BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROGER PETERS, Claimant, vs. RYDER INTEGRATED LOGISTICS, INC., Employer, and OLD REPUBLIC INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5067874 ARBITRATION DECISION Head Note Nos.: 1402.40, 1402.60, 1802, 1803, 2206, 2701

STATEMENT OF THE CASE

Roger Peters, claimant, filed a petition in arbitration seeking workers' compensation benefits against Ryder Integrated Logistics, as the employer, and Old Republic Insurance Company, as the insurance carrier.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, this matter was heard, via CourtCall, on March 10, 2020, by Deputy Workers' Compensation Commissioner Erica J. Fitch.

On March 9, 2021, pursuant to Iowa Code section 17A.15(2), the Iowa Workers' Compensation Commissioner delegated authority to the undersigned to enter a proposed decision in this matter due to the unavailability of Deputy Commissioner Fitch. Pursuant to the requirements of Iowa Code section 17A.15(2), I have read the entirety of the record created before Deputy Commissioner Fitch, as well as the parties' post-hearing briefs. Although there are several factual disputes between the parties, neither party argues demeanor is the operative decision making factor in this case. Thus, I conclude I can proceed to issue a proposed decision pursuant to Iowa Code section 17A.15(2).

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. Deputy Commissioner Fitch accepted the hearing report and entered an order at the time of hearing noting her approval of the stipulations and disputes noted on the hearing report. I therefore accept the stipulations noted on the hearing report, and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are bound by their stipulations.

The evidentiary record consists of Joint Exhibits 1 through 12, Claimant's Exhibits 1 through 10, and Defendants' Exhibits A through H. Roger Peters testified on his own behalf. No other witnesses were called to provide testimony at the evidentiary hearing.

ISSUES

In this proceeding, claimant alleged injuries to the left wrist, left elbow, left shoulder, cervical spine, thoracic spine, and the body as a whole.

The parties submitted the following issues for determination:

1. Whether the alleged injuries are a cause of temporary disability during a period of recovery;
    a. Claimant is seeking temporary benefits from February 25, 2019, to February 27, 2019; March 7, 2019, to April 11, 2019; and June 9, 2019, through September 13, 2019;
2. Whether the alleged injuries are a cause of permanent disability;
3. If the injury is found to be a cause of permanent disability, whether the disability is a scheduled member disability or an industrial disability;
    a. Claimant is seeking permanent partial disability benefits for 200 weeks for at least a 40 percent loss of use of the whole person or a 40 percent loss of earning capacity;
4. The commencement date for permanent partial disability benefits, if any;
5. Whether claimant is entitled to payment of medical expenses;
6. Whether claimant is entitled to reimbursement for the fees associated with an independent medical examination (IME) under Iowa Code section 85.39;
7. Whether claimant is entitled to alternate medical care under Iowa Code section 85.27;
8. Whether claimant is entitled to penalty benefits under Iowa Code section 86.13; and
9. Costs.

FINDINGS OF FACT

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

Roger Peters is a 58-year-old individual who resides in Dysart, Iowa. (Hearing Transcript, page 17) Mr. Peters obtained a high school diploma from Dysart-Geneseo Community Schools in approximately 1980. (Exhibit A, Deposition page 5) He subsequently received completion certificates for welding and agricultural courses at Hawkeye Community College. (Hr. Tr., p. 18) Mr. Peters did not seek any additional, formal education; however, he has received specialized training associated with his commercial driver's license (CDL). Id. Claimant maintains a Class A CDL, with several endorsements, including, tanks, HAZMAT, doubles, and triples. (Ex. A, Depo. pp. 5-6)

The vast majority of Mr. Peters' employment history consists of work as an over-the-road truck driver. (See Hr. Tr., pp. 19-20) Additionally, he has experience in farming, and he briefly owned and operated a bar in Clutier, Iowa from 2008 to 2010. (Ex. A, Depo. p. 16)

Mr. Peters began working for the defendant employer as an over-the-road truck driver on June 20, 2018. (Ex. 3, p. 25) As part of his job duties, Mr. Peters would be required to haul trailers from the Target distribution center in Cedar Falls, Iowa, to the Twin Cities area for delivery. (See Ex. A, Depo. pp. 9-10) Claimant worked between 45 and 50 hours per week. (Ex. A, Depo. p. 11)

On February 22, 2019, Mr. Peters was involved in a motor vehicle accident. According to claimant, he was returning from the Twin Cities area when he hit a patch of black ice. Claimant's truck spun out of control and jackknifed near Clear Lake, Iowa. (Hr. Tr., pp. 33-35) Claimant asserts that at some point during the MVA, his left shoulder, left arm, and left knee struck the driver's side of the cab. (Hr. Tr., pp. 34-37) As a result, Mr. Peters experienced pain from the left side of his neck all the way down the left side of his body. (Hr. Tr., p. 38) Additionally, Mr. Peters experienced numbness in his left elbow and forearm. (See Hr. Tr., p. 38) Mr. Peters reported the motor vehicle accident to the defendant employer and waited for highway patrol to arrive on the scene. Due to a tow ban, claimant was forced to stay overnight in Clear Lake, Iowa. He would drive his truck back to Cedar Falls, Iowa in the morning after his truck was pulled out of the ditch. (Hr. Tr., p. 40)

Claimant's symptoms increased over the weekend and he formally requested medical care from the defendant employer on Monday, February 25, 2019. (Hr. Tr., pp. 40-41) Defendants accepted the injury and directed care. See id.

The defendant employer temporarily suspended claimant's employment during its investigation of the motor vehicle accident. (See Hr. Tr., p. 42) The investigation lasted approximately one month. During this time, claimant was paid a flat, hourly rate, that he asserts was approximately one-third of what he typically made while driving. (Hr. Tr., p. 42) At the conclusion of the investigation, claimant was cited with "risk associated behavior" and asked to sign off on an acknowledgment of the same. (Hr. Tr., p. 43) Claimant complied with the employer's request.

