BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CLAYTON W. PARKER, Claimant, vs. PLASTICS UNLIMITED, INC., Employer, and AUTO-OWNERS INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED SEP 08 2015 WORKERS COMPENSATION	File No. 5050208 ARBITRATION DECISION Head Note Nos.: 1108; 1803 2500; 2907

STATEMENT OF THE CASE

Clayton Parker, claimant, filed a petition in arbitration seeking workers' compensation benefits against Plastics Unlimited Inc., employer, and Auto-Owners Insurance, insurance carrier, for a work injury date of January 4, 2014.

This case was heard on June 5, 2015, in Des Moines, Iowa, and considered fully submitted as of June 19, 2015, upon the simultaneous filing of briefs.

The record consists of claimant's exhibits 1-10 and defendants' exhibits A-D and testimony of the claimant. By consent of the parties, the hearing was held telephonically with the court reporter present with the undersigned.

ISSUES

Whether claimant's claim is barred because claimant refused reasonable surgery;

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

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

Whether the alleged disability is a scheduled member disability or an unscheduled disability;

The extent of claimant's scheduled member/industrial disability;

Whether there is a causal connection between claimant's injury and the medical expenses claimed by claimant;

Whether claimant is entitled to penalty benefits under Iowa Code section 86.13 and, if so, how much.

STIPULATIONS

The parties agree claimant sustained an injury on January 4, 2014 arising out of and in the course of his employment. The injury caused some temporary disability but the parties dispute the extent and whether there is any permanency.

They agree that if permanent partial disability benefits are awarded, the commencement date of those benefits would be September 16, 2014.

The parties stipulate that at the time of the alleged injury, claimant's gross earnings were $427.50 per week. Claimant was married and entitled to two exemptions. Based on those numbers, the weekly benefit rate is $296.31.

Prior to the hearing, defendants had paid claimant $296.31 since the first date of restriction.

FINDINGS OF FACT

Claimant was a 55-year-old man at the time of the hearing. He has a ninth grade education and attempted to complete a GED program in 1977, but was unable to pass. Claimant is currently on social security disability as a result of his heart, back, and arm issues. Currently claimant has back pain, heart problems, knee pain, high blood pressure and overheating with exertion.

Claimant's past work history is primarily that of a welder and labor. He stocked beer coolers at a local tavern and then as a press operator for Metro Rubber. He worked a number of years as a welder for various companies as well as an auto mechanic.

For the defendant employer claimant built molds.

On January 4, 2014, claimant injured himself while lifting a door at work. The immediate sensation was a snap in the left arm elbow area. He reported this injury, but did not want to be taken off of work. He told his employer that he could keep working and did so. In February he was laid off during a seasonal layoff period. He had no doctor's restrictions. When he returned he was given a job promotion, however the

promotion did not come with any increase in pay, but instead an increase in work duties. Claimant began to favor his left arm and the increased workload resulted in an increase in pain and discomfort.

On April 3, 2014, claimant sought medical treatment at the urging of his employer. He was seen by Kimberly A. Thompson, D.O., who recommended an MRI. (Exhibit 1, page 3) Initially, the insurance company was not sure they wanted to cover any more testing. When claimant returned to Dr. Thompson on April 21, 2014, with consistent complaints of pain and discomfort, Dr. Thompson repeated her recommendation for an MRI. Claimant was still working and could do a lot of his job activities despite the discomfort (Ex. 1, p. 5) and Dr. Thompson agreed to continue the claimant at full duty without restrictions. (Ex. 6, p. 7)

After an initial MRI performed at a mobile unit in Maquoketa, a second one revealed a partial thickness tear of the common extensor tendon region and a mild bursitis. (Ex. 9, p. 1)

On April 15, 2014, R. L. Kreiter, M.D., performed a physical capacities evaluation wherein he opined that the claimant had reproducible pain in shoulders and hands upon movement. He recommended claimant work 7 to 8 hours a day sitting, 1 to 2 hours a day standing or walking and that the claimant would have limitations with repetitive reaching, handling, or fingering. (Ex. 2, p. 15) He limited claimant to lifting up to 20 pounds only occasionally and recommended claimant not crawl, climb, or reach above shoulder level. (Ex. 3, p. 15)

Claimant did not return to work following April 16, 2014.

