BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARIA RIOS, Claimant, vs. JOHN DEERE WATERLOO WORKS, Employer, Self-Insured, Defendant.	:	File No. 5053450 REMAND DECISION Head Notes: 1402.30; 1701; 1802; 1804; 2501; 2701; 2907; 4000.2

STATEMENT OF THE CASE

This matter is before the Iowa Workers' Compensation Commissioner on remand from the Polk County District Court, following a decision dated March 25, 2020. The District Court's decision was not forwarded to this office until May of 2020.

This matter was initially heard on April 20, 2017, and May 1, 2017. An arbitration decision was filed October 26, 2017. That decision found, in part, that claimant failed to prove she was entitled to weekly benefits due to her work injury of November 15, 2013.

The arbitration decision was appealed within the agency. The appeal decision affirmed the arbitration decision.

A petition for judicial review was filed. The ruling in the petition for judicial review remanded the case back to this agency.

ISSUES

The ruling on the petition for judicial review primarily addressed the issue of causation. The ruling found the agency erred in not giving more weight to the causation opinions of claimant's experts. (Judicial Review, pages 11-22) The ruling found the agency erred in not properly considering lay testimony. (Judicial Review, pp. 22-27) The ruling also affirmed the agency's finding that claimant was not entitled to reimbursement from defendant for an independent medical evaluation (IME) under Iowa Code section 85.39. (Judicial Review, pp. 28-31)

As the ruling found the agency erred in failing to give sufficient weight to claimant's experts and lay witnesses regarding causation, all other issues, other than

the issue regarding the IME, will be addressed in this remand decision. As such, the issues in this remand decision are:

1. Did the stipulated November 15, 2013, injury cause claimant's disability?
2. Did the injury cause temporary disability?
3. The extent of claimant's entitlement to permanent partial disability benefits.
4. The commencement date of benefits.
5. Whether there is a causal connection between the injury and the claimed medical expenses.
6. Whether claimant is entitled to alternate medical care.
7. Credit.
8. Whether defendant is liable for penalty under Iowa Code section 86.13.
9. Costs.

FINDINGS OF FACT

The deputy workers' compensation commissioner who wrote the arbitration decision did a good job detailing the facts of this case. The findings of fact for the remand decision will attempt to highlight relevant facts in this matter.

Claimant was an engineer for John Deere Waterloo Works (Deere). Claimant began with Deere in 2005. (Exhibit A, p. 1; Transcript p. 213) Claimant was 40 years old at the time of the arbitration hearing. (JE2, p. 1)

Claimant's medical history before the November 15, 2013, date of injury is relevant.

In 2010, claimant fell down two flights of stairs. Records from this fall suggest claimant sustained a concussion from the fall. (Ex. 22) Claimant complained of sensitivity to light and headaches. (Ex. D, pp. 1-2)

Records indicate claimant had migraines off and on for approximately two years following this fall. (Ex. D, p. 3)

In 2011, claimant was seen in the emergency department for headaches and vertigo. (Ex. C, pp. 5-6)

From 2011 through 2013, claimant was treated approximately half a dozen times at Greenhill Medical Group in Waterloo, Iowa for headaches. (Ex. D)

In 2012, claimant was treated at the emergency department for Covenant Medical Center for depression and headaches. (Ex. C, p. 13)

In 2012, claimant was evaluated at the Mayo Clinic by David Ahlquist, M.D., for significant pain and blurred vision. Dr. Ahlquist found no organic explanation for claimant's symptoms and believed claimant had a psychological overlay and recommended a psychological evaluation. (Ex. E, pp. 1-3) Claimant was assessed as having an anxiety disorder. (Ex. E, p. 9)

In April of 2013, claimant treated for migraine headaches and vomiting at the emergency department of Allen Memorial Hospital. (Ex. F, p. 2)

In May of 2013, claimant returned to the emergency department at Allen Memorial Hospital for adverse effects of migraine medication. (Ex. F, pp. 7-8)

In May of 2013, claimant returned to Allen Memorial Emergency Department for complaints of headaches. Claimant reported light and sound sensitivity and was concerned whether she overdosed on her migraine medication. Claimant had blurred vision. (Ex. F, pp. 28-33) Claimant's husband told hospital staff that he and claimant were going through a separation and "every time this has happened" claimant had something emotional occurring. Claimant's husband believed the symptoms were caused by the separation. (Ex. F, p. 33)

Ryan Cawelti, testified he was claimant's supervisor beginning in August 2012. Mr. Cawelti testified that he and claimant's prior supervisor had discussed claimant's work performance for fiscal year 2012 and came to the conclusion that claimant's performance required improvement. Mr. Cawelti testified that in fiscal year 2013, claimant's work had not improved, but declined. He testified claimant was "not a desirable employee." Mr. Cawelti said he communicated concerns regarding claimant's declining performance in fiscal year 2013 and that claimant was performing substandard in her work. (Tr. pp. 191, 195-202, 205, 210, 212)

The findings of fact in the arbitration decision noted that claimant appeared at the hearing in a wheelchair. Claimant was sensitive to the light in the hearing. Claimant wore sunglasses during the hearing. Claimant struggled to respond to questions and appeared confused and dazed. Claimant vomited at hearing. At one point in the hearing, claimant lost control of her bladder. Claimant often gave unclear and unresponsive answers to questions. Given the above, claimant's testimony was found to be of little or no value. (Arbitration Decision, pp. 2-3)

On November 15, 2013, claimant fell while walking down stairs at John Deere. While claimant was walking downstairs from the second floor, another Deere engineer, Praveen Nagilla, was walking up the first floor stairs at the time of claimant's fall. Between the two sets of stairs was a landing. (Ex. 16)

In his deposition, Mr. Nagilla testified:

> I saw her---I was coming from—I was in [*sic*] the first floor and she was coming from [the] second floor. I saw her falling down from the second floor stairs halfway through, and I was in the middle of the first floor stairs. After she fell down, I asked her if she's okay and if she needs help. She said she's okay and she doesn't need any help. She got up and went in her direction, I went in mine.