Claimant first presented to Sarvenaz Jabbari, M.D., at Allen Occupational Health on February 25, 2019. (JE5, p. 47) He reported left shoulder, left elbow, left hip, and left knee pain. Dr. Jabbari ordered an x-ray of claimant's left elbow, which returned normal. She subsequently assessed claimant with left shoulder, elbow, knee, and hip pain following a motor vehicle accident. (JE5, p. 48) Claimant was prescribed naproxen and restricted from commercial driving and lifting more than 15 pounds. (JE5, p. 52)

Two days later, medical records from Alison Good, ARNP note that all of claimant's injured body parts had returned to a baseline state, except for his left shoulder and arm. (JE5, p. 53) Following her examination, Ms. Good assessed claimant with a left shoulder strain and referred claimant to physical therapy. (JE5, p. 56) Ms. Good released claimant to return to full duty work. (Id.)

Before continuing with a summation of the medical treatment claimant received following the alleged injury, it is worth noting this is not the first time claimant has reported symptoms in his bilateral upper extremities, neck, and upper back.

Medical records from Brian Meeker, M.D., claimant's primary care physician, reveal that claimant has previously received treatment for bilateral carpal tunnel syndrome. (See JE1, p. 3)

On May 10, 2011, claimant presented to Dr. Meeker reporting that he had recently "shoved a trailer door shut" at work and felt a twinge of pain in the left elbow, which radiated down into his left hand. (JE1, p. 3) Claimant also reported experiencing pain in the middle of his back, between the shoulder blades. Id. Claimant relayed that he had initially presented to his chiropractor for treatment; however, when the chiropractor became concerned with claimant's persistent numbness, he recommended claimant present to his family physician. Id. Dr. Meeker diagnosed claimant with left ulnar neuropathy and recommended claimant obtain an EMG of the left upper extremity. Id.

The EMG, dated May 17, 2011, revealed acute right C8 cervical radiculopathy of moderate degree, moderate to severe right carpal tunnel syndrome with median nerve entrapment at the wrist, and mild right ulnar neuropathy at the elbow. (JE2, p. 37; see JE1, p. 4) Dr. Meeker assessed claimant with a suspected right C8 disc herniation with radiculopathy, carpal tunnel syndrome, and cubital tunnel syndrome. (JE1, p. 4) Dr. Meeker did not believe the symptoms in claimant's left arm were caused by closing a semi-trailer door. Id. Dr. Meeker ordered an MRI of claimant's cervical spine. Id.

The MRI of claimant's cervical spine, dated May 24, 2011, revealed degenerative disc disease and small disc protrusion paracentral to the left at C4-5, and neural foramina stenosis. (See JE1, p. 4) Dr. Meeker assessed claimant with cervical disc disease with radiculopathy and referred him to a neurosurgeon. Id.

It appears Chad Abernathey, M.D., performed a C7-T1 discectomy in 2011. (See JE9, p. 94; Ex. B, p. 3) (Dr. Mooney's medical records provide claimant underwent a discectomy and fusion; however, claimant's surgeon, Dr. Abernathey, only documents a discectomy as occurring in 2011) Dr. Abernathy performed a left carpal tunnel release on November 20, 2012, and a right carpal tunnel release on December 18, 2012. (JE3, pp. 38-41) Claimant testified that the carpal tunnel releases fully resolved his symptoms. He denied experiencing any symptoms in his bilateral upper extremities between the surgeries and the February 22, 2019, work injury. (Hr. Tr., pp. 21-22)

In addition to the left upper extremity, claimant also has a pre-existing history of neck and low back pain. (See JE1, p. 4; JE4, p. 45; Ex. B, p. 3) On June 8, 2018, claimant was examined by the Department of Transportation as part of his commercial driver medical certification. (JE4, pp. 43-46) He discussed his prior carpal tunnel release procedures with the examining physician. (JE4, p. 43) At the time of the examination, claimant denied arm, neck, or back problems. (JE4, p. 44) That being said, claimant's physical examination revealed moderately limited range of motion in the neck. (JE4, p. 45) The examining physician found claimant met the medical standards of the Department of Transportation. (JE4, p. 46)

Lastly, claimant has a long-standing history of Type II diabetes, hypertension, and hyperlipidemia. (See JE1, p. 2)

Returning to the current work injury, Ms. Good assessed claimant with cervical, thoracic, lumbar, and left shoulder strains, and ordered x-rays of the same on March 13, 2019. (JE5, p. 59) Claimant's diagnostic imaging revealed arthritis, but no acute findings. (JE5, p. 60) When claimant continued to report numbness in his left arm at an April 12, 2019, follow-up appointment, Dr. Jabbari ordered an EMG. (JE5, p. 68)

Claimant returned to his full-duty position after Ryder's investigation of the motor vehicle accident had concluded on or about April 11, 2019. (See Hr. Tr., p. 44)

Around this time, claimant began reporting significant weakness in his right hand. At an April 22, 2019, appointment with Dr. Meeker, claimant relayed that the weakness in his right hand was so significant that he was unable to put on a seatbelt. Dr. Meeker assessed claimant with cervical radiculopathy at C8 and right-hand weakness. (JE1, p. 11) Dr. Meeker was concerned with the weakness in claimant's right hand and referred claimant for an urgent MRI. (Id.)

