

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEANNA DOTY,

Claimant,

vs.

POLARIS INDUSTRIES, INC.,

Employer,  
Self-Insured,  
Defendant.

File No. 5044352

A P P E A L  
D E C I S I O N

Head Note Nos.: 1801, 1803, 2500,  
4000

**FILED**

OCT 29 2015

WORKERS' COMPENSATION

Defendant Polaris Industries, Inc., self-insured employer, appeals from an arbitration decision filed October 2, 2014. The case was heard on July 2, 2014, and it was considered fully submitted on July 31, 2014, in front of Deputy Workers' Compensation Commissioner Michelle A. McGovern. On September 11, 2014, this matter was delegated to Deputy Workers' Compensation Commissioner Jennifer Gerrish-Lampe, who then issued the arbitration decision on October 2, 2014.

The deputy commissioner determined claimant is entitled to temporary total disability benefits from May 9, 2013, through September 20, 2013, with interest. The deputy commissioner determined defendant shall be given credit for short-term disability payments received by claimant from May 9, 2013, through September 20, 2013. The deputy commissioner determined claimant is entitled to penalty benefits in the amount of 25 percent (25%) for defendant's failure to pay temporary total disability benefits owed from May 9, 2013, through September 20, 2013. The deputy commissioner determined claimant is entitled to reimbursement of medical expenses in the amount of \$377.00 incurred by claimant, which expenses are an attachment to the hearing report. The deputy commissioner also awarded claimant the cost of the independent medical evaluation (IME) performed by Marc Hines, M.D. The deputy commissioner determined it was premature to award permanency benefits because claimant is not at MMI.

In a Motion for Order Nunc Pro Tunc filed on October 23, 2014, claimant requested that the arbitration decision be amended to order defendant to authorize the right shoulder surgery recommended by Jason Hough, D.O., claimant's treating orthopedic surgeon. In the Order Nunc Pro Tunc filed on October 29, 2014, the deputy commissioner stated the following, in pertinent part:

The first request the claimant makes is for an order to direct the defendant to provide medical care. In reviewing the case file, there is no direct request for this. There is no checkmark beside the alternate care issue on

the hearing report. In the recitation of the issues to be decided in the case, the deputy identified payment of medical expenses and repayment of an independent medical evaluation. (Transcript page 8) When asked if there were any other issues, the counsel replied no. (Tr. p. 9) The request for Nunc Pro Tunc relief is not only improper, but the issue regarding future medical care, other than what the defendants are obligated by law to do, was not presented to the deputy for hearing. The request for Nunc Pro Tunc relief as it relates to ordering specific medical care is denied.

(Order Nunc Pro Tunc, page 1)

On appeal, defendant asserts the deputy commissioner erred in awarding temporary total disability benefits and in awarding payment of medical expenses in the amount of \$377.00 incurred by claimant. Defendant also asserts the deputy commissioner erred in awarding penalty benefits.

On cross-appeal, claimant asserts the deputy commissioner erred in declining to award permanent disability benefits and in declining to order defendant to authorize the surgery recommended by Dr. Hough. Claimant asserts the award of penalty benefits should be affirmed. Claimant also asserts the award of \$377.00 for medical expenses incurred by claimant should be affirmed.

#### ISSUES ON APPEAL

1. Whether claimant is entitled to temporary total disability benefits from May 9, 2013, through September 20, 2013, for the work injury of October 12, 2012.
2. Whether claimant is entitled to reimbursement of medical expenses in the amount of \$377.00 incurred by claimant for the work injury of October 12, 2012.
3. Whether claimant is entitled to penalty benefits for defendant's failure to pay temporary total disability benefits from May 9, 2013, through September 20, 2013, for the work injury of October 12, 2012.
4. Whether claimant is entitled to permanency benefits for the work injury of October 12, 2012.
5. Whether defendant should be ordered to authorize the surgery recommended by Dr. Hough.

Having performed a de novo review of the evidentiary record and the detailed arguments of the parties, I affirm the deputy commissioner's finding that the medical opinions of Jason Hough, D.O., and Marc Hines, M.D., deserve greater weight than the medical opinions of Jerry Blow, M.D. I affirm the deputy commissioner's findings with

regard to issues 1, 2, 4 and 5. I also affirm the deputy commissioner's finding with regard to issue 3, the award of penalty benefits, but for a different reason than that given by the deputy commissioner.