(Ex. 16, p. 2)

Mr. Nagilla testified he did not see the beginning of claimant's fall. He said he heard a scream and then saw claimant falling. Mr. Nagilla testified he thought claimant fell at about the sixth or eighth step. He said claimant's right shoulder hit a handrail. He said claimant did a one and one-half roll down the steps and there was contact with her head. Mr. Nagilla testified claimant's body stopped on a landing between the two sets of stairs. (Ex. 16, pp. 2-15)

Mr. Nagilla testified he climbed a few steps to get to claimant. He did not believe claimant was unconscious. He said he held his hand out to help claimant get up and claimant took his hand and got to her feet. Mr. Nagilla asked claimant if she needed further help and claimant said no. He said he believed he was on the landing with claimant for 20 to 30 seconds. Claimant walked down the next flight of stairs. He watched her. Mr. Nagilla said claimant appeared fine and he continued on the stairs. (Ex. 16, pp. 7-10)

Luis Garcia is claimant's husband. Mr. Garcia testified claimant called him from work in the late afternoon on November 15, 2013. Mr. Garcia stated claimant told him she had fallen down stairs at work. Claimant told her husband that her head and her whole body was hurting. (Tr. pp. 118-119)

Mr. Garcia said that when he went to pick up claimant, claimant was dazed, not focused, and was not herself. Mr. Garcia said claimant did not want to go to the emergency room. He said claimant was dazed and she vomited several times. (Tr. pp. 120-122)

On Monday, November 18, 2013, claimant went to work and reported her injury to Deere Occupational Health. Claimant indicated she fell down stairs. Claimant indicated no loss of consciousness. Claimant indicated she had dizziness, headaches, and double vision. Claimant was assessed as having a mild concussion, multiple contusions, and muscle aches from the fall. (JE1, pp. 1-2)

On November 19, 2013, claimant called Deere Occupational Health and reported she had significant headaches, continued nausea, and did not feel well. Claimant was told to go to the emergency room for further evaluation. (Ex. 17, Deposition p. 44)

On November 19, 2013, claimant went to the Allen Memorial Emergency Department. Claimant indicated she fell down approximately 12 steps at work. Claimant indicated headaches, nausea, and vomiting. Claimant vomited while in the emergency department. (JE2, pp. 2-5) Claimant was assessed as having headaches, concussions, and multiple contusions. Clamant was admitted to the hospital for treatment for a post-concussive headache. A CT scan showed no evidence of intracranial abnormality. Claimant was negative for loss of consciousness. (JE2, pp. 10-11, 13)

Claimant was released from Allen on November 20, 2013. Claimant was assessed as having dizziness, post-concussive syndrome, headaches, and nausea. (JE2, pp. 1-6)

Claimant returned to Occupational Health Services on November 20, 2013. Claimant complained of pain in the thigh and a stiff neck. Claimant fell down stairs and had a loss of consciousness. Claimant was assessed as having a concussion and she was released to work on limited duty. (JE3, pp. 1-5)

Mr. Nagilla testified he did not believe claimant was unconscious. (Ex. 16, p. 10; Deposition p. 40) Claimant reported her injury to Deere Occupational Health on November 18, 2013, indicating no loss of consciousness. (JE1, pp. 1-2) Claimant was evaluated on at least two other occasions with no mention of loss of consciousness. (Ex. 17, Deposition p. 44; JE2, pp. 10-11)

Given this record, it is found that claimant did not have a loss of consciousness regarding her fall. Based upon the testimony of Mr. Nagilla, it is also found that claimant fell approximately six to eight steps from her fall at Deere. (Ex. 16, pp. 2-10, 12)

Claimant returned to the Deere clinic on November 22, 2013. Claimant indicated her headaches had improved, but riding to work made her nauseous. (Ex. 17, Deposition p. 46)

On November 25, 2013, claimant returned to the Deere clinic for a follow-up regarding her head injury. Claimant fell down several stairs but did not lose consciousness. Notes indicate claimant drove herself to work without problems. Claimant had mild nausea, but had not thrown up. Claimant had continued mild headaches. Claimant was told that if her headaches became more severe, she should see her primary care provider. Claimant was returned to work at regular duties. (JE1, pp. 3-4, 25)

On November 26, 2013, claimant was seen at the Deere clinic. Claimant was doing better. Claimant was getting relief by taking ibuprofen. (Ex. 17, p. 44)

Claimant returned to the Deere clinic on November 27, 2013. Claimant reported worsening headaches. (JE1, p. 26)

Claimant had four days off of work for Thanksgiving from November 28, 2013 through December 1, 2013. Claimant went to Chicago with her family for Thanksgiving during that period. (Ex. 17, p. 43; Tr. p. 126) Mr. Garcia testified at hearing that during Thanksgiving claimant was distant. He said claimant had to lean against walls to walk due to pain from bruising. (Tr. pp. 126-127)

Mr. Garcia testified that when the family returned from Chicago, claimant continued to struggle. He said claimant had difficulty with focus and had difficulty typing her emails. Mr. Garcia testified he proofread claimant's emails before they were sent. (Tr. p. 128)

On December 2, 2013, claimant returned to Deere Occupational Health. Claimant was still experiencing headaches. Claimant reported a good weekend with no problems while in Chicago. (Ex. 17, p. 43)

On December 2, 2013, claimant was given an employee review indicating her work performance required improvement. (Ex. 25, pp. 114-115)

As noted in the arbitration decision and in the ruling on petition for judicial review, there is a gap in the medical records from December 2, 2013 until January 4, 2014. Given this gap in the records, it is assumed claimant did not seek medical treatment during this period of time.

