BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
JAN 18 2018
WORKERS' COMPENSATION

CHRISTINE MAST (f/k/a MEYER),	
Claimant,	
vs.	File No. 5056664
AMERICAN BAPTIST HOMES OF THE MIDWEST d/b/a CREST SERVICES,	
Employer,	ARBITRATION DECISION
and	
UNITED HEARTLAND,	
Insurance Carrier, Defendants.	Head Note Nos.: 1100; 1402.30; 1801 1803; 2500

STATEMENT OF THE CASE

Christine Mast (f/k/a) Meyer, claimant, filed a petition in arbitration seeking workers' compensation benefits from defendant employer, American Baptist Homes of the Midwest, d/b/a Crest Services and United Heartland, the insurance carrier. The arbitration hearing was held on August 31, 2017. The parties submitted post-hearing briefs on October 16, 2017, and the matter was considered fully submitted on that date.

The evidentiary record includes: Joint Exhibits JE1 through JE12, Claimant's Exhibits 1 through 5 and 7 through 14 and Defendants' Exhibits B through I. Claimant provided testimony at the hearing.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury on January 7, 2016, that arose out of and in the course of her employment.

2. Whether the injury caused temporary disability. The parties agree that if defendants are found liable for the alleged injury, claimant is entitled to benefits for the period of November 18, 2016 through January 9, 2017.

3. Whether the injury caused permanent disability and if so, the extent thereof. The parties agree that if permanent disability is found, the disability is an industrial disability and the commencement date for benefits is January 10, 2017.

4. Whether claimant is entitled to medical expenses incurred as identified in exhibit 13, including whether said medical treatment was reasonable and necessary, causally connected to the work injury, and whether the medical fees are fair and reasonable.

5. Whether claimant is entitled to IME reimbursement under Iowa Code section 85.39 as identified in exhibit 14.

6. Whether claimant is entitled to penalty benefits, if any.

7. Costs.

FINDINGS OF FACT

After a review of the evidence presented, I find as follows:

Claimant, Christine Mast, formerly known as Meyer, was recently married prior to hearing and changed her last name. (Tr. p. 4) Claimant was 47 years old at the time of the hearing. (Transcript page 9)

EDUCATION

Claimant graduated from high school in 1988. (Tr. p. 10) She obtained an A.S. degree in criminal justice administration from Arizona Institute of Business and Technology in 1996. (Id.) Claimant testified that she has never used her degree in her employment. (Id.)

WORK HISTORY

Claimant's work experience includes working: as a housekeeper in hotels; at fast food and other restaurants; in nursing homes and care facilities; and other temporary and part-time jobs. (Ex. 5, pp. 27-29) Claimant's most significant work in the years prior to her employment with defendant involved working in nursing homes and care facilities as a care giver or a CNA. (Id.) Claimant testified that working as a CNA/care

giver required a lot of physical activity and involved dressing, feeding, bathing, toileting and lifting clients. (Tr. pp. 11-12) Claimant has also previously worked as a kitchen supervisor in a care facility. (Tr. p. 12)

Claimant began working for defendant employer, Crest Services, in 2000 as the Assistant Program Director. (Tr. p. 12; Ex. 5-27) Crest Services provides care and services to mentally challenged individuals. (Tr. p. 13) The patients/clients of Crest Services are referred to as "members." (Tr. 38) The members reside in homes in the community and the services provided are aimed at helping the members move toward independent living. (Tr. p. 13) Claimant was hired to work as the Assistant Program Director. (Id.) She managed medical appointments, supervised and trained staff, made phone calls, worked on the computer and occasionally was directly involved with clients particularly if staff was unavailable. She helped with transportation of members to and from appointments, getting them into and out of bed and/or turning and cleaning clients, and helping with wheelchairs and walkers. (Tr. p. 14)

CURRENT EMPLOYMENT

At the time of the hearing, claimant continued to be employed by the defendant employer, Crest Services, and she remained in the same position of Assistant Program Director. Claimant stated that before her alleged work injury, she assisted members with activities as described above. However, after the work incident of January 7, 2016, she spends more time in the office than she did before. She described the office work as being much less physically demanding than assisting members. (Tr. pp. 14-15) Since returning to work after the January 7, 2016 incident, her attendance has been good and she has received positive evaluations. (Tr. p. 56) Her wage remains the same as it was on January 7, 2016. (Tr. pp. 56-57)