Claimant was referred to Suleman M. Hussain, M.D., an orthopaedic specialist. Claimant was seen by Dr. Hussein on May 18, 2014. The MRI showed mild bicipital radial bursitis or two millimeter partial thickness tear of the common extensor tendon origin. (Ex. 3, p. 2) Dr. Hussain recommended therapy and anti-inflammatories but if claimant did not show improvement after a month, he should consider surgical intervention, which would consist of a single incision open approach to the distal biceps with debridement of the partial tear and reattachment. (Ex. 3, p. 2) Dr. Hussain went so far as to request authorization for the surgical procedure. (Ex. D) According to trial testimony, the employer and insurer approved coverage for the procedure, but the claimant did not follow through.

Claimant began physical therapy treatment at Rock Valley on May 20, 2014. (Ex. 4, p. 1) Claimant attended five therapy visits, but then canceled his remaining visits indicating that he wanted a second opinion from a doctor of his choice. (Ex. 4, p. 7)

On June 11, 2014, Dr. Kreiter diagnosed claimant with a partial rupture, left biceps tendon distally, with probable mild impingement and adhesive capsulitis of the left shoulder and mild ulnar nerve entrapment in the left elbow. (Ex. 2, p. 5) He recommended the claimant stay out of therapy and do exercises at home. He felt that

the claimant's injury needed to heal completely but that surgery was not indicated at this time. (Ex. 2, p. 6) Dr. Kreiter wrote out a note allowing claimant to return to right-handed work only with a five-pound lifting limit on the left. (Ex. 7, p. 15)

He returned to Dr. Kreiter on June 25, 2014 for reevaluation of the partial rupture of the distal left biceps tendon at the elbow. He was getting along well, but fell while walking his dog and came down on his outstretched left arm. He had increased symptoms, "but certainly not to any great degree." (Ex. 2, p. 8)

On July 29, 2014, claimant returned to Dr. Kreiter. He reported that he was lifting six pounds of weight for strengthening and occasional experienced sharp pain, but that it was lessening. He had been looking for work but had not been successful because of his back and his elbow and because he has had problems in the past with a learning disability. (Ex. 2, p. 9) He was instructed to continue with the strengthening and try to find work. (Ex. 2, p. 9)

Returning a month later to Dr. Kreiter, on August 19, 2014, claimant reported that the pain from his elbow was migrating into his shoulder. He reported hand numbness particularly when he drives the car, reads the paper or talked on the phone. He noticed some significant grip strength weakness on the left side. On examination claimant exhibited limited motion in his cervical spine with good motion in his shoulders and elbows. He had tenderness in the antecubital area and markedly positive Tinel's with percussion at the ulnar nerve causing numbness into the small and ring finger. (Ex. 2, p. 11) Dr. Kreiter directed claimant to get an EMG and nerve conduction study.

The EMG and nerve conduction studies were done on September 8, 2014. The results revealed a normal study of the upper extremities without evidence of neuropathy or radiculopathy. (Ex. 6, p. 2)

On August 27, 2014, claimant returned to Dr. Hussein. Claimant reported continuing stiffness and lack of extension in his elbow. He did not believe that therapy was helpful. "Attempts at making a reevaluation fell through the cracks, as the patient did not show for those evaluations." (Ex. 3, p. 4)

A functional capacity evaluation was set up and took place on September 16, 2014 at the request of Dr. Hussein. Claimant exhibited weakness and some limited range of motion in the right upper extremity. (Ex. 4, p. 10) The functional capacity evaluation indicated that claimant could do more than the self-reported limitations. (Ex. 4, p. 10) As a result, the functional capacity evaluation results were not valid. "There were significant inconsistencies in the performance of repeated measures which is indicative of low effort." (Ex. 4, p. 15) Subject to that qualification, claimant demonstrated the ability to work in a sedentary and light physical demand classification with some components of the medium work classification. (Ex. 4, p. 15)