Deere closed its plants for two weeks during the holidays. During this time, claimant returned to Chicago with her family. Mr. Garcia testified that during the holiday break, claimant was dazed, could not balance, and had difficulty following conversations. (Tr. p. 130)

Vanessa Gomez testified she is a friend of claimant. Ms. Gomez said she saw claimant weekly between 2007 through the fall of 2013. Ms. Gomez and claimant were involved together with church activities. (Tr. p. 34) Ms. Gomez said before her fall, claimant was a leader at church and was a high-functioning person. (Tr. p. 36) Ms. Gomez said she visited claimant in December of 2013 after claimant was not in church for several Sundays. She said claimant was pale and tired during the visit. She said claimant seemed confused and had difficulty following conversations. (Tr. pp. 37-41) Ms. Gomez testified that since her fall, claimant's condition has progressively worsened. (Tr. pp. 44-45)

On January 4, 2014, claimant was assessed as having the flu with headaches. (JE10, pp. 1-2)

On January 14, 2014, claimant was evaluated by Santhi Ilankeeran, M.D. Claimant had a chronic history of migraines. Claimant had a fall on November 15, 2013. Claimant had trouble with focusing, thinking straight, and had "weird sensations" in her head. Claimant was recommended to have a neurological consult. (JE4, pp. 1-2)

On February 12, 2014, claimant was evaluated by Ameer Almullahassani, M.D., a neurologist. Claimant complained of headaches for the last ten months. Dr. Almullahassani reviewed claimant's CT scans. He assessed claimant as having a pseudotumor cerebri and removed 20 milliliters of fluid during a spinal tap. The spinal tap improved claimant's symptoms. (JE5, p. 1)

Claimant's last day at work with Deere was February 12, 2014. (Tr. p. 234)

On February 20, 2014, claimant called Dr. Almullahassani's office and complained of numbness in the hands, confusion, and no improvement with headaches. Claimant was given detailed instructions when to take migraine medication. (JE5, p. 3)

Claimant was evaluated by Meredith Christ, M.D., on February 21, 2014. Claimant had worsening chronic headaches since her fall at work. Claimant noted that when she woke up she felt comparatively well. After taking her medication, claimant had blurred vision and difficulty with concentration. Claimant was not able to drive. Dr. Christ did not believe claimant could return to work in her condition. She was recommended to see an ophthalmologist. (JE4, pp. 3-4)

Claimant completed a Deere form for disability on February 21, 2014. The form indicated claimant's last day of work was February 12, 2014. Claimant estimated she could return to work on April 24, 2014. Claimant indicated her impairments included a stiff neck, headaches, back pain, nausea, hand and leg numbness, and vision issues. (JE4, p. 5)

On February 21, 2014, Dr. Christ completed a statement of disability for claimant. Claimant's diagnosis was a pseudotumor cerebri. Dr. Christ noted claimant was unsteady and that claimant was unfocused. Claimant was limited to standing and walking ten minutes at a time. (JE1, pp. 6-7; JE4, pp. 3-4)

Claimant was approved for FMLA/Disability by Deere commencing on February 13, 2014. (Ex. 14, pp. 1-5)

Claimant was referred by Dr. Almullahassani to the Department of Neurology at Mayo Clinic in Minnesota. Claimant was evaluated by numerous specialists at Mayo between April of 2014 through November of 2016. (Ex. J7)

Claimant had an MRI of the brain on April 4, 2014, and an MR angiography with contrast. (Ex. J7, p. 13) Comparisons of the 2014 MRI with the 2012 MRI of the brain did not show any significant intracranial abnormalities. (JE7, p. 13) At the same visit, claimant also had a lumbar puncture for headache pain. The procedures decreased claimant's headaches, but caused claimant back pain. (JE7, p. 8)

Claimant went to the emergency room at Mayo on April 10, 2014, for back pain. Claimant was admitted as the doctors in the emergency room were unable to control her pain. (JE7, pp. 23-24)

On April 12, 2014, claimant was prescribed a walker to help with stability. (JE7, pp. 54-55)

In May of 2014, claimant had an MRI of the cervical spine and an MRI of the brain. The MRI of the brain showed two small, white lesions in the subcortical white matter of the right frontal lobe. (JE10, p. 12) The MRI of the cervical spine showed a central disc protrusion at the C3-4 levels. (JE10, p. 14)

In July of 2014, claimant was diagnosed with fibromyalgia due to her constant and chronic complaints of pain. (JE7, p. 79)