Those portions of the arbitration decision pertaining to issues not raised on appeal are adopted as part of this appeal decision.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(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).

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).

The parties agree claimant sustained an injury to her right shoulder on October 12, 2012. Defendant, relying on the opinions of Dr. Blow, argues that claimant sustained only a temporary aggravation of a degenerative right shoulder condition and

that any ongoing problems are caused by a pre-existing degenerative condition rather than by the work-related injury. (Exhibit A, pages 14-16)

I agree with the deputy commissioner that Dr. Blow's opinions are not convincing. Claimant was pain free and working without restrictions when she was hired by defendant. (Tr. pp.15-16, 37-38) After October 12, 2012, claimant experienced ongoing shoulder pain that has been continuous. (Tr. p. 17-19) While claimant's radiography results do show degeneration, there is no dispute she was pain free prior to the fall of 2012. Dr. Blow did not point to another inciting event, but instead opines that claimant would have had pain regardless of her work. (Ex. A, p. 15) He bases this on some perceived inconsistencies claimant allegedly exhibited during one physical therapy appointment and that claimant did not improve despite being off work. (Ex. A, pp. 16-17)

Dr. Blow does not explain why he set claimant's MMI date in June of 2013 when the therapist's examinations recorded reduced range of motion, pain and impingement syndrome and were the same as his own. Claimant's pre-injury baseline was no pain and full range of motion. At no time did claimant return to her pre-injury baseline and even Dr. Blow acknowledges this, preferring however to attribute claimant's continuing symptoms on preexisting degeneration. (Ex. A, pp. 14-16)

Claimant had a visible change in her ability to perform the essential functions of her job. The onsite occupational therapist, Matthew Jager, noted that claimant was "consistently demonstrating difficulty raising her R arm to or above shoulder level." (Ex. 1, p. 1) According to her supervisor, claimant was in good physical condition prior to the fall of 2012 and had not complained about pain or evidenced any reduced ability to do her job. (Ex. 7, p. 5)

Dr. Hough, a treating physician authorized by defendant, has consistently maintained that claimant sustained a work-related injury to her right shoulder which requires surgical repair. Dr. Hough has not wavered from that position in nearly two years, even in the face of criticism from a colleague. (Ex. 2, pp. 6, 8-9, 11-12, 15-16, 18-20)

Claimant testified without challenge or rebuttal that she currently is in regular pain, must seek assistance from co-workers to reach over her head, and she takes Aleve and Hydrocodone on a daily basis. (Tr. pp. 23-24, 29-30, 35)

I affirm the deputy commissioner's determination that claimant's physical condition as recorded by Dr. Hough and Dr. Hines, along with the testimony of claimant's supervisor, the notes of the company occupational therapist, claimant's un rebutted and consistent testimony, all buttress the opinions of Dr. Hough and Dr. Hines rather than that of Dr. Blow. I therefore find Dr. Hough's opinion regarding causation of claimant's right shoulder condition, and claimant's need for surgery as a result of the work injury, to be convincing.

The first issue to determine in this appeal is whether claimant is entitled to temporary total disability benefits from May 9, 2013, through September 20, 2013.

On February 26, 2013, claimant was given work restrictions of no lifting greater than 20 pounds, no work above the shoulder level, and no prolonged or heavy push/pull. (Ex. 2, p. 4) Claimant's restrictions were accommodated as she continued to work. (Tr. p. 68-69)

Starting April 8, 2013, claimant stopped working and she didn't return to work until September 20, 2013. (Ex. 3, p. 1) On April 11 and 16, 2013, Penny Ashland, RN, defendant's plant nurse, notified claimant there was work available for her if she came into work. (Ex. 3, pp. 2-3) Claimant did not want to return to work as she was waiting on her FMLA. (Ex. 3, p. 2) Claimant affirmed that this notation by Ms. Ashland was correct. (Tr. p. 48)

On May 1, 2013, Dr. Hough signed a physician's statement for short-term disability with the work restrictions that claimant was given on February 26, 2013. (Ex. 2, p. 9) Those were work restrictions defendant could and did accommodate. (Tr. p. 68-69)

On May 9, 2013, Dr. Hough signed a note that claimant should be off work until surgery was approved. (Ex. 2, p. 11)