PRIOR MEDICAL CONDITION

She testified that she had numbness and tingling in her right hand and fingers in 2014. (Tr. p. 14) On February 16, 2015, claimant reported neck pain radiating into her right arm since the previous July. (Ex. JE8-59) She had a C5-6 anterior cervical fusion surgery performed by David Boarini, M.D., on February 17, 2015. (Ex. JE8-61) She was off work for four weeks following the surgery and was on restricted duty until returning to full-duty in May, 2015. (Tr. pp. 16, 18) Claimant testified that in May 2015, the radiating pain from her neck to her arm was gone, although she continued to have minor numbness in her fingers. (Tr. p. 17) She was supposed to have additional follow-up with Dr. Boarini, but stated that she lacked the money to pay for those appointments and also felt that they were unnecessary because "there was nothing wrong with my neck." (Tr. p. 18) Claimant testified that she had no difficulties with her neck between May 6, 2015 and January 7, 2016. (Id.) But, she agreed that she had difficulties with her arm during that time. (Tr. p. 18)

In October, 2015, claimant had sharp, excruciating pain in her right arm just below her elbow. (Tr. pp. 18-19) She returned to see Tyler Casey, M.D., at Unity Point Health and complained of right forearm pain and bilateral hand numbness. (Ex. JE1-19) Dr. Casey diagnosed claimant with paresthesia, lateral epicondylitis (tennis elbow), and cervical radiculopathy. (Ex. JE1-20) A blood clot was then discovered in her upper right arm. (Ex. JE1-26)

On October 22, 2015, Dr. Casey questioned whether the right arm pain and bilateral hand numbness was due to "developing carpal tunnel or other cervical issues." (Ex. JE1-26) The record contains a reference to "neck pain, pain shooting down the arms." (Id.) However, claimant testified at hearing that she was not having any problems with her neck and she was not having any pain radiating from her neck down her arm. (Tr. pp. 21-22) Her concern at that time was the pain in her arm. (Tr. p. 21) The medical record contains an assessment of "[c]ervical herniated disc" along with prescriptions for Neurontin and Celebrex. (Ex. JE1-27) Dr. Casey noted that the arm pain might be related to the cervical spine or possible carpal tunnel. Also, he specifically diagnosed the right arm pain and DVT. (Ex. JE1-26)

On December 22, 2015, Dr. Casey stated that "[w]e were not sure how much that was residual pain from her C-spine as she had surgery within the last year versus developing carpal tunnel or other process." (Ex. JE1-30) I note that the record also states that the nerve conduction study showed evidence of carpal tunnel. (Id.)

On December 22, 2015, claimant's primary complaint was clearly pain in her right arm near the elbow. (Ex. JE1-30) Dr. Casey's assessment at that time was: right upper extremity DVT with ongoing anticoagulant medication; and, mixed right arm pain due to combination of DVT, lateral epicondylitis, and carpal tunnel. I note that although "cervical herniated disc" is mentioned under a section titled "Assessment/Orders" in association with a Celebrex prescription, radiculopathy and/or neck pain is not otherwise described in the body of the medical report. Further, under the section titled "Assessment and Plan" Dr. Casey identifies diagnoses, as stated above, but any reference to findings of cervical pain or radiculopathy are noticeably absent. In addition under the section titled "Physical Exam" the neck is described as "supple" with a "normal range of motion," and again there is no mention of neck pain or radicular pain. (Ex. 1-30, 32) Dr. Casey also stated that claimant was significantly better than she was two months earlier. (Ex. JE1-31) Claimant testified that in late December, 2015, she was not having problems with her neck. (Tr. p. 22) Claimant's testimony appears consistent with a fair reading of the whole medical record.

Interestingly, on March 16, 2016, more than two months after her reported work injury, Dr. Casey discussed claimant's previous cervical fusion and radicular symptoms, but no longer included "cervical herniated disc" in the section titled "Assessments/Orders." (Ex. JE1-36) If the January 7, 2016 work incident was merely a continuation of radicular symptoms as suggested by defendants, one might expect that the diagnosis of cervical herniation would have continued in Dr. Casey's records.

THE INJURY

On January 7, 2016, claimant was assisting a member following a water therapy appointment. The member required the use of an electric wheel chair. The member was unable to lift himself off the seat of the wheel chair and from an awkward position, claimant had to tug and pull to get the member's underwear and sweatpants on. While doing this, claimant felt pain. She stated that her "arm just got worse, and my neck just started hurting really bad." (Tr. pp. 24-25)

Claimant testified that her neck, which had been without pain during the time prior to the incident, had "instant stabbing pain." (Tr. p. 25) Claimant acknowledged that concerning her right arm, immediately prior to the work incident, she "still had difficulties with it," but following the work incident, "it was more excruciating pain and felt like it was stabbing more." (Id.)

Claimant texted her supervisor concerning the injury and she returned the member to his home. Claimant then went home and applied ice to her neck and arm. (Tr. p. 26) She received medical attention the following day.