Claimant was evaluated by Farid Manshadi, M.D., on November 4, 2014. Claimant told Dr. Manshadi she fell down 18 steps and lost consciousness in the fall. Claimant had neck pain, back pain, headaches, numbness and tingling in all extremities. Dr. Manshadi assessed claimant as having chronic pain syndrome, fibromyalgia, numbness and tingling in all extremities, probably concussion. Dr. Manshadi recommended an MRI of the neck and an EMG. (JE9, pp. 4-5)

On November 14, 2014, claimant was taken by ambulance to the Covenant Medical Center in Waterloo, Iowa. Claimant had been found on the floor of her home by neighbors. Claimant was unable to move her legs or her arms. Claimant was unable to stand up or walk. Claimant had intense neck and head pain. Claimant appeared intoxicated. A drug screen was negative for drugs or alcohol. Claimant was admitted to the hospital. (JE10, pp. 18-34)

Claimant was sent to the University of Iowa Hospitals and Clinics (UIHC) on November 25, 2014, at the request of local physicians for further neuropsychological evaluation. Claimant had multiple complaints, including headaches, bilateral lower extremity weaknesses and paresthesia. Claimant was assessed by Vicki Kijewski, M.D., as having a conversion disorder. (JE12, pp. 1, 3, 5, 11, 17-18, 21) Claimant was also assessed as having a somatization disorder. (JE12, p. 16) Claimant was discharged from UIHC on November 26, 2014. (JE12, p. 3)

In a January 31, 2015, report, Karla Brennscheidt, Psy.D., gave her evaluation of claimant following a neuropsychological evaluation. Claimant had a long history of multiple health issues including fibromyalgia, migraines, difficulty with memory and attention following a fall down stairs at work. Ms. Brennscheidt indicated it was difficult to interpret tests given to claimant due to issues of validity of effort. Ms. Brennscheidt recommended treatment at Madonna Rehabilitation Center in Omaha, Nebraska as the facility had extensive experience with patients with somatization and conversion disorders. (JE14, pp. 6-11)

In a report dated May 29, 2015, Stewart Gitlow, M.D., a psychiatrist, gave his opinions of claimant's condition following a records review. Dr. Gitlow opined that

based upon his review of records, claimant had not established as being totally disabled secondary to a psychiatric condition of illness. (Ex. K, pp. 1-2)

In a report dated May 29, 2015, Leonid Topper, M.D., board certified in psychiatry and neurology, opined that claimant did not meet the definition under the long-term disability (LTD) plan as being disabled. As a result, claimant was not eligible for LTD benefits. Dr. Topper also opined from a neurological point of view, claimant was not prevented from performing her job or any other job without accommodation. (Ex. K, pp. 4-10)

On June 5, 2015, claimant was evaluated by Richard Roberts, Ph.D., a neuropsychologist. Claimant had complaints of short-term memory and cognitive changes after a closed head trauma at work. Claimant was tested to have mild decline in general IQ of at least ten IQ points. Claimant's attention and concentration deficits were consistent with a mild traumatic brain injury (TBI). (JE5, pp. 5-10)

Claimant returned to Dr. Manshadi on June 26, 2015. Dr. Manshadi opined that claimant had evidence of multiple symptoms as a result of a brain concussion at Deere. He assessed claimant as having post-concussive syndrome, chronic migraines, and fibromyalgia. He also assessed claimant as having dizziness, loss of balance, numbness and tingling in all extremities and cognitive changes. (JE9, p. 17)

On September 15, 2015, claimant underwent a psychiatric evaluation with Darko Zdilar, M.D., Ph.D. Claimant had issues with memory, focus, and sustaining conversation. Claimant was assessed as having a mood disorder, a cognitive disorder, post-concussive syndrome, migraines, lower back pain, and fibromyalgia. (JE13, pp. 10-17)

On October 27, 2015, claimant was evaluated by Billie Schultz, M.D., at the Mayo Clinic's brain rehabilitation program. Claimant indicated she fell down 20 flights of stairs with a loss of consciousness. Claimant had cognitive problems. Claimant was distracted and repeated herself. Claimant complained of photosensitivity, nausea, severe migraines, and vomiting. Claimant was assessed as having a probable TBI with loss of consciousness after falling down stairs. Dr. Schultz recommended claimant undergo occupational therapy and speech therapy. (JE7, pp. 186-188)

Approximately at the end of 2015, claimant began using a wheelchair. (JE9, pp. 20-24)

In an August 18, 2016, report, Robin Sassman, M.D., gave her opinions of claimant's condition following an independent medical evaluation (IME). Claimant stated she fell down 28 steps at Deere and lost consciousness. (Ex. 6, pp. 2-3) Claimant complained of headaches, sensitivity to noise and light, neck pain, back pain, weakness and numbness in all extremities. (Ex. 6, p. 25)

Dr. Sassman assessed claimant as having a TBI/post-concussive syndrome, lower back pain, cervical pain, and fibromyalgia. Dr. Sassman found all of claimant's various diagnoses were related to her fall at work. Claimant was not found to be at maximum medical improvement (MMI) for the TBI. Claimant was not found to be at MMI for the cervical condition. Dr. Sassman found claimant reached MMI for the back pain on June 21, 2016, and for the fibromyalgia on May 31, 2016.(Ex. 6, pp. 30-31)

Dr. Sassman found claimant had a combined 48 percent permanent impairment for the body as a whole for the TBI, the cervical spine, bladder issues, and for the right ankle. (Ex. 6, pp. 32-33)

Dr. Sassman opined that claimant could not return to work in her prior capacity and agreed that claimant was totally disabled from working. (Ex. 6, p. 33)