The MRI of claimant's cervical spine indicated moderate foraminal narrowing at left C3-4, bilateral C4-5, and right C5-6, as well as moderate to severe foraminal narrowing at left C6-7. (JE8, p. 92)

A CT scan of claimant's left elbow, dated April 22, 2019, indicated no acute abnormalities. (JE6, p. 80) An EMG of claimant's left upper extremity, dated April 24, 2019, revealed moderate carpal tunnel syndrome and ulnar neuropathy distal to the elbow, with no evidence of cervical radiculopathy. (JE7, p. 82)

Johnathan Fields, M.D., of Allen Occupational Health, examined claimant on April 26, 2019. (JE5, p. 72) During the interview portion of the appointment, claimant described ongoing pain and an inability to utilize his fingers. (Id.) Claimant relayed that physical therapy helped the symptoms in his left hand; however, he was now experiencing weakness in his right hand. (Id.) He noted that the weakness had been present for the previous two weeks. Dr. Fields recommended bilateral EMG studies and provided work restrictions of limited gripping/squeezing with the right hand. (JE5, p. 74)

Defendants subsequently arranged for claimant to undergo an orthopedic evaluation of his neck and left upper extremity with Dr. Abernathey. The evaluation occurred on May 1, 2019. (JE9, p. 94) Dr. Abernathey reviewed claimant's cervical MRI and assessed claimant with a cervical strain. Dr. Abernathey recommended against an aggressive neurosurgical approach given the paucity of clinical and radiographic evidence. (Id.)

On June 8, 2019, claimant was involved in his second motor vehicle accident while working for the defendant employer. (Hr. Tr., p. 47) According to claimant, his right hand slipped off of his steering wheel while he was making a tight turn in the Twin Cities. (Hr. Tr., pp. 47-48) This motion caused claimant's truck to hit the bumper of another vehicle. (Id.) Claimant's truck did not sustain any damage. (Id.) It appears that this motor vehicle accident occurred, in part, because of the symptoms claimant was experiencing in his right hand. Claimant testified that he could not grip the steering

wheel with his right hand, so to compensate for this he would make a fist and place it between the spokes of the steering wheel. (Hr. Tr., p. 46) Claimant testified he had to do some maneuvers slower as a result of his make-shift accommodation. (Hr. Tr., p. 47)

Claimant discussed the June 8, 2019, motor vehicle accident and his right hand weakness with Dr. Meeker on June 18, 2019. (JE1, p. 18)

On June 26, 2019, claimant returned to Dr. Fields reporting he had no strength in his right hand. Dr. Fields, now for the second time, recommended claimant obtain an EMG of his bilateral upper extremities. (JE5, pp. 76-79)

After concluding their investigation into claimant's second motor vehicle accident, defendants formally terminated claimant on July 1, 2019, for risk-associated behavior. (Ex. 3, p. 28)

The EMG of the bilateral upper extremities, dated July 30, 2019, revealed severe carpal tunnel syndrome on the left and moderate-to-severe carpal tunnel syndrome on the right. (JE10, pp. 99-100) The study also indicated the presence of ulnar neuropathy across the right elbow. (Id.) The examining physician did not appreciate electrophysiological evidence of ulnar neuropathy across the left elbow or cervical radiculopathy affecting the right upper extremity. (Id.)

Claimant accepted a job stocking shelves and helping customers at Menards between August and September 2019. Claimant reportedly left this job because of the neuropathy in his feet. (See Ex. A, Depo. p. 19)

Peter Chimenti, M.D., an orthopedic surgeon at Physicians' Clinic of Iowa, examined claimant on August 20, 2019. (JE10, p. 104) Interestingly, claimant reported that in addition to sustaining trauma to his left side, he might have also struck his right elbow during the February 22, 2019, motor vehicle accident. (Id.) Dr. Chimenti assessed claimant with a lesion of the right ulnar nerve, mononeuropathy of the left upper extremity, and stiffness of the right hand. Dr. Chimenti could not explain the etiology of claimant's left forearm numbness; however, he noted it is possible that claimant sustained a contusion of the medial antebrachial cutaneous nerve as such a diagnosis would be consistent with the distribution pattern of claimant's paresthesia and numbness. Dr. Chimenti was concerned with the right-handed stiffness and recommended occupational therapy for aggressive range of motion and grip strengthening. Dr. Chimenti opined claimant would eventually need to undergo a decompression of the ulnar nerve in the right elbow. (JE10, p. 106)

In September, 2019, Dr. Abernathey assessed claimant with right ulnar neuropathy at the elbow and opined that the severity of claimant's neurologic deficits was profound. (JE9, p. 95) Dr. Abernathey subsequently performed a right cubital tunnel release on claimant on September 26, 2019. (See JE9, p. 95)

Claimant started a new, seasonal job with Nekola Trucking on September 13, 2019. (See Hr. Tr., p. 54) The work consisted of hauling loads of corn, with limited physical activity on the part of claimant. (Hr. Tr., p. 37) Claimant testified that on average he worked approximately 60 to 70 hours per week for Nekola Trucking. (See Hr. Tr., p. 75)

Following the surgical intervention, claimant reported increased dexterity and sensation in his right hand. (JE9, p. 95) Dr. Abernathey recommended claimant pursue physical therapy to further aid in his recovery; however, claimant declined the same. (Id.) Claimant wanted to keep his follow-up appointments open-ended because he was recovering so well. (Id.)

An MRI of claimant's thoracic spine, dated October 1, 2019, revealed mild degenerative changes without significant neural compromise. (JE8, p. 93) Dr. Abernathey opined that the degenerative changes were consistent with claimant's age. (JE9, p. 96) He did not recommended claimant pursue surgical intervention on the thoracic spine. (Id.)