Claimant was told on August 22, 2013, that she would not be allowed to return to work without a written release from her doctor. (Ex. 3, p. 2) On August 23, 2013, Dr. Hough issued a work release for desk duty and claimant was told she could not be accommodated. (Ex. 3, p. 2) Claimant received a broader release from Dr. Hough on September 20, 2013, and claimant was then allowed to return to work. (Ex. 3, p. 2)

Based on the foregoing evidence, the deputy commissioner determined claimant is not entitled to temporary total disability benefits from April 10, 2013, through May 8, 2013, but is entitled to temporary total disability benefits from May 9, 2013, through September 20, 2013. I affirm the deputy commissioner's determination that claimant is entitled to temporary total disability benefits from May 9, 2013, through September 20, 2013. Because claimant has worked consistently for defendant after September 20, 2013, she is not entitled to temporary benefits after that date.

The second issue to determine is whether claimant is entitled to reimbursement of medical expenses in the amount of \$377.00.

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).

Because it is determined claimant's ongoing shoulder problems arise out of and in the course of her employment, it is appropriate to award the medical expenses claimed in the attachment to the hearing report in the amount of \$377.00 because those are charges from Dr. Hough, an authorized physician.

The third issue to address in this appeal decision is whether claimant is entitled to Section 86.13 penalties for defendant's failure to pay temporary total disability benefits from May 9, 2013, through September 20, 2013. The deputy commissioner awarded penalty benefits of 25 percent for defendant's failure to pay temporary benefits for that period of time.

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

Iowa Code section 85.33(3) provides:

If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits .

Between April 10, 2013, and May 8, 2013, claimant refused to work light duty offered by defendant which was within her restrictions. Temporary benefits were properly suspended for that period of time.

From May 9, 2013, through September 20, 2013, claimant was off work pursuant to restrictions from Dr. Hough which defendant was unable to accommodate. As justification for its failure to pay benefits during this period, defendant relies on the report of Jerry Blow, M.D., for his evaluation of claimant. (Ex. A) In addition to

evaluating claimant on June 28, 2013, Dr. Blow reviewed claimant's medical records and diagnostic films from October 4, 2012, through June 27, 2013. (Ex. A, pp. 5-11) Dr. Blow concluded that claimant's work injury of October 12, 2012, caused a temporary aggravation of a preexisting degenerative condition in claimant's right shoulder. (Ex. A, p. 14) Dr. Blow concluded claimant reached MMI for the work injury as of June 27, 2013. (Ex. A, p. 14) Dr. Blow disagreed with Dr. Hough's opinion that claimant's continuing symptoms were from the work injury. Dr. Blow determined claimant's ongoing symptoms were from a preexisting degenerative condition. (Ex. A, pp. 15-16)

Iowa Code section 86.13(4)(a) provides in relevant portion:

If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse . . . 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.

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."

Whether the issue is fairly debatable turns on whether there is a factual dispute that, if resolved in favor of the employer would have supported the employer's denial of compensability; the employer need not actually prevail on the dispute so long as it was fairly debatable. Keystone Nursing Care Center v. Craddock, 705 N.W.2d 299, 307-308 (Iowa 2005); Gilbert v. USF Holland, Inc., 637 N.W.2d 194, 199-201 (Iowa 2001)

While I agree with the deputy commissioner's finding that the opinions of Dr. Hough and Dr. Hines regarding causation should be given greater weight and that claimant is therefore entitled to temporary total disability benefits for the period of May 9, 2013, through, September 20, 2013, I find that Dr. Blow's report makes the issue of whether claimant is entitled to those benefits "fairly debatable" such that defendant had a reasonable basis at the time for not paying the temporary total disability benefits.

Dr. Blow conducted a thorough evaluation of claimant on July 26, 2013. Dr. Blow thoroughly reviewed and summarized claimant's medical records and diagnostic films

for the period of October 4, 2012, through June 27, 2013. Dr. Blow carefully and thoroughly analyzed all of the questions posed to him by defense counsel. While I disagree entirely with Dr. Blow's opinions, I find that those opinions have a reasonable and rational basis that made the issue of medical causation "fairly debatable."

However, the analysis does not stop there. Iowa Code sections 86.13(4)(b) and (c) state:

- b. The workers' compensation commissioner shall award [penalty] benefits under this subsection if the commissioner finds both of the following facts:
  - (1) The employee has demonstrated a denial, delay in payment, or termination of benefits.
  - (2) The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.
- c. In order to be considered a reasonable or probable cause or excuse under paragraph "b", an excuse shall satisfy all of the following criteria:
  - (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
  - (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.
  - (3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

In this case, claimant satisfied the requirements of Iowa Code section 86.13(4)(b)(1) by proving entitlement to temporary total disability benefits from May 9, 2013, through September 20, 2013, and by then proving defendant denied payment of those benefits.