Dr. Sassman found claimant would require future medical treatment at a brain injury clinic, Botox injections, and evaluation with a pain management specialist. (Ex. 6, p. 35)

In an August 15, 2016, report, Dr. Manshadi gave his opinions of claimant following an IME. Dr. Manshadi opined claimant's fall at work was a substantial factor in causing her TBI and fibromyalgia. Dr. Manshadi based his opinion, in part, on a comparison of brain MRIs from before and after the fall, which he opined showed abnormalities in the right frontal lobe. He found claimant at MMI as of May 20, 2016. (Ex. 4)

In a September 7, 2016, report, James Gallagher, M.D., gave his opinions of claimant's condition following an independent psychiatric evaluation. Testing was performed with claimant's husband as claimant could not consistently or coherently respond to questions. Dr. Gallagher did not believe claimant had a conversion disorder. He did not believe claimant was malingering or feigning illness. (Ex. 5, pp. 1-11)

Dr. Gallagher opined it was probable claimant's injury at work caused a TBI. He opined that claimant's fall was a substantial factor in causing claimant to develop physical and psychological problems. He believed claimant was totally disabled. (Ex. 5, pp. 12-13)

In a September 30, 2016, response to questions from claimant's counsel, Dr. Roberts gave his opinions regarding claimant's condition. He opined that claimant was vocationally disabled due to cognitive and neuro behavioral problems as a result of her head trauma from the fall at work. Dr. Roberts did not believe claimant was malingering or faking her injury. (Ex. 3)

In an October 4, 2016, report, Richard Neiman, M.D., gave his opinions of claimant's condition following an IME. Dr. Neiman opined claimant had a closed head injury in November of 2013 from falling down stairs at work. He opined the closed head

injury caused an aggravation of pre-existing arthritis and development of fibromyalgia. (Ex. 7)

In a sworn statement, Dr. Schultz indicated she is the division chair for the brain injury program at Mayo Clinic. In that capacity, she treated claimant as a patient. Dr. Schultz opined it was not necessary to have loss of consciousness to have a brain injury. (Ex. 1, pp. 1-5)

Dr. Schultz assessed claimant as having a mild traumatic brain injury with subsequent cognitive difficulties. (Ex. 1, pp. 9-10) Dr. Schultz opined that symptoms from the brain injury included problems with cognitive processing, memory, dizziness, word finding, and chronic headaches. (Ex. 1, pp. 10-11)

Dr. Schultz opined claimant's treatment at Mayo was reasonable and necessary to treat her injury. She opined that given claimant's current symptoms, she could not live independently and could not perform activities of daily living (ADL) independently. (Ex. 1, pp. 16-17)

In a sworn statement, Kevin Fleming, M.D., indicated he was the head of the general medicine division of the Mayo Clinic and was the director of the fibromyalgia and chronic fatigue clinic. Dr. Fleming testified he reviewed claimant's medical records from the Mayo Clinic. He testified records showed claimant as being diagnosed as having fibromyalgia and chronic pain syndrome. He opined claimant's fall at work triggered or caused her fibromyalgia and chronic pain to become symptomatic. (Ex. 2, pp. 1-7)

Dr. Fleming opined that the treatment claimant received at Mayo was reasonable and necessary to treat her work injury. (Ex. 2, p. 12) Dr. Fleming opined it was unlikely claimant could return to work as an engineer. (Ex. 2, p. 15) He also opined that given claimant's current condition, it would be impossible for her to do work outside the home. (Ex. 2, p. 15)

In a December 6, 2016, report, Robert Jones, Ph.D., gave his opinions of claimant's condition following a records review and interview of claimant. Claimant's husband participated in the interview as claimant was unable to participate in formal testing. (Ex. L, pp. 1-4)

Dr. Jones opined claimant's current presentation would not be expected following a concussion or mild brain injury. Dr. Jones noted that generally, following a brain trauma, symptoms are at their worst and gradually improve. Claimant's records indicated that claimant had initial symptoms consistent with post-concussive syndrome, but her condition declined over time, which was "highly unusual for a mild concussion." He also noted a mild concussion is not associated with the symptoms of deterioration exhibited by claimant. (Ex. L, p. 4)

In a January 30, 2017, addendum, Dr. Jones indicated that he had reviewed data from Dr. Roberts' assessment of claimant. Dr. Jones indicated Dr. Roberts' assessment of claimant was incomplete, in part, as there was no measure of symptom validity. (Ex. L, p. 22)

Dr. Jones noted, "in sum, after examining the data from the assessment of Dr. Roberts, our impression continues to be that from a neuropsychological perspective, her current complaints and course would not be expected following a mild concussion, and that non-neurological aspects of her presentation, including possible psychological factors and effort, are likely to explain at least part of her current complaints." (Ex. L, p. 22)

In deposition, Dr. Jones agreed claimant's fall at work could have caused a TBI. He agreed that claimant had probably had a concussion from the fall. (Ex. 29, pp. 8, 10)

Dr. Jones agreed that the white matter lesions shown in claimant's 2014 MRI could be, but are not necessarily, objective evidence of changes to the brain. (Ex. 29, p. 13)

Dr. Jones agreed that if full recovery is not made to a TBI one and one-half years after the accident, it is unlikely a patient will have further improvement. (Ex. 29, p. 17) Dr. Jones indicated it is possible claimant's many symptoms could be due to a TBI, but indicated he had never seen a case like claimant's. (Ex. 29, p. 17) Dr. Jones indicated that patients with closed head injuries usually have worse symptoms after the fall, and gradually improve. He noted claimant was assessed as having a mild concussion a few days after the fall. He noted it was unusual claimant's condition would decline over time. (Ex. 29, pp. 18-19)