On November 5, 2019, claimant presented to neurologist Ivo Bekavac, M.D. with complaints of left arm pain. (JE7, p. 85) Dr. Bekavac assessed claimant with a contusion of the left elbow with persistent pain and numbness of the hand. Dr. Bekavac referred claimant for an MRI and repeat EMG of the left upper extremity. (JE7, p. 86)

The November 6, 2019, MRI revealed a partial tear of the common extensor tendon. (JE11, p. 107) The November 11, 2019, EMG revealed severe left carpal tunnel syndrome and ulnar neuropathy distal to the elbow. (JE7, p. 87)

At some point in November 2019, claimant started a new job driving a dump truck for Hatch Grading and Contracting. (Ex. 5, p. 37) This job was seasonal and short-lived. (See Hr. Tr., p. 77)

Claimant established care with Joseph Buckwalter, M.D. on December 5, 2019. (JE12, p. 108) The goal of the initial evaluation was to find a definitive diagnosis and treatment plan for claimant's bilateral upper extremity conditions. Id. Dr. Buckwalter assessed claimant with bilateral ulnar neuropathy and carpal tunnel syndrome. Dr. Buckwalter chose to first focus on claimant's left upper extremity. In doing so, he recommended an ulnar nerve decompression and carpal tunnel release. (JE12, p. 111)

Dr. Buckwalter performed surgery on claimant's left arm, elbow, and carpal tunnel on December 23, 2019. (JE12, pp. 116-119) The December 23, 2019, surgical intervention resolved the numbness in claimant's hand and reduced his overall level of pain. (See JE12, pp. 120-121) Claimant demonstrated the ability to make a full composite fist and he exhibited full finger extension. (JE12, p. 120) Unfortunately, the surgery did not improve his elbow paresthesia. (See JE112, p. 121) Dr. Buckwalter felt claimant had an excellent response to the revision left carpal tunnel release. (See JE12, p. 122) He believed claimant would reach maximum medical improvement for the left upper extremity approximately three to four months after surgery. (Ex. E, p. 24)

Due to his response to the revision left carpal tunnel release, claimant inquired about the possibility of having the same procedure done on his right wrist. (JE12, p. 122) Given that claimant's chief complaint on the right was weakness rather than pain, Dr. Buckwalter was uncertain the extent to which a revision right carpal tunnel release would improve his symptoms. Nevertheless, Dr. Buckwalter agreed to proceed with surgery. Id.

Claimant's counsel wrote to Dr. Buckwalter, requesting an opinion regarding causation of claimant's various claimed injuries. (See JE12, p. 123) The first half of the letter simply confirms Dr. Buckwalter's credentials and his understanding of the evidentiary record. (See JE12, pp. 123-124) Dr. Buckwalter agreed that blunt force trauma to the elbow frequently causes inflammation that leads to ulnar neuropathy when the ulnar nerve becomes compressed. Dr. Buckwalter further agreed that blunt force trauma can also lead to carpal tunnel syndrome. (JE12, p. 124) Dr. Buckwalter agreed that based on claimant's history, medical records, and his personal examination, claimant's left ulnar neuropathy and carpal tunnel syndrome are related to the traumatic February 22, 2019, incident. (JE12, p. 125) Dr. Buckwalter agreed that claimant's chronic health issues may have contributed to his symptoms; however, the personal health issues would not be considered causal factors. (Id.) Lastly, Dr. Buckwalter opined he was not able to determine whether claimant's right upper extremity conditions could have originated with a spinal injury sustained during the February 22, 2019, incident. (Id.)

Dr. Buckwalter later opined the revision right carpal tunnel release "was not part of the claimant's work injury claim" and restrictions for the same would not be related to the February 22, 2019, work injury. (See Ex. E, p. 24)

Mr. Peters obtained an independent medical evaluation of his own with Farid Manshadi, M.D., on January 15, 2020. (Ex. 1) Dr. Manshadi found the February 22, 2019, motor vehicle accident resulted in injuries to claimant's cervical spine, thoracic spine, left arm, and left shoulder. (Ex. 1, p. 7) Dr. Manshadi opined it was unclear whether claimant's right cubital tunnel syndrome and right carpal tunnel syndrome are causally related to the February 22, 2019, motor vehicle accident. (Id.)

While he did not provide a specific date, Dr. Manshadi opined that claimant had reached maximum medical improvement for the cervical spine, thoracic spine, and left arm conditions. (Id.) Dr. Manshadi expressed concerns about claimant's left shoulder, opined that the left shoulder was not at MMI, and recommended additional treatment for the left shoulder consisting of updated diagnostic imaging. (Ex. 1, pp. 7, 8)

Dr. Manshadi assigned a number of impairment ratings to claimant's left wrist and forearm. (Ex. 1, p. 7) For the left carpal tunnel syndrome, Dr. Manshadi assigned 3 percent impairment for motor deficit, 10 percent impairment for sensory deficit below the mid-forearm, and 1 percent impairment for sensory deficit of the medial antebrachial nerve. In total, Dr. Manshadi assigned 13 percent upper extremity impairment for the median nerve involvement related to claimant's carpal tunnel diagnosis. (Id.) For the left ulnar nerve involvement at the elbow, Dr. Manshadi assigned 9 percent impairment for motor deficit, and 4 percent impairment for sensory deficit, for a combined impairment rating of 13 percent of the left upper extremity. (Ex. 1, p. 8) Dr. Manshadi also assigned 7 percent upper extremity impairment for the range of motion deficits in claimant's left elbow. (Ex. 1, p. 7)

For the alleged cervical spine injury, Dr. Manshadi placed claimant in DRE Category II and assigned 6 percent impairment of the whole person. (Ex. 1, p. 7) For the alleged thoracic spine injury, Dr. Manshadi used Table 15-4 to assign another 6 percent impairment of the whole person. (Id.) Despite not placing claimant at MMI for the alleged left shoulder condition, Dr. Manshadi opined that if claimant does not

receive any additional medical treatment for the alleged condition, his current state would warrant a 14 percent impairment of the left upper extremity. (Id.)

