aggravated by her work injury of August 19, 2014. He did not appear to comment on the shoulder pain. It is also noted that the mechanism of injury he understood was entirely different than what claimant described at hearing and in the contemporaneous records. (Cl. Ex. 7, p. 15) He assigned a 3 percent whole body rating for the back condition, but did not rate the shoulder. (Cl. Ex. 7, p. 16) He also recommended some permanent restrictions.

John Kuhnlein, D.O., prepared a report dated December 16, 2016. (Def. Ex. S) He performed a thorough review of the records without seeing claimant.

He opined that Dr. Bansal's rating for the finger was flawed. He opined Dr. Bansal used the wrong section of the AMA Guides and that he did not compare her range of motion with the unaffected right index finger. (Def. Ex. S, p. 2) He refused to assign any impairment without examining claimant. He did not opine that her finger was 100 percent healed.

With regard to the injury to claimant's eyes, Dr. Kuhnlein agreed with Dr. Bansal that there was no ratable impairment. The injury was only temporary.

Finally, with regard to the low back, Dr. Kuhnlein opined there was no permanent disability related to the August 2014, work injury. "Given the gap in the record, I'm not able to state that her current back pain is related to the original injury date." (Def. Ex. S, p. 5) He noted that she had reported to physical therapists in 2016 that her back pain had been intermittent. (Def. Ex. S, p. 5)

Overall, I find the expert opinions of Dr. Kuhnlein to be more persuasive than the opinion of Dr. Bansal, particularly as it relates to the low back injury.

CONCLUSIONS OF LAW

The first question is whether the admitted work injuries are a cause of any permanent disability, and if so, the extent of such disability.

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).

File No. 5053596:

By a preponderance of evidence, I find that the claimant has failed to carry her burden of proof that her August 2014, work injury resulted in any permanent disability. Dr. Bansal did not have the correct history of the injury. This claim is based significantly upon claimant's testimony and the history she has provided. As noted in the findings of fact, she is a poor historian. She has a long, undisclosed history of intermittent low

back pain. It appears her work injury was at most a temporary aggravation of her prior low back injury. When viewing this record as a whole, I find the claimant has failed to carry her burden of proof. I would find claimant failed to carry her burden even without the report of Dr. Kuhnlein.

File No. 5053597:

Based upon the evidence in the record, when viewed as a whole, I cannot conclude that the claimant's work injury of June 30, 2014, caused any permanent or ongoing functional disability in her eyes. Claimant's counsel contends that claimant's testimony of her ongoing symptoms of disability and pain demonstrates a permanent loss of function. It is true that lay testimony must be considered when determining issues of medical causation, however, causation must ordinarily be approved through expert medical opinions.

File No. 5053598:

When considering the record as a whole, it is apparent that the claimant suffered a broken finger on June 6, 2014, and this broken finger has resulted in some, very minor loss of function of her left index finger. This finding is not based upon claimant's testimony, but rather the objective, contemporaneous medical records and documentation. The matter is somewhat confused and confounded by this prior unexplained treatment; however, it does not change the fact that she broke her finger in a workplace accident. Furthermore, while I found that the opinions of Dr. Kuhnlein are generally more credible than those of Dr. Bansal, Dr. Kuhnlein's opinions on the June 2014, work injury are equivocal. He did not rule out medical causation and impairment, but rather simply declined to provide a rating having not seen the claimant. By a preponderance of evidence, I find claimant has met her burden of proof that she suffered a permanent loss of use of her right index finger as a result of the June 2014, work injury.

The next issue is the extent of claimant's functional disability in her index finger.