Dr. Jones opined he did not think claimant's cognitive deficit was due to a brain injury. (Ex. 29, p. 22) Dr. Jones opined it would be an unusual case for claimant to have difficulties with memory, cognitive, and mood due to her fall at work. (Ex. 29, p. 25)

In a December 8, 2016, report, written by claimant's counsel, Dr. Christ gave her opinions of claimant's condition. Dr. Christ indicated that claimant's fall at work caused a TBI, a central sensitization syndrome, fibromyalgia, chronic fatigue syndrome, a hypotonic neurogenic bladder, and aggravated her migraines. Dr. Christ indicated claimant needed assistance with all ADL's. Dr. Christ saw no evidence claimant was malingering. She opined claimant was disabled from work due to the November 15, 2013, fall at work. (Ex. 27)

Mr. Garcia testified that prior to her injury, claimant was very active in church. Claimant was also active in the 4-H club for her kids and ran the household. He testified that since the accident, claimant is not able to do any of those things. (Tr. pp. 108-109)

Mr. Garcia testified that Deere has never communicated why they have denied claimant's workers' compensation claim. (Tr. p. 149)

Juanna Andrade testified she knew claimant for approximately 10 to 12 years. Ms. Andrade stated she knew claimant through church. (Tr. p. 56) Ms. Andrade testified that prior to the accident, she socialized with claimant at least every other weekend. (Tr. p. 59) Ms. Andrade said that before the fall, claimant was very active. (Tr. p. 59) She said that before the fall, claimant took care of herself, and her children. She said claimant was very active in church and volunteered in the community. She said that since the fall, claimant is a different person and cannot even take care of herself. (Tr. pp. 58-60)

Claimant was paid salary continuation benefits during the period of time that she was off work at Deere. (Ex. 14, p. 5; Tr. p. 162) Claimant's salary continuation benefits ended February 12, 2015. (Ex. 14, p. 9) Claimant agreed defendant paid salary continuation disability benefits as detailed in Exhibit 14, pages 27-28. Claimant disputes defendant is entitled to a credit for these amounts paid. (Hearing Report)

Claimant was denied LTD benefits by Deere in a letter dated February 6, 2015. (Ex. 14, pp. 14-15)

CONCLUSIONS OF LAW

The first issue to be determined is did the stipulated work injury cause claimant's disability.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The

expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

A number of experts have opined regarding the causation of claimant's disability. Dr. Schultz is a treating psychiatrist from the Mayo Clinic. Dr. Schultz opined claimant's fall at work caused a mild TBI, which led to claimant having cognitive difficulties. Dr. Schultz indicated claimant's symptoms from the TBI include memory problems, dizziness, word finding, and chronic headaches. Dr. Schultz also opined it was not necessary to have a loss of consciousness to have a brain injury. (Ex. 1)

Dr. Fleming is a physician with the Mayo Clinic who treated claimant for fibromyalgia. Dr. Fleming opined that claimant's fall at work caused claimant's fibromyalgia and chronic pain syndrome to become symptomatic. (Ex. 2)

Dr. Roberts was a treating neuropsychologist. He opined claimant was vocationally disabled due to cognitive and neural behavioral problems as a result of head trauma caused by a fall at work. (Ex. 3)

Dr. Gallagher specializes in neurology and psychiatry. He evaluated claimant once for an IME. Dr. Gallagher opined claimant's fall at work probably caused the TBI. He also opined claimant's fall was a substantial factor in developing claimant's physical and psychological problems. (Ex. 15, pp. 12-13)

Dr. Manshadi is a treating physiatrist. He opined claimant's fall at work was a substantial factor in causing claimant's TBI and fibromyalgia. (Ex. 4)

Dr. Sassman evaluated claimant once for an IME. Dr. Sassman opined that claimant's various diagnoses were all caused by her fall at work. (Ex. 6, pp. 30-31)

Dr. Neiman evaluated claimant once for an IME. He opined that claimant's fall down the stairs at work caused her closed head injury, this in turn caused claimant's fibromyalgia. (Ex. 7)

Dr. Christ is a primary care physician and treated claimant for an extended period of time. She indicated claimant's fall at work caused her TBI and claimant's other various diagnoses. (Ex. 27)

Dr. Kijewski treated claimant over the course of two days in November of 2014 at the UIHC hospitals. Dr. Kijewski assessed claimant as having a conversion disorder. Claimant was also assessed as having a somatization disorder. (JE12, p. 1, 3, 5, 11, 17-18, 21)

Claimant was evaluated by Dr. Brennscheidt, for a neuropsychological exam. Her findings indicated claimant gave invalid effort. She suggested claimant be sent to a facility for the treatment of somatization or conversion disorders. (JE14, pp. 6-11)

In a records review, Dr. Gitlow found claimant did not qualify for LTD benefits. Dr. Gitlow did not believe claimant had a medical condition that would render claimant totally impaired. (Ex. K, pp. 1-3)

In a similar records review, Dr. Topper also found claimant had a conversion disorder. (Ex. K, p. 4)

Dr. Jones evaluated claimant once for a neuropsychological exam. Dr. Jones opined he did not believe claimant's medical presentation could be expected following a brain trauma. (Ex. L, p. 4) Dr. Jones noted that patients with brain injuries usually have the worst symptoms after an incident, and improve, rather than deteriorate, over time. (Ex. 29, pp. 18-19)