In City of Davenport v. Newcomb, 820 N.W.2d 882 (Iowa App. 2012), the Iowa Court of Appeals stated:



This code section [86.13] "provides a statutory remedy for unreasonably delayed or withheld workers' compensation benefits." *Christensen v. Snap-On Tools Corp.*, 554 N.W.2d 254, 260 (Iowa 1996) The claimant must first establish there was a delay in the commencement or termination of benefits. *Blasnitz*, 742 N.W.2d at 81. The burden then shifts to the insurer-or in this case the City-to prove a reasonable cause or excuse for the delay or denial. *Id.*

820 N.W.2d at 893 (statutory citation and emphasis added)

Defendant satisfied its burden of proof under of Iowa Code sections 86.13(4)(c)(1) and (2). The evaluation by Dr. Blow requested by defendant constituted a reasonable investigation to determine whether defendants actually had a basis to deny payment of temporary total disability benefits from May 9, 2013, through September 20, 2013. It clearly appears Dr. Blow's report was the basis upon which defendant relied to deny payment of the temporary total disability benefits.

However, there is no evidence anywhere in the record that defendant conveyed to claimant, or to claimant's counsel, that Dr. Blow's report was the basis for refusing to pay the temporary total disability benefits. Therefore, pursuant to Iowa Code section 86.13(4)(c)(3), because defendant had the burden of proof on this particular point, and defendant failed to satisfy that burden of proof, I affirm the deputy commissioner's award of penalty benefits of 25 percent of the temporary total disability benefits owed to claimant from May 9, 2013, through September 20, 2013, with credit for the short term disability benefits claimant received during that period.

The fourth issue for consideration is whether claimant is entitled to permanency benefits for the work injury of October 12, 2012.

The Iowa Supreme Court explained when an award of permanent disability can be made. The Court stated:

[Re]view of temporary and permanent disability awards reveals that a fundamental component of a permanent impairment is stabilization of the condition or at least a finding that the condition is "not likely to remit in the future despite medical treatment." American Medical Association, *Guides to Evaluation of Permanent Impairment* 27 (6th ed. 2008). In other words, stabilization is the event that allows a physician to make the determination that a particular medical condition is permanent. *Municipality of Anchorage v. Leigh*, 823 P.2d 1241, 1242 n.3 (Alaska 1992) ("A physician can determine ... whether or not a particular medical condition has become permanent because it is static or well-stabilized." (quoting American Medical Association, *Guides to Evaluation of Permanent Impairment*, Preface at x (2d ed. 1984))).

The symmetry of the process reveals that a claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved. See 4 Larson § 80.03D[3] n. 10, at D80-43 to D80-48.2 (recognizing cases generally holding it is premature to award permanent impairment benefits when medical stabilization has not yet been reached). Until that time, only temporary benefits are available. A finding by the commissioner that the injuries sustained by a worker produced a permanent impairment is only relevant in determining an award for permanent disability benefits. Thus, it is only necessary for the commissioner to determine the existence of a permanent impairment once a claim for permanent disability benefits is ripe.

We acknowledge it is possible, in many cases, for the commissioner to decide the existence of a permanent impairment, as the commissioner did in this case, in advance of maximum medical improvement and before the claim for permanent disability benefits is ripe for adjudication. Yet, this approach should be limited to those instances when the period of recovery and stabilization will only produce evidence relevant to the degree of permanent disability. When the period of recovery and stabilization will provide relevant evidence to make a full and fair assessment of conflicting medical opinions over the existence of a permanent impairment, the decision must not be made until maximum medical improvement has occurred. If the commissioner decides the issue of permanency before an award is ripe, the commissioner risks making a final decision that could be undermined by later relevant evidence. Thus, a procedure that allows for the adjudication of issues before the relevant evidence is known could undermine the entire system of workers' compensation by creating the risk of either denying permanent disability benefits to a deserving claimant or requiring an employer to pay permanent disability benefits to a worker who did not suffer a permanent impairment.

Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 200-201 (Iowa 2010).