POST-INJURY MEDICAL TREATMENT

After the work incident, claimant was seen by Carlos Moe, D.O., of Concentra on January 8, 2016. (Ex. JE9-71) Claimant stated that she was having excruciating pain in her neck and right arm. (Tr. p. 27) Dr. Moe was aware of claimant's history of cervical fusion, the DVT in her arm, and her prior diagnosis of right lateral epicondylitis. (Ex. JE9-72) Dr. Moe's assessment of claimant's condition was: cervical myofascial strain; right trapezius strain; and, right lateral epicondylitis. (Ex. JE9-71) I note that cervical radiculopathy was not included. Claimant was placed on work restrictions, started on medication, and referred for physical therapy. (Ex. JE9-74; Tr. p. 27) Claimant stated that physical therapy made her condition worse. (Id.)

Claimant continued to treat with Concentra for a period of time and was then referred to David Hatfield, M.D. (Tr. p. 28)

On February 17, 2016, Dr. Hatfield examined claimant and stated that claimant was "here today with a work incident on 1/7/16 which has increased neck and right arm pain as well as caused some left arm numbness." (Ex. JE11-88) Claimant indicated that the problem began suddenly on January 7, 2016. (Ex. JE11-89) However, she also advised Dr. Hatfield of her prior medical history including the blood clot in her arm in October, 2015 and her C5-6 cervical fusion with Dr. Boarini in February, 2015. (Ex. JE11-87) Dr. Hatfield ordered a new cervical MRI, which was obtained on March 9, 2016. (Ex. JE11-88, 96)

On March 14, 2016, Dr. Hatfield stated that the MRI showed the C3-4 with right sided change and "no intrinsic cord change appreciated." (Ex. JE11-98) He stated that

"given the axial neck pain, it is not clear that surgical intervention at the C3-4 level would reliably alleviate her symptoms with regard to neck pain per se, however, she may come to require this with regard to some radicular component." (Id.)

On June 22, 2016, Dr. Hatfield stated that claimant had received an epidural steroid injection (ESI), "which helped the right upper extremity symptoms somewhat," but "[u]nderstandably this did not help her neck symptoms." (Ex. JE11-101) On June 22, 2016, a cervical spine CT was ordered to "better evaluate her prior fusion." (Id.)

On July 13, 2016, Dr. Hatfield stated that the CT showed "no distinct radiographic complete bridging C5-6," and there was "not evidence of bony union C5-6." (EX JE11-104) In addition, there was "[m]arked degenerative change right C3-4," (Ex. JE11-104) A decision was made at that time to proceed with surgery at C3-4 for "decompression and instrumented fusion with revision C5-6 decompression and instrumented fusion with allograft and autograft." (Ex. JE11-104)

On August 15, 2016, Dr. Hatfield stated concerning the prior C5-6 fusion surgery with Dr. Boarini there was a non-union for which he did not have a distinct or single explanation and that claimant's "development of symptoms" are related to the January 7, 2016 incident, "absent the same or similar symptoms prior to the described incident." (Ex. JE11, p. 106) In addition, the C3-4 level surgery "is to address the neural compression identified on MRI. Again, absent the same or similar symptoms predating the January 7, 2016 episode, I would relate the changes at C3-4 and the need for surgery on these to the episode described." (Ex. JE11-106)

Claimant testified that from the date of her last visit with Dr. Boarini in May, 2015 until January 7, 2016 that she did not have the same or similar symptoms as discussed by Dr. Hatfield, concerning her neck pain. (Tr. p. 31)

Claimant testified that the surgery was scheduled for August 18, but it did not occur at that time because the workers' compensation insurance carrier did not approve the surgery. (Tr. p. 31) Claimant indicated her understanding that her claim was "denied at that point." (Id.) She then pursued treatment on her own. (Tr. p. 32)

A cervical MRI was obtained on October 5, 2016, and on October 10, 2016, claimant confirmed her desire to proceed with the recommended surgery. (Ex. JE11-111, 113)

On November 17, 2016, Dr. Hatfield performed surgery. (Ex. JE6-42) The surgery involved a C3-4 fusion and a C5-6 revision fusion. (Tr. p. 32; JE6-42) The surgery included a bone graft taken from claimant's hip. (JE6, p. 43) Claimant testified that she was taken off work for six weeks following surgery. (Tr. p. 32) When she initially returned to work, she did so with a lifting restriction of 10 pounds. (Ex. JE11-117)

Claimant had follow-up care with Dr. Hatfield and was placed at maximum medical improvement (MMI) and returned to work with no restrictions on May 3, 2017. (Ex. JE11-120)

Claimant testified that when she was released to return to full-duty, Dr. Hatfield advised her to use "common sense and better judgment." (Tr. p. 33) Since being released to return to full-duty work, without restrictions, claimant avoids certain activities at work such as lifting over 10 pounds and helping members with wheelchairs or walkers. (Tr. p. 34) However, she is not working under any formal work restrictions.