At least a dozen experts have given opinions regarding the cause of claimant's multiple symptoms. The judicial review decision indicates that opinions that claimant's fall at work caused her fibromyalgia and sensitization syndrome were unrebutted. (Judicial Review Ruling, p. 17) The ruling also indicates that absent testimony that claimant's other stressors caused her multiple symptoms, the causes identified by claimant's expert must carry the day. (Judicial Review Ruling, p. 22)

This is a complicated case. Claimant has a history of seeking treatment for symptoms when she has family or job stress. At least three experts in this case have suggested or assessed claimant as having a conversion or somatic disorder. Dr. Jones indicated patients with brain injuries usually have their worst symptoms following the time of injury and gradually improve over time. After the injury, claimant was still working at Deere and was still able to walk. By 2015, claimant was using a wheelchair. By 2016, claimant was unable to answer questions. (Ex. L, pp. 3-4) The record indicates claimant had no medical treatment for her fall at work for approximately one month, from December 2, 2013, through January 4, 2014. No expert has adequately explained why, if claimant's multiple conditions are due to a TBI, she has deteriorated, instead of improved since the date of injury.

However, eight experts for claimant opined claimant's fall at work caused her various symptoms. Of those experts, five actively treated claimant. Given this record, despite the concerns with discrepancies, as noted above, and discrepancies regarding the number of stairs fallen, and whether claimant lost consciousness at the time of the injury, claimant has carried her burden of proof that her fall at work caused her numerous conditions.

The next issue to be determined is the extent of claimant's entitlement to temporary benefits.

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

Claimant's last day at work at Deere was February 12, 2014. (Tr. p. 234) Experts have given various dates of MMI. Dr. Schultz found claimant to be at MMI as of November 1, 2016. (Ex. 1, pp. 16-17) Dr. Sassman found numerous dates of MMI for claimant's various ailments, but opined that at the time of her report, claimant was not at MMI for the TBI. (Ex. 6, p. 31) Dr. Roberts opined that claimant was unlikely to improve as of September 30, 2016. (Ex. 3, p. 2) Dr. Manshadi found claimant to be at MMI as of May 20, 2016. (Ex. 4, p. 9)

Dr. Fleming, the specialist treating claimant for fibromyalgia, gave no opinion regarding MMI. Dr. Sassman opined that claimant would not be at MMI until she treated at the Mayo brain injury program. (Ex. 1, p. 31) The record suggests the majority of claimant's symptoms stem from her TBI. Dr. Schultz found claimant at MMI as of November 1, 2016. Given this record, claimant is due temporary benefits from February 13, 2014, through November 1, 2016.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

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

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

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

Since 2015, claimant has been using a wheelchair. The record indicates claimant was unable to coherently testify at hearing. Claimant's husband testified he is responsible for most of claimant's ADL's.

Dr. Schultz opined that claimant is totally disabled. (Ex. 1, p. 16) Dr. Fleming testified that as of November 1, 2016, claimant was unemployable. (Ex. 2, p. 15) Dr. Roberts opined that claimant is vocationally disabled. (Ex. 3, p. 1) Dr. Manshadi opined that claimant was totally disabled. (Ex. 4, p. 11) Dr. Gallagher opined that claimant was totally disabled. (Ex. 5, p. 13) Dr. Sassman found claimant was totally disabled. (Ex. 6, p. 33) Dr. Neiman opined claimant was totally impaired. (Ex. 7, p. 4) Dr. Christ opined that claimant was totally disabled. (Ex. 27, p. 5) There is no evidence in the record that claimant could return to work at Deere or any other occupation.

Eight experts have opined claimant is either totally or vocationally disabled. There is no evidence contradicting these opinions. Given this record, claimant is found to be permanently and totally disabled.

Claimant is also found to be an odd-lot employee, given the factors as detailed above, and because defendant has offered no evidence of the availability of any substantial employment for claimant.

The next issue to be determined is whether there is a causal connection between the injury and the claimed medical expenses.

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 16, 1975).

As detailed, claimant's numerous conditions have been found to have been causally connected to her fall at work. Defendant stipulated in the hearing report that the medical fees charged were fair and reasonable. Defendant also stipulated in the hearing report that the listed expenses are causally connected to the medical conditions which the injury is based upon. Given this record, defendant is liable for the medical billings attached to the hearing report. Defendant is also liable for any medical mileage incurred by claimant.

The next issue to be determined is whether claimant is entitled to alternate medical care.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be

> reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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).

Claimant has requested defendant provide ongoing care for claimant. There is no evidence in the record that defendant has complied with that request. (Ex. 23, pp. 5-6)

Dr. Schultz recommended claimant have medical care and treatment for a TBI. (Ex. 2, pp. 12-14) Dr. Manshadi recommended claimant have care for her TBI and fibromyalgia. (Ex. 4, p. 12) In general, Dr. Christ suggests claimant needs aid or assistance for ADL's and help with catheterization. (Ex. 27, p. 3) Drs. Christ, Sassman, and Manshadi all opine that claimant needs medical care as recommended by the UIHC. (Ex. 27, p. 2; Ex. 4, p. 12; Ex. 6, p. 34) Dr. Sassman opined that claimant requires a commode, drop-arm bariatric chair, and a hospital bed. (Ex. 6, p. 34)

Dr. Christ opined that claimant also requires occupational therapy and physical therapy. (Ex. 27, p. 3)

There is no evidence defendant has provided any of the treatments for claimant that have been requested. The record indicates defendant has not communicated why the detailed recommended care for claimant has not been provided. As defendant has failed to properly offer claimant medical care, claimant has carried her burden of proof that she is entitled to the requested medical care. Defendant shall authorize and pay for the following medical care for claimant:

1. Medical care and treatment for claimant's TBI and fibromyalgia;

2. Home health care necessary for claimant's ADL and catheterization;

3. A power wheelchair, as described above;

4. Occupational and physical therapy;

5. A commode, drop-arm bariatric chair, and hospital bed.

The next issue to be determined is whether defendant is due a credit under Iowa Code section 85.38(2).