On examination with Dr. Hussein, claimant exhibited good grip strength but soreness over the left bicipital radial tuberosity. (Ex. 3, p. 3) He lacked 15 degrees of

terminal extension but otherwise had good flexion, supination and pronation. (Ex. 3, p. 3) Claimant did not want to have surgery. He believed that the risks of operation and potential complications would not be beneficial. (Ex. 3, p. 4)

Claimant did not return to Dr. Hussein due to Dr. Hussein's desire to impose a work restriction. Claimant refused to return to him and sought a second opinion from Dr. Kreiter.

On September 16, 2014, Dr. Kreiter saw claimant and determined that he had reached maximum medical improvement (maximum medical improvement). On examination, he had good range of motion in the left shoulder but significant tenderness in the anterior aspect of the left shoulder in the region of the biceps tendon group. He also had tenderness at its insertion distally in the antecubital area. He had good range of motion of the elbow, both in flexion and extension, pronation and supination, but had tenderness over the lateral aspect of the elbow and markedly positive Tinel's with percussion of the ulnar nerve at the left elbow, causing numbness in the small and ring fingers. (Ex. 2, p. 13)

On September 19, 2014, claimant sought care at the local emergency room for pain in his elbow.

On September 24, 2014, Dr. Kreiter wrote a letter to claimant's counsel finding claimant had reached maximum medical improvement on the left side as a result of the biceps tendon injury and shoulder problem. (Ex. 2, p. 12) Dr. Kreiter agreed that the claimant had a permanent impairment as a result of the injury, primarily due to weakness in his left shoulder and upper extremity with pain. Permanent restrictions were needed which included lifting of 10 to 15 pounds one-handed on the left side, 25 to 30 pounds with both hands, no rapid pulling or activities such as pulling a starter rope for a chainsaw, mowing, snow blower, etc. Hammering activity on the left side should be avoided and overhead work with the left shoulder should be avoided. (Ex. 2, p. 12)

Claimant testified that Dr. Kreiter recommended claimant not undergo surgery because he had waited too long.

On April 7, 2015, claimant underwent an independent medical evaluation with David S, Field M.D., orthopaedic surgeon. At the visit, the claimant reported pain in the left elbow and some pain with activities in the shoulder as well. (Ex. A) Dr. Field diagnosed claimant with sustaining a partial injury to the distal biceps of the left elbow related to the work injury of January 4, 2014. He also had some strain or secondary stiffness of the left shoulder with a mild degree of adhesive capsulitis. (Ex. A, p. 3) Dr. Field recommended minimal overhead lifting of perhaps 5 to 10 pounds and double-handed lifting of about 25 pounds. Dr. Field noted that evaluating claimant's permanency and functional capacity was problematic because he has a partially torn biceps tendon. (Ex. A, p. 3)

Dr. Field recommended the surgical repair of the distal biceps tendon. However should claimant not elect to follow through with the surgery, his restrictions would be permanent. (Ex. A, p. 4) Dr. Field believed that the surgical repair of the biceps tendon was the most appropriate course of treatment and would have a much better result for him in terms of range of motion and reduction of pain. (Ex. A, p. 4)

He agreed that the maximum medical improvement date would be September 24, 2014 and that claimant has sustained a ten percent impairment of his left upper extremity but opined that much of that could be resolved through surgical repair. (Ex. A, p. 5)

Claimant asserts that he has limited ability to read and write. He testified that he can only read small children's books and that his wife is responsible for reading letters to him. His past medical history is significant for four heart attacks, bad discs in his back, and painful knees.

He smokes approximately two cigarettes a day.

During the hearing he testified that he had to sell a motorcycle because he had not received a check from workers' compensation. He approached the workers' compensation adjuster, who reportedly told him that the employer had not sent the paperwork in.

Claimant did not miss any work until after April 3, 2014. There is no evidence in the record as to when benefit payments were made. Claimant maintained that the benefit payments were late, but could not identify the date upon which he was entitled to them and the date upon which he received them.