CURRENT CONDITION

Claimant testified at hearing that she was not taking any prescription medication for her neck condition, but that she was taking ibuprofen for her "upper shoulder pain." (Tr. pp- 55-56) She stated that she no longer has any pain in her neck or arm, but does have pain in her upper shoulders. (Tr. p. 35) Claimant also noted right shoulder pain, but stated that the right shoulder pain was not related to the work injury. Rather it was due to slipping on some water in the bathroom and "I just have arthritis and bone spurs in there." (Id.)

CAUSATION AND PERMANENCY

As discussed above, on August 15, 2016, Dr. Hatfield stated that the C5-6 and C3-4 symptoms and need for surgery were related to the January 7, 2016 incident, provided that the same or similar symptoms were absent prior to the January 7, 2016 injury date. (Ex. JE11-106) Claimant testified that from her last visit with Dr. Boarini in May, 2015 until January 7, 2016, she was not having the "same or similar symptoms." (Tr. p. 31) She stated that she had no neck pain and her right arm pain substantially increased following the January 7, 2016 incident. (Tr. pp. 18, 25, 31) She testified that following the incident, her arm pain was "more excruciating pain and felt like it was stabbing more." (Tr. p. 25)

On May 3, 2017, when claimant was placed at MMI and returned to work with no restrictions, Dr. Hatfield stated:

> All considered given Ms. Meyer's prior history, it appears her nonunion at C5-6 was asymptomatic until January 7, 2016 with the described incident being the cause of subsequent symptoms.
>
> Absent the same or similar symptoms predating the incident as described, I would relate the subsequent symptoms, findings, and need for operative intervention to the January 7, 2016 incident as described.

(Ex. JE11-120)

On May 31, 2017, claimant was seen by John Kuhnlein, D.O., of Medix for the purpose of an independent medical evaluation at the request of her attorney. (Ex. 2-6) On that date, Dr. Kuhnlein reviewed her medical history including claimant's prior symptoms and the C5-6 fusion with Dr. Boarini. (Ex. 2-7, 11) Dr. Kuhnlein reviewed claimant's job duties and physical requirements and discussed the events of the January 7, 2016 work incident. (Ex. 2-6, 7, 8) He recorded claimant's report of her symptoms that were occurring at that time and her work activities as well as the factors that aggravated and relieved her symptoms. (Ex. 2-10, 11) Dr. Kuhnlein reviewed claimant's social history and medications and conducted a physical examination recording his findings regarding range of motion, strength and sensation. Dr. Kuhnlein noted residual right anterior hip numbness from the graft harvesting used in the cervical fusion surgery. (Ex. 2-12, 13) Dr. Kuhnlein then opined within a reasonable degree of medical certainty that claimant had pre-exiting "C3-C4 degenerative changes and neural foraminal stenosis and the C5-C6 nonunion from the previous fusion" and that given the mechanism of injury, those conditions were "aggravated or 'lit up'" by the January 7, 2016 injury. (Ex. 2-14) He noted that the symptoms claimant reported after January 7, 2016 were "significantly changed and worsened." (Ex. 2-14) Dr. Kuhnlein stated:

> [t]here is no other obvious logical explanation for the significant change in her symptoms and pattern of medical care after this incident when compared to before. Ms. Meyer was working in a physically stressful task in awkward positions when her neck and right arm symptoms began. The cervical disease would be related to the January 7, 2016, injury in this fashion. The right thigh numbness developed as a sequela to the neck injury as it developed after the harvesting procedure performed for the November 17, 2016, anterior cervical discectomy and fusion.

(Ex. 2-14) Dr. Kuhnlein also found that although claimant had a history of right lateral epicondylitis, she had no evidence of it during his examination and he concluded that it "was more probably than not related to the cervical disease." (Ex. 2-13, 14) Concerning the right carpal tunnel referenced in the medical record, Dr. Kuhnlein found that given the mechanism of injury, that the carpal tunnel "would not be consistent with traumatic right carpal tunnel syndrome, and there is not evidence of chronic right carpal tunnel syndrome on physical examination today." (Ex. 2-14)

Dr. Kuhnlein agreed with Dr. Hatfield that claimant reached MMI on May 3, 2017. (Ex. 2-15)