Dr. Manshadi recommended permanent work restrictions that include avoiding any activity which requires repetitious gripping activities with the left hand, holding his neck in one position for a prolonged period of time, and rotating the thoracic spine in any direction in a continuous manner. Dr. Manshadi further recommended no lifting of more than 20 pounds with the left upper extremity. (Ex. 1, p. 8) Lastly, Dr. Manshadi provided temporary restrictions to the left shoulder of avoiding any shoulder height or overhead activities. (Id.)

Defendants obtained an independent medical evaluation performed by Charles D. Mooney, M.D., on October 10, 2019. (Ex. B) Dr. Mooney assessed claimant with mild cervical and thoracic muscular strains, as well as contusions to the left shoulder and left elbow. (Ex. B, p. 9) Dr. Mooney opined claimant's bilateral carpal tunnel syndrome and the ulnar neuropathy of the right elbow pre-existed the February 22, 2019, motor vehicle accident. In a roundabout way, Dr. Mooney also opined the February 22, 2019, motor vehicle accident did not permanently or materially aggravate, accelerate, or light up claimant's bilateral carpal tunnel syndrome or the ulnar neuropathy at the right elbow. (See Ex. B, pp. 9-10) Dr. Mooney further opined the February 22, 2019, work injury was not a material and substantial factor in causing any permanent disability or the need for carpal tunnel releases on the left or right wrist. (Ex. B, p. 10)

Dr. Mooney recommended that claimant continue under the care of Dr. Abernathey and complete his course of physical therapy as it relates to his right cubital tunnel release. Dr. Mooney recommended against any further surgical intervention as it relates to claimant's bilateral carpal tunnel syndrome. (Ex. B, p. 10) Note: Dr. Mooney provided these opinions prior to Dr. Buckwalter's recommendations for surgery.

Defense counsel also wrote to Dr. Buckwalter, requesting an opinion regarding causation of claimant's various claimed injuries. Dr. Buckwalter opined that the injury claimant sustained on February 22, 2019, is a causal factor of the left carpal tunnel syndrome and left ulnar neuropathy. Dr. Buckwalter further opined there is no evidence to suggest claimant experienced a return of symptoms prior to the February 22, 2019, work injury. Therefore, within a reasonable degree of medical certainty, Dr. Buckwalter opined the February 22, 2019, work injury caused the presentation of left ulnar neuropathy and left carpal tunnel syndrome. Interestingly, Dr. Buckwalter believes the work injury caused the condition, rather than materially aggravated an underlying condition. (See Ex. E, p. 23) Dr. Buckwalter opined the February 22, 2019, work injury was a substantial factor in claimant's need for surgery on the left arm. (Ex. E, p. 23)

Defense counsel sent similar letters to Dr. Fields and Dr. Abernathey. Dr. Fields agreed to a number of pre-written opinions, including: (1) the February 22, 2019, work injury caused a temporary exacerbation of claimant's left elbow, left shoulder, thoracic spine, and cervical spine conditions; (2) the work injury was not a factor in causing claimant's left carpal tunnel syndrome; (3) the work injury did not permanently and materially aggravate, accelerate, or light up claimant's left carpal tunnel syndrome; and (4) claimant does not require any permanent restrictions for his left upper extremity, left shoulder, thoracic spine, or cervical spine conditions. (Ex. F, p. 33)

Dr. Abernathey opined claimant did not sustain permanent impairment as a result of his right upper extremity or thoracic spine injuries. (Ex. G, p. 36) He further agreed with the opinion that the February 22, 2019, work injury did not aggravate, accelerate, or light up any underlying condition of the right upper extremity and the symptoms in the right upper extremity were not sequela of the February 22, 2019, work injury. (Id.)

As I weigh and consider the competing medical evidence, I ultimately find the medical opinions of Dr. Buckwalter to be the most convincing opinions in this record. Although claimant did not establish care with Dr. Buckwalter until December, 2019, Dr. Buckwalter was still able to evaluate claimant on a number of occasions, including intra-operatively. Moreover, Dr. Buckwalter twice confirmed his causation opinions. (JE12, pp. 123-125; Ex. E, pp. 25-31) To the extent Dr. Manshadi concurs in his causation opinions about the left upper extremity, I accept those opinions as well.

I do not find the causation opinions of Dr. Mooney to be convincing in this matter. Dr. Mooney's causation opinion is illogical and out of touch with the facts of this case. In discussing causation as it relates to claimant's carpal tunnel syndrome, Dr. Mooney opines,

> It is my opinion that the record does not support any injury to the left upper extremity that would result in the aggravation of his pre-existing median neuropathy.
> It is my opinion there is no medical record evidence that the incident of [February 22, 2019] caused any direct aggravation or acceleration of these conditions.

(Ex. B, pp. 9-10)

Dr. Mooney's opinion is contradicted by the opinions of Dr. Buckwalter. In his initial report, Dr. Buckwalter adopted the opinion that blunt force trauma can lead to both carpal tunnel and cubital tunnel syndrome. (JE12, p. 124) Unlike Dr. Mooney, Dr. Buckwalter is an orthopedic surgeon who specializes in hand and wrist conditions, such as carpal tunnel syndrome. I trust his opinion in this regard. Moreover, it is baffling that Dr. Mooney holds the opinion that there is no medical evidence that the February 22, 2019, motor vehicle accident caused *any* direct aggravation or acceleration of claimant's condition. (Emphasis added) The evidentiary record clearly demonstrates that claimant was asymptomatic prior to the February 22, 2019, motor vehicle accident, and symptomatic immediately thereafter. A temporal relationship between an injury and the onset of claimant's condition does not necessarily mean that the injury was the major contributing cause of claimant's condition. That being said, the temporal relationship between a work injury and the onset of symptoms is still a factor to be considered and weighed when determining the contributing causes of claimant's condition. In this case, there is a strong temporal relationship between claimant's work injury and the onset of his symptoms.