Currently claimant is not working and believes that he cannot work due to his heart issues, his low back, his legs and knees, as well as his left elbow and shoulder.

Much of the record is claimant's attorney asking leading questions and testifying and there was little oral testimony from the claimant relating to his own issues.

He has done little to search for a new job, but instead signed up for disability. He testified that he had asked other employers about work but there was no work for him. In his deposition, he admitted that he made no formal job applications. (Ex.10 deposition, p. 38) No specific companies or positions were identified other than a former employer. He indicated that the reasons that he was not being hired were due to his heart condition. He further testified that things such as shoveling, mowing, and other strenuous activities were off the table for him because of his heart.

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 Rule of Appellate Procedure 6.14(6).

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).

The parties agree that claimant sustained a work-related injury but dispute the extent of the disability and claimant's entitlement to certain benefits arising out of the injury.

The first question is whether claimant sustained a scheduled member or body as a whole injury. There is no real dispute here. Claimant's treating physicians and even Dr. Field, the defendants' independent medical examiner, agree that claimant had a biceps tear that resulted in pain and weakness in the left shoulder and left elbow. Defendants attempt to limit claimant's injury to the upper left extremity based on Dr. Field's impairment rating to the left upper extremity. However that finding would ignore Dr. Field's opinion that claimant suffered strain or secondary stiffness of the left shoulder with a mild degree of adhesive capsulitis.

From the outset, claimant complained of shoulder pain and a medical diagnosis of adhesive capsulitis confirmed his complaints.

When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Comm'r Report 281 (App. February 24, 1982), a torn rotator cuff was found to cause disability to the body as a whole

Therefore claimant's work injury was industrial in nature.

Claimant was off work from April 16, 2014, to September 15, 2014, due to his arm injury.

Healing period benefits are covered by Iowa Code section 85.34(1), which provides that the employer shall pay an employee compensation for a healing period beginning on the date of the injury and continuing until the first to occur of three events: (1) the employee has returned to work; (2) the employee has achieved maximum medical recovery; or (3) the employee is capable of returning to substantially similar employment. See Ellingson v. Fleetguard, Inc., 599 N.W.2d 440, 447 (Iowa 1999).

Claimant was deemed to be at maximum medical improvement on September 15, 2014. Therefore, claimant is entitled to healing period benefits from April 16, 2014, through September 15, 2014.

The next question is whether claimant sustained a permanent injury. Under the current conditions, claimant is suffering an ongoing and disabling injury that affects and limits his ability to obtain employment. It has been recommended several times that claimant's weakness and pain in his left elbow and shoulder could be addressed through surgical repair. Dr. Field opines that claimant could be returned to his pre-injury status if the surgery were undertaken; however if no surgery takes place, claimant is permanently disabled.

Defendants argue that claimant failed to undertake a surgery that has low risk and high reward. The defendants cite Walker v. Worley Warehousing, Inc., File No. 5035129 (Arb. Dec. January 26, 2012).

> This agency has adopted the approach that where the risk of treatment is insubstantial and the probability of cure or improvement is high, then refusal of medical treatment will result in a termination of benefits. But if there is a real risk involved and a considerable chance that the procedure will result in no improvement or perhaps a worsening of the condition, then claimant cannot be forced to run the risk at the peril of losing his or her statutory compensation rights. OTC Holdings v. Prucha, 758 N.W.2d 839 (Iowa A00. 2008) Palmer v. Iowa Power, Inc., file no. 941807 (App. Dec., May 25, 1993); Hardy v. Abell-Howell Company, file no. 814126 (App. Dec. Dec. 21, 1990).

Id.

Defendants carry the burden of proving that the risk of treatment is insubstantial and the probability of cure or improvement is high. Claimant has a heart condition. Dr. Fields did opine that surgery was advisable but there is no evidence as to the risk versus reward.

Dr. Fields did believe that the surgery was the most appropriate option and that it would have a much better result in terms of range of motion and reduction in pain, but there was not a work up of claimant's physical condition to determine what the surgical risk was given claimant's heart condition.