Dr. Kuhnlein discussed permanent impairment under the American Medical Association Guides for the Evaluation of Permanent Impairment, Fifth Edition, (AMA Guides) and arrives at a whole person impairment of 23 percent based upon the multilevel cervical surgeries, reduced range of motion, and the right thigh numbness. He then explained that if consideration is given to only one of the two fusions, based on the DRE method, claimant could be placed at 28 percent impairment for the whole person. However, a multilevel fusion results in a lesser impairment rating. He refers to

this as "one of the paradoxes in The Guides," and concludes that to avoid penalizing claimant for having an additional fusion, it is more appropriate to "assign 28% whole person impairment, given that she has now had two fusions, without radiculopathy" and considering her "residual loss of use of the cervical spine area." (Ex. 2-16)

Dr. Kuhnlein stated that in her current job, claimant does not require any restrictions because she is being accommodated, however, in the event of a job change, he would assign the following restrictions due to her cervical spine: lift 10 pounds occasionally from floor to waist; 20 pounds occasionally from waist to shoulder; and 10 pounds occasionally over shoulder height and avoid working on ladders or at heights. (Ex. 2-16)

William Boulden, M.D., issued a report dated June 7, 2017, following an independent medical evaluation conducted at the request of defendants. (Ex. I-1) Dr. Boulden identified claimant's chief complaints as: neck, right foot, right shoulder and right thigh numbness. (Id.) He described the injury and claimant advised that the January 7, 2016 incident increased her right arm pain, but the "neck pain was a new issue since she had never had any neck pain." (Ex. I-1) However, I note that Dr. Boulden had reviewed claimant's medical history and was aware of her pre-existing cervical fusion surgery with Dr. Boarini in February, 2015. (Ex. I-4) Dr. Boulden described his findings concerning the physical examination with no objective or measured data recorded concerning strength, sensation, or range of motion. Dr. Boulden opined as follows:

> With reference to question number one, did the patient sustain a work-related injury to her neck on or about January 7, 2016, I would have to state that there are no objective findings showing there was a new injury to her neck. She had already been having problems with her right arm, as well as the fact that she had had a previous fusion at C5-6 that was finally found to have a nonunion.

(Ex. I-7) Dr. Boulden also stated:

> I do not believe the alleged work injury was a substantial factor necessitating surgical care on November 17, 2016. I think the biggest issue there was the nonunion at C5-6. The reason I state this is the fact that C3-4 would not cause radicular pain in the arm based on the anatomy. Because the patient had nonunion at C5-6 as well as the fact that they redid that and her arm pain dissipated, I would state that was the reason she had to have the surgery, because of the C5-6 nonunion. I believe Dr. Hatfield has stated that the injury could have caused the nonunion to become symptomatic; however, the medical records document that she was having symptoms already, so I do not believe there is correlation between the date of injury and the need for surgery.

(Id.) Dr. Boulden estimated that claimant reached MMI between 6 and 12 months post-surgery. (Id.) He declined to assign any functional impairment or permanent partial disability.

Claimant described her evaluation with Dr. Kuhnlein as "very thorough," stating that she was in his office for about 2 hours and 45 minutes. (Tr. p. 34) She stated that her evaluation with Dr. Boulden lasted about 20 to 25 minutes, including the time she spent waiting to be seen. (Id.)

ADDITIONAL FINDINGS

Considering the expert opinions and medical records presented, I find the causation opinions of Dr. Hatfield and Dr. Kuhnlein to be the most convincing. As described by Dr. Kuhnlein, and testified to credibly by claimant, she had not had any neck pain from her release to return to work in May, 2015 until the work incident on January 7, 2016. Although claimant had some difficulties with her arm, she was diagnosed with DVT in her arm and diagnostic testing indicated the presence of carpal tunnel prior to the work injury. It is significant that the January 7, 2016 work incident brought on a substantial increase in arm pain along with the neck pain. (Tr. p. 27) As concluded by Dr. Kuhnlein, the events of January 7, 2016 and claimant's subsequent neck pain and increased arm pain, along with her subsequent medical care, including multilevel cervical surgery, are most logically related to the January 7, 2016 work injury as the most obvious "logical explanation for the significant change in her symptoms and pattern of medical care." (Ex. 2-14) I note that Dr. Boulden does not specifically explain the role or relationship of the C3-4 condition and fusion surgery to the alleged work injury. He only states that the C3-4 level problem would not have been the cause of radicular symptoms. He does not address the issue of claimant's lack of neck pain prior to the work incident, substantial neck pain after the work incident and relief of neck pain following the multilevel fusion surgery.

I find based on the opinion of Dr. Kuhnlein, as supported by Dr. Hatfield and claimant's testimony, that claimant's pre-existing cervical condition was aggravated or lighted up as a consequence of the work incident on January 7, 2016 and on that date, claimant sustained a work injury that arose out of and in the course of her employment.