In order to prove entitlement to a credit, defendant must prove the following:

1) That benefits were received under a group plan;

2) Contribution to that plan was made by the employer;

3) The benefits should not have been paid if workers' compensation benefits were received; and

4) The amounts to be credited or deducted from the payments made or owed under chapter 85. Greenlee v. Cedar Falls Community Schools, File No. 934910 (App., December 27, 1993); McKernan v. Morningside College, File No. 955069 (Arb., February 22, 1993).

Defendant's burden to prove entitlement to a credit under section 85.38(2) was affirmed in SKW Biosystems/Degussa Health and Nutrition v. Wolf, No. 5-973/05-1214 (Iowa Ct. App. June 28, 2006) (unpublished 723 N.W. 448)(table). In that case, the court held that SKW did not present the short or long-term disability policies and failed to present sufficient evidence to show that it was entitled to a credit. See also Albertsen v. Benco Manufacturing, File No. 5010764 (App., July 27, 2007); Damiano v. Universal Gym, File No. 1071309 (App., January 17, 2008); Miller v. Maintainer Corp., File No. 5020192 (App., December 2, 2009).

The record in the hearing report indicates defendant has met all four criteria detailed in the Greenlee opinion. (Ex. 14, pp. 29-34) Given this, defendant is due a credit for benefits paid under Iowa Code section 85.38(2) and as detailed in Exhibit 14, pages 27-28.

The next issue to be determined is penalty.

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).

There is no evidence in the record that defendant conveyed the basis for the denial of benefits in this case. Given this, a penalty is appropriate. As detailed above, there are a number of discrepancies in this case concerning causation of claimant's disability. For that reason, a ten percent penalty is appropriate.

Claimant was due temporary benefits from February 13, 2014, through November 1, 2016. This is approximately 141 weeks. Defendant is liable for $15,668.91 for penalty for failure to convey the basis for the denial of temporary benefits. (141 weeks x $1,111.27 x 10 percent)

Claimant was due permanent total disability benefits commencing on November 2, 2016. Hearing for this matter was completed on May 1, 2017. This is a

period of approximately 25 weeks. Defendant is liable for $2,778.18 in penalty for failure to relay the rationale for the denial of permanent partial disability benefits. (25 weeks x $1,111.27 x 10 percent)

The final issue to be determined is costs. Costs are awarded at the discretion of this agency. Claimant has prevailed on most of her issues in this matter. Claimant's evidence of costs is attached to the hearing report. Claimant is awarded the following costs:

1. One hundred and 00/100 dollars ($100.00) for the filing fee;

2. Three thousand seven hundred and 00/100 dollars ($3,700.00) for the costs associated with Dr. Manshadi's preparation and report under rule 876 IAC 4.33(6);

3. Three thousand five hundred and 00/100 dollars ($3,500.00) for the preparation by Dr. Gallagher of his report under rule 876 IAC 4.33(6);

4. Thirty-five and 20/100 dollars ($35.20) for a copy of claimant's deposition under rule 876 IAC 4.33(2);

5. Seven hundred twenty-eight and 00/100 dollars ($728.00) for transcripts and costs associated with the depositions of Mr. Nagilla and Nurse Ozga under rule 876 IAC 4.33(2);

6. Four hundred sixty-two and 50/100 dollars ($462.50) for transcripts and costs of Dr. Jones' deposition under rule 876 IAC 4.33(2);

7. One hundred fifty and 00/100 dollars ($150.00) for the costs of Dr. Jones' deposition testimony under rule 876 IAC 4.33(2) and Iowa Code section 622.72.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant healing period benefits from February 13, 2014, through November 1, 2016, at the rate of one thousand one hundred eleven and 27/100 dollars ($1,111.27) per week.

Defendant shall pay claimant permanent total disability benefits commencing on November 2, 2016, and shall continue until claimant is no longer permanently and totally disabled.

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

lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendant shall pay claimant's medical bills as detailed above.

Defendant shall authorize and pay for the requested alternate medical care as detailed above.

Defendant shall receive a credit for benefits paid under Iowa Code section 85.38(2) as detailed above.

Defendant shall pay claimant a penalty of fifteen thousand six hundred sixty-eight and 91/100 dollars ($15,668.91) for failure to convey the basis for the denial of temporary disability benefits.

Defendant shall pay claimant a penalty of two thousand seven hundred seventy-eight and 18/100 dollars ($2,778.18) for failure to convey the basis for the denial of permanent disability benefits.

Defendant shall pay costs as detailed above.

Defendant shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed on this 2nd day of November, 2020.

Joseph S. Cortese II

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

The parties have been served, as follows:

Saffin Parrish-Sams (via WCES)

James F. Kalkhoff (via WCES)