I similarly do not find the causation opinions of Dr. Fields to be convincing in this matter. At the time of his opinion letter, Dr. Fields had not personally examined claimant in approximately eight months. There is no evidence what, if any, medical records Dr. Fields reviewed prior to signing off on defendants' pre-written opinions. His opinion is cursory and unconvincing.

With respect to claimant's alleged neck and back injuries, I do not find the causation opinion of Dr. Manshadi to be convincing. Claimant did not complain significantly of neck or back pain over the course of numerous evaluations with his various treating physicians. The only points in which claimant's cervical spine was at issue was when he was initially diagnosed with a cervical strain, and when Dr. Meeker ordered an MRI to see if the symptoms in claimant's right arm stemmed from the cervical spine. Outside of being offered an injection, claimant did not receive significant treatment for his alleged cervical spine condition. The evidentiary record supports a finding that claimant at most sustained a temporary injury to the cervical spine.

Similarly, the evidentiary record supports a finding that claimant sustained only a temporary injury to the thoracic spine. Claimant did not request or receive significant medical treatment for his alleged thoracic spine symptoms. Claimant has not sought any additional treatment for his alleged thoracic spine condition since Dr. Abernathey told claimant he was not a surgical candidate. (JE9, p. 96) Dr. Abernathey reviewed claimant's thoracic spine MRI and opined it demonstrated mild degenerative changes consistent with age without significant neural compromise. (Ex. JE9, p. 96) Dr. Abernathey believed claimant sustained a temporary exacerbation to his thoracic spine that did not result in any permanent impairment. (Ex. G, p 36).

For these reasons, I find that claimant has not proven by a preponderance of the evidence that he sustained permanent injuries to the cervical or thoracic spine as a result of the February 22, 2019, motor vehicle accident.

Lastly, the medical records in the evidentiary record demonstrate claimant sustained only a temporary injury to the left shoulder. Claimant was assessed with a left shoulder strain on February 22, 2019. (JE5, pp. 48-49) Claimant did not obtain any left shoulder imaging or seek additional treatment for his left shoulder strain. After his March 27, 2019, examination, claimant no longer documented pain in his left shoulder. (JE5, pp. 69, 73, 77) The only shoulder pain claimant was complaining of from this point forward was pain in the middle of his back, or pain between his shoulder blades. (See JE5, pp. 69, 73, 77) Dr. Manshadi is the only physician to opine claimant requires additional treatment for the left shoulder condition. Dr. Manshadi is similarly the only physician to opine claimant sustained anything other than a temporary left shoulder strain. Dr. Manshadi does not provide a diagnosis for claimant's left shoulder condition, and his causation opinion is based on the fact claimant reported left shoulder pain following the motor vehicle accident. Dr. Manshadi does not address the lack of medical records evidencing continued left shoulder complaints. At this time, there is no objective medical evidence demonstrating claimant sustained a permanent injury to the left shoulder. For these reasons, I find claimant failed to prove by a preponderance of the evidence that he sustained permanent injury to the left shoulder as a result of the February 22, 2019, motor vehicle accident.

Dr. Manshadi provides the only impairment ratings for the left upper extremity in the evidentiary record. The impairment ratings were made pursuant to the AMA Guides, Fifth Edition. (See Ex. 1, p. 8) Dr. Manshadi is also the only physician to assign permanent restrictions regarding the left upper extremity.

That being said, I have a difficult time accepting the work restrictions recommended by Dr. Manshadi. While claimant is likely limited in his functional abilities with the left upper extremity, he was able to adequately perform his job duties for two employers following the date of injury, and the evidentiary record reveals claimant's functional abilities improved following his most recent surgery. Dr. Manshadi's recommendations no longer reflect claimant's functional abilities.

I accept Dr. Buckwalter's approximate date of maximum medical improvement. More specifically, I find claimant reached maximum medical improvement on April 23, 2020, or four months after his December 23, 2019, surgery. This date will also serve as the commencement date for any permanent partial disability benefits awarded. While I think the impairment ratings are relatively high given other evidence, my hands are more or less tied when it comes to the impairment ratings attributable to claimant's left upper extremity due to the 2017 amendments to Iowa Code section 85.34. Having found claimant carried his burden of proving permanent impairment to the left upper extremity, I accept Dr. Manshadi's impairment ratings as the only impairment ratings in evidence. Specifically, I find that claimant sustained 7 percent upper extremity impairment as a result of the reduced range of motion in the left elbow, 13 percent upper extremity impairment as a result of injuries involving the median nerve, and 13 percent upper extremity impairment as a result of injuries to the ulnar nerve. Using the Combined Values Chart on page 604 of the AMA Guides, these figures amount to a combined value of 30 percent upper extremity impairment.

I find claimant is entitled to healing period benefits from February 25, 2019, to February 27, 2019.

Claimant is seeking healing period benefits for the time period of March 7, 2019, through April 11, 2019. Claimant was not under work restrictions between March 7, 2019, and April 11, 2019. Claimant was released without restrictions following his appointments on February 27, 2019, March 13, 2019, and March 27, 2019. (JE5, pp. 56, 63, 67) The medical evidence in the record suggests claimant was medically capable of returning to his truck driver position during this time period; however, claimant was off work pending a standard investigation into his motor vehicle accident. Claimant was paid, albeit at a lesser wage, during this time period. I find claimant failed to carry his burden of proving entitlement to temporary benefits between March 7, 2019, and April 11, 2019.

I similarly find claimant failed to prove entitlement to temporary benefits from June 9, 2019, through September 13, 2019. During this time period, claimant's restrictions only pertained to his right hand. Claimant is not alleging that his right hand and/or upper extremity conditions are causally related to the February 22, 2019, work injury. He was not under any temporary restrictions for any condition that he is alleging is causally related to this claim during that time period. Therefore, claimant is not entitled to healing period benefits from June 9, 2019 through September13, 2019.