Having accepted the opinion of Dr. Kuhnlein, and having found that claimant sustained an injury that arose out of and in the course of her employment on January 7, 2016, I consider the medical expenses sought by claimant as contained in Exhibit 13, including the multilevel fusion surgery performed by Dr. Hatfield. I find, based on the opinions of Dr. Kuhnlein and Dr. Hatfield that the medical treatment claimant received as described in Exhibit 13 was causally related to her work injury, and that the treatment was reasonable and necessary and the fees and charges were reasonable. I further find that the treatment represented by the medical bills contained in Exhibit 13 was helpful to resolving many of claimant's symptoms. On February 1, 2017, Dr. Hatfield noted that "[s]he reports she is clearly improved from preoperatively." (Ex. JE11-118) Claimant testified at hearing that she no longer has neck pain, but "[j]ust sometimes my

upper shoulders will hurt, but that's pretty much it." (Tr. p. 35) She also stated that she no longer had problems with her right arm. (Id.)

I find that claimant was off work following the surgery performed by Dr. Hatfield, from November 18, 2016 through her return to light duty work on January 9, 2017, as stipulated to by the parties in the Hearing Report, and that claimant is entitled to temporary benefits for this period of time.

Concerning functional impairment, Dr. Kuhnlein assigned a functional impairment of 28 percent to the whole person. (Ex. 2-16) Dr. Boulden stated, "[s]he would have a functional impairment rating based on the fact of previous surgeries, but in my opinion, it is not related to the alleged injury of January 7, 2016." (Ex. I-7) Therefore, Dr. Boulden declined to calculate a rating in the event that claimant's condition was found to be work related, but agrees that one would exist. It does not appear that Dr. Hatfield offered an opinion on the issue of functional impairment. Therefore, the only functional impairment rating that is offered is that of Dr. Kuhnlein and I accept the same.

Concerning restrictions, Dr. Hatfield, the treating surgeon released claimant to return to work without restrictions on May 3, 2017. (Ex. JE11-120, Tr. p. 33) Dr. Boulden agreed that no permanent restrictions were needed. Dr. Kuhnlein indicated that claimant's current job did not require permanent restrictions but that restrictions may be needed in the event of a job change at some point in the future. (Ex. 2-16) I am not free to speculate about claimant's future employment status and whether or not the restrictions described by Dr. Kuhnlein might become necessary at a later date. Because Dr. Kuhnlein's restrictions relate to a possible future event and are not assigned at the present time, I find that claimant does not have any present permanent restrictions. This is supported by Dr. Hatfield and Dr. Boulden.

Considering permanent partial disability, the parties agree in the Hearing Report that the disability, if any, is an industrial disability. In view of claimant's functional impairment, lack of restrictions, age, education, work experience, motivation to remain employed and her pre and post work injury earnings, her medical condition before and after the work injury, the length of her healing period, and all other appropriate considerations for industrial disability, I find that claimant has sustained 30 percent industrial disability.

Considering claimant's assertion for reimbursement of her IME with Dr. Kuhnlein under Iowa Code section 85.39, as identified at Exhibit 14, I find that the examination occurred on May 13, 2017 and the report was issued on June 20, 2017. I also find that Dr. Boulden was a physician retained by defendants who conducted an evaluation of permanent impairment and he conducted an evaluation and issued his report on June 7, 2017. (Ex. 1-1) I find that the condition precedent of an opinion being issued by an employer retained physician that claimant found to be too low prior to claimant's IME was absent and claimant is therefore not entitled to reimbursement under Iowa Code

section 85.39. Claimant appears to agree in her post-hearing brief that she is not entitled to IME reimbursement. (Cl. Post-Hearing Brief, p. 20)

Considering penalty benefits, defendants initially directed medical care, which led to the authorized physician, Dr. Hatfield and his recommendation for surgery on July 13, 2016. (Ex. JE11-104) The defendant insurance carrier was sent a letter from Dr. Hatfield on August 15, 2016, in which he stated that the need for surgery related to the symptomology of the nonunion at C5-6 and the C3-4 level, and that "absent the same or similar symptoms prior to the described incident," he related the development of symptoms and changes at both levels to the January 7, 2016 work incident. (Ex. JE11-106) The parties submitted duplicate exhibits of the August 16, 2016, letter from the insurance adjuster to claimant's counsel indicating that Dr. Hatfield's recommendation for surgery was "under investigation to determine if Ms. Meyer's current condition and need for surgery is a result of her alleged work injury." (Ex. H-2; Ex. 9-35) The letter also requested that claimant produce a list of all health care providers that claimant had seen in the past ten years. (Id.) Given the nature of Dr. Hatfield's causation statement, which included the qualifying statement that "absent the same or similar symptoms prior to the described incident" the cervical spine injuries are related, it was appropriate for defendants to investigate claimant's medical history. However, I note that the injury date occurred over six months prior to the request for surgery and defendants had sufficient time to conduct such an investigation in order to determine authorization for the continued care they were already providing. It would be ordinary for defendants to investigate a claimant's prior medical history. It is troublesome to the undersigned that the cessation of care only occurs when a multilevel fusion surgery is recommended. However, obviously, penalty is not applicable to a denial of medical benefits.