Therefore, defendants failed to meet their burden in proving by a preponderance of the evidence that the claimant's risk of treatment was insubstantial.

We next turn to the extent of claimant's disability.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature

intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

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

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

The evidence is largely undisputed that claimant hurt himself in January 2014 but continued to work. He then underwent a seasonable layoff. When he returned to work, his job duties increased and those increased job duties aggravated his January 2014 injury according to the medical reports.

It is not clear whether claimant sustained the distal tendon biceps tear in January 2014 or subsequent, but the most likely evidence points to January 2014 as being the date of injury.

When claimant was first seen by a medical professional on April 3, 2014, claimant was working without restrictions. He asked Dr. Thompson to not impose any. She agreed, but recommended the claimant obtain an MRI. The subsequent MRI reviled a partial thickness biceps tendon tear and mild bursitis. Claimant then returned to work. On April 15, 2014, Dr. Kreiter imposed work limitations.

Claimant has not returned to gainful employment since April 16, 2014.

Claimant argues that his work restrictions along with his pre-existing conditions all contribute to him being significantly disabled, if not permanently and totally disabled. Claimant does have upper body work restrictions although the functional capacity evaluation was returned as invalid due to claimant's varying responses.

The credible evidence supports a finding that claimant has restrictions that include no overhead work above the left shoulder and some limited lifting with the left arm. Dr. Kreiter set the limitations at 10 to 15 pounds on the left side and 25 to 30 pounds with both hands. Claimant should avoid hammering activity and the pulling of a starter rope with the left hand. Dr. Fields' restrictions were approximately the same, limiting overhead lifting to under 10 pounds and double-handed lifting at 25 pounds.

Claimant is able to sit and stand for 7 to 8 hours at a time. He has good range of motion in his neck and upper torso. While he has pain in the lower back and in his knees, claimant could do light duty or sedentary work. He is capable of driving.

Claimant has not actively looked for work. He approached one former employer, but did not fill out any formal job applications. He does not appear motivated to return to work at this point.

Based on claimant's education, work experience, physical condition, motivation to return to work, and his suspect functional capacity results, it is found claimant has sustained a 65 percent industrial disability.

Claimant seeks a penalty benefit.

There is insufficient evidence in the record regarding payments. Claimant was not entitled to any benefits, permanent or temporary, until he left work on April 16, 2014. It is not clear from the testimony and there are no documents that indicate whether claimant was paid benefits at that time. Claimant asserted he had to sell his motorcycle but it appears that the sale of the motorcycle occurred prior to April 16, 2014. He had no recollection of when payments were made. In his deposition, he indicated that he was put on "workmen's comp" after he was not allowed to work because of his arm. (Ex. 10, p. 36) Thus there was some evidence that he received benefit payments after leaving work on April 16, 2014.

The hearing report indicates that claimant has been provided payments "continuing since first date of restriction." Claimant provided no contradictory evidence.

It is claimant's burden to show that the owed benefit payments were untimely. After that occurs, the burden shifts.

There is not sufficient evidence upon which to award penalty benefits.

Claimant seeks reimbursement of medical expenses from Dr. Kreiter in Exhibits 8 and 9. Those medical bills are for visits for claimant's shoulder and left elbow injury arising out of the work related injury. Defendants assert that Dr. Kreiter was not an authorized treating physician, that claimant left the authorized treater's care and sought out his own care.

Iowa Code section 85.27 and the authorization defense are designed to avoid duplicative parallel care.

The Iowa Supreme Court recently analyzed the payment of medical expenses under Iowa Code section 85.27 in Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 202-209 (Iowa 2010).

Nevertheless, the employer's right to choose medical care does not prevent the employee from choosing his or her own medical care at his or her own expense under

two circumstances. Both of these circumstances normally arise when a dispute occurs between the parties.

The first circumstance in which an employee can select his or her own medical care is when the employer denies compensability of the injury.