Claimant's entitlement to penalty benefits will be addressed in the conclusions of law section.

CONCLUSIONS OF LAW

The initial dispute submitted by the parties is whether claimant sustained a permanent injury causally related to the February 22, 2019, motor vehicle accident. Defendants admit claimant sustained a work related injury; however, they dispute whether the work injury caused any permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits. (Hearing Report)

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)

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

In this case, I found the medical opinions of Dr. Buckwalter to be the most convincing and credible evidence in the record. Having accepted Dr. Buckwalter's opinions, I found claimant carried his burden of proving he sustained permanent impairment to the left upper extremity as a result of the February 22, 2019, work injury. Having found claimant carried his burden of proving he sustained permanent disability as a result of the February 22, 2019, work injury, I must address his entitlement to permanent disability benefits.

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).

In this case, I found that Mr. Peters proved compensable and permanent injuries to the left arm. The Iowa Workers' Compensation Commissioner has adopted the AMA Guides to the Evaluation of Permanent Impairment. Fifth Edition, as a guide for determining permanent partial disabilities for injuries compensated under Iowa Code section 85.34(2)(s). 876 IAC 2.4.

With respect to the extent of claimant's entitlement to permanent disability benefits, I accepted Dr. Manshadi's impairment ratings. Again, this is largely due to the fact I found claimant carried his burden of proving entitlement to permanent disability benefits, and Dr. Manshadi is the only physician to provide permanent impairment ratings to the left upper extremity. Having accepted the impairment ratings of Dr. Manshadi, I found claimant sustained 30 percent combined impairment to the left upper extremity. I conclude that Mr. Peters is entitled to 75 weeks of permanent partial disability benefits, which represents 30 percent of 250 weeks of benefits. Iowa Code section 85.34(m)

Mr. Peters asserts a claim for healing period benefits from February 25, 2019 through February 27, 2019; from March 7, 2019 through April 11, 2019; and June 9, 2019 through September 13, 2019. Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Defendants stipulate claimant was off work during these periods of time. In their post-hearing brief, defendants concede that if the undersigned found claimant's injuries to be permanent, claimant would be entitled to healing period benefits from February 25, 2019 through February 27, 2019. As such, I conclude claimant is entitled to an award of healing period benefits from February 25, 2019, through February 27, 2019. However, I found claimant was medically capable of substantially similar employment from March 7, 2019 through April 11, 2019; and June 9, 2019 through September 13, 2019. Therefore, I conclude that claimant is not entitled to an award of healing period benefits from March 7, 2019 through April 11, 2019; and June 9, 2019 through September 13, 2019.

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

Having found Mr. Peters has proven a material aggravation of an underlying condition, I similarly conclude that he has established entitlement to past medical expenses. The parties stipulated that the claimed medical expenses were all related to the disputed medical condition underlying this injury. I conclude that the past medical expenses claimed in Exhibits 8 and 9 that relate to claimant's left upper extremity should be reimbursed to claimant or paid to the medical providers, and that claimant should be held harmless by defendants for those expenses in either event.

Mr. Peters also seeks reimbursement for Dr. Manshadi's independent medical evaluation charges. Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

The Iowa Workers' Compensation Commissioner has noted that the Iowa Supreme Court adopted a strict and literal interpretation of Iowa Code section 85.39 in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015). See Cortez v. Tyson Fresh Meats. Inc., File No. 5044716 (Appeal December 2015). The Commissioner has taken a similar strict interpretation of the pre-requisites set forth in Iowa Code section 85.39. See Reh v. Tyson Foods, Inc., File No. 5053428 (Appeal March 2018).

Prior to the court's decision in Young, this agency had held that a release to full-duty work coupled with the failure to expressly opine as to impairment produces an inference that the employer-retained physician did not believe the injured worker sustained permanent impairment related to the injury. Countryman v. Des Moines Metro Transit Authority, File No. 5009718 (App. March 16, 2006); Kuntz v. Clear Lake Bakery, File No. 1283423 (Rehearing July 13, 2004).

The supreme court's decision in Young, as well as several recent appeal decisions, support a finding that said inference is no longer applicable to open the door for injured workers to obtain a section 85.39 examination. Instead, there must be a definitive permanent impairment rating rendered by a physician selected by the defendants before the injured worker qualifies for an independent medical evaluation pursuant to Iowa Code section 85.39.

In cases where defendants have denied liability, the commissioner has concluded that medical opinions or reports obtained for the purposes of determining causation, regardless of whether they are obtained from a treating or expert physician, are not the equivalent of an impairment rating for purposes of Iowa Code section 85.39. See Reh, File No. 5053428 (App. March 2018); Soliz v. Farmland Foods, Inc., File No. 5047856 (App. March 2018).

In cases where defendants have accepted liability but have not obtained an impairment rating, the commissioner has concluded that a release to full-duty work and placement at MMI, coupled with a failure to expressly opine as to impairment, is not the equivalent of an impairment rating for purposes of Iowa Code section 85.39. Sainz v. Tyson Fresh Meats, Inc., File No. 5053964 (App. September 2018).

If defendants unduly delay in seeking an examination under section 85.39, or fail to obtain an evaluation of permanent impairment altogether, the supreme court has held that the injured worker's recourse is a request to the commissioner to appoint an independent physician to examine the injured worker and make a report. See Young, 867 N.W.2d 839, 845 (Iowa 2015); Iowa Code section 86.38. In practice, the looming threat of penalty benefits for failure to investigate the extent of permanent impairment, once communicated, should encourage timely action.