Claimant's counsel then sent a letter to the insurance adjuster on August 18, 2016, requesting immediate authorization of the surgery recommended by Dr. Hatfield, and attaching a list of claimant's medical providers since 2008. (Ex. 10-36)

Claimant thereafter filed an application for alternate care regarding the recommended surgery. (Tr. p. 31) On or about August 25, 2016, in answer to the petition for alternate medical care, defendants asserted that medical causation was under investigation and "currently an issue." (Ex. H-1) The Alternate Medical Care was therefore denied. (Ex. H-1) No specific basis for the denial is cited other than an ongoing investigation.

The form and substance of any ongoing investigation is not clear.

It was not until at least June 7, 2017, when defendant had possession of Dr. Boulden's opinion that the current condition was not related to the work injury. (Ex. I-1) This was over nine months after the denial of the application for alternate medical care and nearly eleven months after Dr. Hatfield first requested authorization to proceed with the surgery.

Defendants have not paid any temporary benefits in this case prior to the hearing.

Based upon the previous finding that claimant is owed temporary disability benefits and that defendant's failed to pay the same, claimant has shown a denial of temporary benefits. Because the ongoing investigation cited by defendants in their answer to the application for alternate care is unclear and they did not possess Dr. Boulden's report until many months thereafter, I find that defendants have failed to establish that the results of a reasonable investigation was the actual basis of the denial of temporary benefits and failed to communicate said basis to claimant. Simply referencing an ongoing investigation is not sufficient to avoid penalty. Defendants are therefore obligated to pay penalty benefits to claimant for the denied temporary benefits, which the parties stipulated accrued from November 18, 2016 through January 9, 2017. The temporary benefits owed is seven weeks and three days or 7.429 weeks, multiplied by the stipulated rate of $539.08 is $4,004.83. Claimant has provided as part of her post-hearing brief, a list of case citations in which this defendant insurer has been assessed penalties. I find that the period of delay is significant and that penalty should be in the range of 50 percent. Approximately 50 percent of $4,004.83 is $2,000.00.

Concerning penalty related to permanent partial disability benefits, I find that Dr. Boulden's opinion that claimant was not entitled to any permanent impairment is dated prior to the opinion of Dr. Kuhnlein (although Dr. Kuhnlein's examination occurred first) and that defendants could reasonably rely on Dr. Boulden's opinion concerning their denial of permanent partial disability. I therefore find that a reasonable investigation was conducted only as it relates to permanent partial disability benefits, the results of which formed the basis of the denial and that the same was communicated to claimant, in the form of Dr. Boulden's written opinion. Penalty benefits are therefore not applicable to permanent partial disability benefits. This conclusion is further supported by the medical records which indicate that claimant was returned to work by Dr. Hatfield on May 3, 2017, to her same employer, in the same job, at the same pay, with no restrictions following her surgery.

CONCLUSIONS OF LAW

The first issue for determination is whether claimant sustained an injury that arose out of and in the course of her employment on January 7, 2016.

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 alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and

circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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).

When an expert opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845 (Iowa 1995).

In this case, the parties do not argue whether the incident as reported by claimant occurred or whether the incident was properly reported. Rather, the fighting issue in this case is whether the pain reported by claimant and her condition thereafter that brought about the need for medical treatment, including multilevel cervical fusion, represents a new injury or aggravation of an underlying condition, or is it merely a continuation and/or deterioration of claimant's pre-existing cervical spine issues?

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).

I have found above for the reasons there stated that claimant's pre-existing cervical condition was aggravated or lighted up as a consequence of the work incident on January 7, 2016 and I conclude, therefore, that claimant sustained a work injury that arose out of and in the course of her employment on that date.

The next issue is entitlement to temporary benefits.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

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).

The parties stipulated that if the defendant is liable for the injury, that claimant is entitled to temporary total disability from November 18, 2016 through January 9, 2017, as stated on the Hearing Report. (Hearing Report, p. 1) I now conclude that claimant is entitled to these temporary benefits.

The next issue is the extent of permanent partial disability, if any.