While there is substantial evidence to support a finding that claimant has sustained a permanent injury arising out of and in the course of her employment with defendant, the extent of that injury is unknown at this time. Claimant is in need of surgery for her right shoulder injury of October 12, 2012. (Ex. 2, pp. 5, 8, 12, 15-16, 18-19) Dr. Hough has determined that the surgery is necessitated by the work injury. (Ex. 2, pp. 8, 12, 15-16, 18) Dr. Hough has indicated he expects that surgery to improve claimant's range of motion and reduce her pain. (Ex. 2, pp. 5, 15, 18) Dr. Hines agrees that claimant is not at MMI (Ex. 6, p. 5) and a fair reading of Dr. Blow's report indicates claimant has ongoing problems with her right shoulder. (Ex. A, p. 15) I, therefore, affirm the deputy commissioner's finding that claimant is not at MMI and a ruling on permanent disability would be premature. Because claimant has been back at work

continuously since September 2013, (Tr. pp. 28-30, 32) she is not entitled to receive temporary benefits at this time.

The final issue to be determined in this appeal is whether defendant should be ordered to authorize the surgery recommended by Dr. Hough.

At hearing, claimant testified she wants to have the surgery recommended by Dr. Hough. (Tr. pp. 39-40) In her post-hearing brief, claimant requested an order for the surgery. (Claimant's Post-Hearing Brief, p. 9) In the arbitration decision, the deputy commissioner did not order the surgery. Claimant then filed a Motion for Order Nunc Pro Tunc requesting that the arbitration decision be amended to order defendant to authorize the surgery. In the Order Nunc Pro Tunc, the deputy commissioner denied the request because the request for an order for the surgery was not included in the issues listed in the hearing report. Rule 876 IAC 4.19(3)(f) states:

Counsel and pro se litigants shall prepare a hearing report that defines the claims, defenses, and issues that are to be submitted to the deputy commissioner who presides at the hearing. The hearing report shall be signed by all counsel of record and pro se litigants and submitted to the deputy when the hearing commences.

Claimant did not indicate future medical treatment was an issue in the hearing report. As a result, claimant is precluded from raising the issue of future medical treatment in this case as of this time. I therefore affirm the deputy commissioner's determination that it is not appropriate to order the surgery based on the record of this case so far because that issue was not included in the hearing report. If that issue had been included in the hearing report, an order for the surgery would be appropriate.

In her appeal brief, claimant states the following, in pertinent part:

The Arbitration Decision leaves the claimant in an untenable position where she cannot receive a permanent disability award until after she has surgery, but there is no order that the surgery be provided. The evidence clearly demonstrates that Deanna is entitled to an order directing Polaris to provide right shoulder surgery. (Claimant's Appeal Brief, p. 19)

Claimant's argument overlooks the fact that this "untenable position" can be addressed rather quickly by recourse to the commissioner's alternate medical care process if defendant continues to refuse to authorize the surgery after the issuance of this appeal decision.

#### ORDER

IT IS THEREFORE ORDERED that the arbitration decision of October 2, 2014, is affirmed in its entirety:

Defendant shall pay claimant temporary total disability benefits beginning May 9, 2013, through September 20, 2013, at the stipulated rate of four hundred four and 27/100 dollars (\$404.27) per week.

Defendant shall be given credit against temporary total disability benefits owed for the short term disability payments claimant received between May 9, 2013, through September 30, 2013.

The award of penalty benefits in the amount of twenty-five percent (25%) of the temporary total disability benefits owed for the period of May 9, 2013, through September 20, 2013, with a credit for the short term disability benefits received by claimant from May 9, 2013, through September 20, 2013, is hereby affirmed.

All accrued benefits, plus interest as allowed by law, shall be paid to claimant in a lump sum.

Claimant's request that defendant be ordered to authorize the surgery recommended by Dr. Hough is denied.

Defendant shall pay the medical expenses in the amount of \$377.00 pursuant to Iowa Code section 85.27 as set forth above.

Defendant shall pay the IME expense of Dr. Hines.

Defendant shall pay the costs of this action awarded in the arbitration decision and the parties shall split the costs of the appeal, including the preparation of the hearing transcript

Defendant shall file reports with this agency on the payment of this award pursuant to rule 876 IAC 3.1.

Signed and filed this 29<sup>th</sup> day of October, 2015.



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WORKERS' COMPENSATION  
COMMISSIONER

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