If an injured worker wants to be reimbursed for the expenses associated with a disability evaluation by a physician selected by the worker, the process established by the legislature must be followed. This process permits the employer, who must pay the benefits, to make the initial arrangements for the evaluation and only allows the employee to obtain an independent evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Young, at 847 (citing Iowa Code § 85.39)

In this case, defendants did not obtain a permanent impairment rating for claimant's condition. Instead, they asked Dr. Mooney to address causation. Unless a claimant can establish the prerequisites of Iowa Code section 85.39, the defendants are not obligated to pay for the claimant's evaluation. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 843-844 (Iowa 2015) Under the circumstances of this case, claimant is not able to establish the prerequisites of Iowa Code section 85.39 to qualify for an evaluation at defendants' expense. Therefore, I conclude that Mr. Peters' request for reimbursement of Dr. Manshadi's evaluation under Iowa Code section 95.39 must be denied.

Mr. Peters asserted a claim for alternate medical care on the hearing report. Claimant desires an order providing defendants shall authorize Dr. Buckwalter as claimant's treating physician.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, ... the commissioner is justified by section 85.27 to order the alternate care."

Claimant identified and commenced medical treatment through Dr. Buckwalter after defendants denied his claim. Since their denial, defendants have essentially offered no care, while claimant has identified reasonable and appropriate medical treatment offered by Dr. Buckwalter. While it is unclear what, if any, additional medical treatment claimant requires, claimant was still treating with Dr. Buckwalter at the time of the evidentiary hearing. Therefore, I conclude that claimant has identified future medical care that is superior to the care, or lack thereof, offered by defendants. I conclude that claimant's request for alternate medical care should be granted. Dr.

Buckwalter shall be the authorized medical provider and defendants are obligated to pay for all causally related medical services provided by Dr. Buckwalter or at Dr. Buckwalter's recommendation or referral.

Mr. Peters asserts that defendants unreasonably delayed and/or denied his weekly benefits in this case and that defendants should be ordered to pay penalty benefits pursuant to Iowa Code section 86.13.

Iowa Code section 86.13(4) provides:

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

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

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

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

The supreme court has stated:

> (1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen. 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate

reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.

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

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

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

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

Id.

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

(6) In determining the amount of penalty, the commissioner is to consider factors such as the length of the delay, the number of delays, the information available to the employer regarding the employee's injury and wages, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

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

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

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

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

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

Having found claimant failed to prove entitlement to an award of healing period benefits from March 7, 2019 through April 11, 2019; and June 9, 2019 through September 13, 2019, I conclude claimant has failed to establish a denial, a delay in payment, or a termination of benefits occurred during these time periods.

Defendants agree that claimant is entitled to healing period benefits from February 25, 2019, to February 27, 2019. Defendants stipulate they never paid any healing period benefits. A denial has been established.

Defendants did not pay temporary total disability benefits because claimant's absence from work did not extend beyond the 3-day waiting period. Iowa Code section 85.32. Defendants did not pay claimant healing period benefits from February 25, 2019, to February 27, 2019, because they did not believe claimant's injury would result in permanent disability. Defendants authorized medical treatment for the left upper extremity condition until they received Dr. Mooney's causation report in October, 2019. Up until October, 2019, it can reasonably be concluded that defendants were investigating whether claimant's left upper extremity condition was going to result in permanent disability. During this period of time, claimant's entitlement to healing period benefits for the initial 3-day period was fairly debatable and defendants had a reasonable excuse to deny benefits. As such, I find claimant failed to prove entitlement to penalty benefits for the healing period benefits owed to claimant for the time period of February 25, 2019, to February 27, 2019.

Finally, Mr. Peters seeks an assessment of his costs. The assessment of costs is a discretionary function of the agency. Iowa Code section 86.40

In this case, claimant seeks reimbursement of his filing fee ($100.00), as well as the costs associated with service charges ($6.80) and deposition transcripts ($98.00). Given that claimant has prevailed in this case, I conclude the requested costs are reasonable. I assess these costs pursuant to rule 876 IAC 4.33 (2), (3) and (7).

Mr. Peters also seeks assessment of the costs associated with obtaining Dr. Manshadi's report. The cost of a physician drafting a written report in lieu of offering testimony at a workers' compensation hearing can be taxed as a cost. 876 IAC 4.33(6); Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015).

Dr. Manshadi charged $400.00 for his examination of claimant and an additional $1,600.00 for drafting his report. Defendants assert no argument with respect to the reasonableness of Dr. Manshadi's fees. As such, I find the cost of obtaining this report ($1,600.00) is appropriate and assessed pursuant to 876 IAC 4.33(6).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay healing period benefits from February 25, 2019, through February 27, 2019, at the weekly rate of six hundred ninety-five and 01/100 dollars ($695.01).

Defendants shall pay unto claimant seventy-five (75) weeks of permanent partial disability benefits commencing on April 23, 2020, at the weekly rate of six hundred ninety-five and 01/100 dollars ($695.01).

Defendants shall pay accrued weekly benefits in a lump sum together with interest payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent, as required by Iowa Code section 85.30.

Defendants shall provide and pay for causally connected future medical care for claimant's left upper extremity injury, if any.

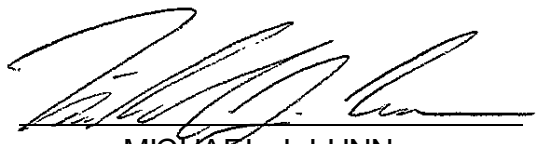
Defendants shall authorize Dr. Buckwalter as a treating physician.

Defendants shall pay the prior causally related medical expenses contained in Exhibits 8 and 9.

Defendants shall pay costs of one thousand eight-hundred four and 80/100 dollars ($1,804.80).

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 14th day of May, 2021.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Gary Nelson (via WCES)

Casey Steadman (via WCES)

Rachael Neff (via WCES)

Kent Smith (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.