The parties have stipulated that if permanent partial disability is found, the commencement date for benefits is January 10, 2017. (Hearing Report, p. 1)

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, 593; 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. However, consideration must also be given to the injured worker's medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured workers' qualifications intellectually, emotionally and physically; the worker's earning before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted. Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); 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).

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W.2d 614 (Iowa 1995).

I have found above for the reasons there stated that claimant has sustained industrial disability of 30 percent.

The next issue is claimant's entitlement to medical expenses incurred as identified in exhibit 13.

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).

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally mandated in a workers' compensation proceeding to support a finding that the care provided was reasonable. The success, or lack thereof, of the care provided is evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File No. 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995)

The Court in Bell Bros. stated:

> 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.

Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010).

I have found above that defendant denied further medical treatment at the time of their answer to alternate medical care, on or about August 25, 2016. I have also found that claimant sustained an aggravation of a pre-existing cervical condition that required medical treatment including multilevel fusion at C3-4 and C5-6 and I conclude that it was reasonable for claimant to proceed with the medical treatment as recommended by the treating physicians and that claimant has shown through her medical records and by her testimony that the medical treatment, including surgery, was helpful. I further conclude that the medical bills are reasonable and that the medical treatment claimant received as identified in exhibit 13 was reasonable and beneficial and that defendants are obligated to pay the same.

The next issue is whether claimant is entitled to IME reimbursement under Iowa Code section 85.39 as identified in exhibit 14.

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

Claimant concedes in her post-hearing brief that she is not entitled to reimbursement under Iowa Code Section 85.39 and she is correct as I have explained above. Claimant's request for reimbursement of her IME with Dr. Kuhnlein under Iowa Code section 85.39 is denied.

The next issue is entitlement to penalty benefits, if any.

Iowa Code section 86.13(4) provides that:

> (a) If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, of chapter 85, 84A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed or terminated without reasonable or probable cause or excuse.
>
> (b) The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts:

(1) The employee has demonstrated a denial, delay in payment, or termination 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 the following criteria:

(1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.

(2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.

(3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

If weekly compensation benefits are not fully paid when due, section 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Weekly compensation payments are due at the end of the compensation week. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229, 235 (Iowa 1996).

Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It is not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

If the employer fails to show reasonable cause or excuse for the delay or denial, the commission must impose a penalty in an amount up to 50 percent of the amount unreasonably delayed or denied. Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

Payments are "made" either when (a) the check addressed to a claimant is mailed or when (b) the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 236; Kiesecker, 528 N.W.2d at 112.

Penalty is not imposed for delayed interest payments. Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa 1999).

I have found above for the reasons there stated that claimant is entitled to penalty benefits regarding defendants' denial of temporary benefits only and that approximately 50 percent of the amount denied is $2000.00 (based on total temporary benefits of $4,004.83).

The final issue is costs.

The assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs allowable under commissioner rule are as follows:

> Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

876 IAC 4.33. In this case, claimant has set forth his costs in Exhibit 14. I conclude that claimant was successful in this claim and in my discretion I award the following costs: filing fee - $100.00; Service costs - $12.93; Dr. Hatfield report - $120.00; Claimant deposition transcript expense - $87.50; and the report only (not the examination per Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015)) of Dr. Kuhnlein, in the amount of $1,843.50, for a total amount of costs of $2,163.93.

ORDER

IT IS THEREFORE ORDERED:

That defendants shall pay claimant healing period benefits from November 18, 2016 through January 9, 2017.

That defendants shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits beginning on the stipulated commencement date of January 10, 2017.

That all weekly benefits shall be paid at the stipulated rate of five hundred thirty nine and 08/100 dollars ($539.08) per week.

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

That defendants shall be entitled to credit for all weekly benefits paid to date, if any.

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

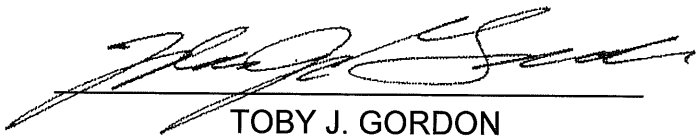
That defendants shall reimburse claimant for his out-of-pocket medical expenses set forth in Exhibit 13 and shall pay, reimburse, and or otherwise satisfy all remaining medical expenses contained therein.

That defendants shall pay claimant penalty benefits of two thousand and 00/100 dollars ($2,000.00) for the unreasonable denial of temporary benefits of four thousand four and 83/100 dollars ($4,004.83).

That defendants shall pay costs of two thousand one hundred sixty three and 93/100 dollars ($2,163.93) as set forth above.

That defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this ___18th___ day of January, 2018.



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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.