> The second circumstance under which an injured employee may select his or her medical care is when the employee abandons the protections of section 85.27 or otherwise obtains his or her own medical care independent of the statutory scheme. This circumstance would ordinarily occur when the employer admits compensability of the injury and assumes responsibility for furnishing medical care, but the employee disagrees with the care provided or otherwise rejects the care, and obtains alternative medical care with neither the consent of the employer nor an order for alternative care from the workers' compensation commissioner. Unlike the first situation, this circumstance would normally occur when a difference of opinion over a diagnosis or treatment arises, "as when the employer's doctor recommends conservative measures while the claimant thinks he or she should have surgery." 5 Larson § 94.02[5], at 94-19.
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> We do not believe the statute can be narrowly construed to foreclose all claims by an employee for unauthorized alternative medical care solely because the care was unauthorized. Instead, the duty of the employer to furnish reasonable medical care supports all claims for care by an employee that are reasonable under the totality of the circumstances, even when the employee obtains unauthorized care, upon proof by a preponderance of the evidence that such care was reasonable and beneficial. In this context, unauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer. The allocation of this significant burden to the claimant maintains the employer's statutory right to choose the care under section 85.27(4), while permitting a claimant to obtain reimbursement for alternative medical care upon proof by a preponderance of the evidence that such care was reasonable and beneficial.

Bell Bros. at 204-207.

Claimant testified that he left the care of Dr. Hussain because Dr. Hussain wanted to impose work restrictions on claimant. He did not leave Dr. Hussain because the care was improper or there was a breakdown in patient/doctor communication. There was no evidence in the record that the care recommended or provided by Dr. Hussain was not reasonably suited to treat the claimant's injury. In fact, Dr. Hussain recommended surgical repair of claimant's injury in addition to physical therapy.

Dr. Kreiter's medical records depict similar treatment. Claimant testified that Dr. Kreiter said that the surgery recommended by Dr. Hussain was not advisable because of the delay in undertaking the surgery but there is no medical record indicating that and claimant's testimony of Dr. Kreiter's statements are given low value. Claimant did not recall at least one early visit to Dr. Kreiter—a physician he chose to see.

There is not sufficient evidence by the claimant to meet the Bell Brothers standard that the care provided by Dr. Kreiter provided a more favorable outcome. Indeed, the evidence largely supports a finding that claimant should have had the surgery and that surgical repair would have provided the better outcome.

Claimant's request for reimbursement of Dr. Kreiter's medical expenses is not supported by a preponderance of the evidence.

Claimant also seeks to recover costs. Under the recent Supreme Court decision in DART v. Young, No. 14-0231 (Iowa June 5, 2015), parties can recover costs "incurred in the hearing." A physician's report becomes a cost incurred in a hearing when it is used as evidence in lieu of the doctor's testimony. The report is separate from the examination. The underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition.

The $100.00 charge from Dr. Kreiter appears to be for his opinion as it is separate from the medical bills of Dr. Kreiter. Therefore, pursuant to DART, Dr. Kreiter's $100.00 charge is assessed as a cost with the filing fee and certified mailing charges.

ORDER

THEREFORE, IT IS ORDERED:

That defendants are to pay unto claimant three hundred twenty-five (325) weeks of permanent partial disability benefits at the rate of two hundred ninety-six and 31/100 dollars ($296.31) per week from September 16, 2014.

That defendants are to pay healing period benefits from April 16, 2014, through September 15, 2014 at the rate of two hundred ninety-six and 31/100 dollars ($296.31).

That defendants shall pay accrued weekly benefits in a lump sum.

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

That defendants are to be given credit for benefits previously paid.

That defendants shall pay the costs of this matter pursuant to rule 876 IAC 4.33, in the amount of two hundred six and 49/100 dollars ($206.49).

Signed and filed this 8th day of September, 2015.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Peter M. Soble
Attorney at Law
3026 – 3rd St.
Moline, IL 61265-8723
peter41@earthlink.net

Andrew A. Willaert
Attorney at Law
317 – 6th Ave., Ste. 1400
Des Moines, IA 50309-2418
awillaert@gislason.com

JGL/srs

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