File No. 5053598:

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

The AMA Guides, 5th edition, has been adopted as a guide for determining an injured worker's extent of functional disability. 876 IAC section 2.4. In making an assessment of the loss of use of a scheduled member, however, the evaluation is not limited to the use of the AMA Guides. Lay testimony and demonstrated difficulties from claimant must be considered in determining the actual loss of use so long as loss of earning capacity is not considered. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420, 421 (Iowa 1994); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936). This agency has a long history of recognizing that the actual loss of use which is to be compensated is the loss of use of the body member in the activities of daily living, including activities of employment. Pain which limits use, loss of grip strength, fatigability, activity restrictions, and other pertinent factors may all be considered when determining scheduled disability. Bergmann v. Mercy Medical Center, File Nos. 5018613 & 5018614, (App. March 14, 2008); Moss v. United Parcel Service, File No. 881576 (App. September 26, 1994); Greenlee v. Cedar Falls Community Schools, File No. 934910 (App. December 27, 1993); Westcott-Riepma v. K-Products, Inc., File No. 1011173 (Arb. July 19, 1994); Bieghler v. Seneca Corporation, File No. 979887 (Arb. February 8, 1994); Ryland v. Rose's Wood Products, File No. 937842 (Arb. January 13, 1994); Smith v. Winnebago Industries, File No. 824666 (Arb. April 2, 1991).

The claimant's disability is located in her left index finger. For the reasons set forth by Dr. Kuhnlein, Dr. Bansal's 10 percent index finger rating is flawed. While Dr. Bansal's rating is not perfect, it is the only rating in the record. It is a reasonable assessment of claimant's minor loss of function. She broke her finger. She is unable to bend it now. A ten percent loss of function entitles claimant to 3.5 weeks of compensation under Iowa Code section 85.34(2)(b) (2015). These benefits shall commence at the time stipulated by the parties.

The final issue for File No. 5053598 is penalty.

Claimant seeks penalties for late payments based upon the failure of the defendants to seek an impairment rating for her left index finger injury. Claimant's penalty benefit claim is based upon the statutory language contained at 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.

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.

Under the current statutory framework, the burden is on the claimant to demonstrate when a payment is due and that the payment was not made on time. Once the claimant has proven the delay or denial, the burden shifts to the defendants to provide a reasonable excuse.

The law, as set forth above, mandates a penalty in this case. The defendants accepted this claim and directed claimant's care. The defendants chose Dr. Rodgers as their authorized treating physician. Dr. Rodgers performed his final evaluation in August 2014, and noted that he had taken measurements of claimant's finger. He stated that he could perform a rating upon request. (Cl. Ex. 5) This was an invitation by the authorized treating physician to properly adjust the claim. No rating was ever requested. No explanation was provided by defendants as to the basis for failing to request a rating. While the injury was very minor, claimant did suffer a broken bone. Ordinarily, at the conclusion of treatment, if there is some evidence in the medical file that suggests some level of permanent loss of function, the defendants must request a rating to determine whether there is any permanency.

Defendants argue that Dr. Rodgers did not assign any permanent restrictions; however, the finger claim is a scheduled functional loss claim, not an industrial claim. Had Dr. Rodgers provided some indication there was no permanency, this might be a different case. On the contrary, he stated that he had taken measurements and would provide a rating upon request.

The defendants' failure to properly adjust this claim has resulted in a substantial delay. In all likelihood, Dr. Kuhnlein's report probably cost the defendants more than it would have to simply request the rating from Dr. Rodgers in a timely fashion. A 50 percent penalty is awarded.

ORDER

THEREFORE IT IS ORDERED:

File No. 5053598:

Defendants shall pay the claimant three and one-half (3.5) weeks of permanent partial disability benefits at the rate of two hundred sixty and 69/100 dollars ($260.69) per week commencing August 2, 2014.

Defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

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

Defendants shall pay a penalty in the amount of four hundred fifty-six and 20/100 dollars ($456.20) for failure to timely pay the benefits in question.

For All Files:

If the defendants have not already paid the IME expense of Dr. Bansal, they shall pay or reimburse the costs therefore.

Signed and filed this 5th day of January, 2018.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JLW/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.