BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEVIN BUTLER,	FILED	
Claimant,	MAR 08 2019	File Nos. 5054780, 5055929
vs.	WORKERS COMPENSATION	ARBITRATION
CITY OF WATERLOO, IOWA,		DECISION
Employer, Self-Insured, Defendant.		Head Note No.: 1802, 1803, 2500, 4000.2

STATEMENT OF THE CASE

Claimant, Kevin Butler, filed petitions in arbitration seeking workers' compensation benefits from City of Waterloo, self-insured employer, as defendant. In File No. 5054780, claimant alleged cervical injuries on October 1, 2014 and/or October 19, 2015. At the time of hearing, the parties stipulated claimant sustained a cervical injury and further, that the proper date of injury for the cervical injury was October 1, 2014. In File No. 5055929, claimant alleged cumulative bilateral carpal tunnel syndrome, with a number of potential injury dates. At the time of hearing, the parties stipulated claimant sustained bilateral carpal tunnel syndrome with a date of injury on April 4, 2016. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch. The record in this case consists of Joint Exhibits 1 through 15, Claimant's Exhibits 1 through 8, Defendant's Exhibits A through R, and the testimony of the claimant, Tony Pauley, Roberta Brooks, and Cheryl Huddleston.

ISSUES

The parties submitted the following issues for determination:

In File No. 5054780 (Date of Injury: October 1, 2014)

1. Whether claimant is entitled to temporary disability benefits from September 20, 2017 through September 22, 2017 and December 12, 2017;

2. The extent of claimant's industrial disability;

3. The proper rate of compensation;

4. Whether defendant is responsible for claimed medical expenses;

5. Whether defendant is responsible for payment of medical mileage;

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

7. Whether defendant is responsible for payment of interest on late indemnity benefits; and

8. Specific taxation of costs.

In File No. 5055929 (Date of Injury: April 4, 2016)

1. Whether claimant refused suitable work from July 22, 2016 through July 27, 2016;

2. The extent of permanent disability to claimant's bilateral upper extremities;

3. The proper rate of compensation;

4. Whether defendant is responsible for payment of medical mileage;

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

6. Whether defendant is responsible for payment of interest on late indemnity benefits; and

7. Specific taxation of costs.

FINDINGS OF FACT

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

Claimant's testimony was direct and consistent as compared to the evidentiary record and his deposition testimony. Claimant's demeanor at the time of evidentiary hearing was excellent and gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 51 years of age at the time of hearing. Claimant dropped out of high school during the 11th grade; he was a below average student. He subsequently earned his GED in 1983. He participated in 5 months of machinist classes at a community college, but did not finish the program. (Claimant's testimony)

Claimant is currently single and resides in Waterloo, Iowa. (Claimant's testimony) Claimant married in 1989. By answers to interrogatories, claimant

represented he and his wife divorced in 2014. (DEL, page 79) At his deposition in October 2016, claimant testified he and his wife were separated/living apart at the time of his October 1, 2014 work injury. (DER, pp. 99-100) However, claimant's 2013 and 2014 federal tax records identify claimant as married, filing jointly, and claiming two exemptions. (CE3, p. 46; DEJ, p. 67) At evidentiary hearing, claimant testified he remained married at the time of his October 1, 2014 injury, but his wife filed for divorce shortly thereafter. The divorce became final in November 2015. (Claimant's testimony)

Claimant's work history consists of manual labor performing maintenance, janitorial/custodial, roofing, item and mail processing, pipe insulation, foundry cleaning, delivery, and his work for defendant. (Claimant's testimony; CE2, pp. 1-3) Claimant began work at defendant in 1989. Until 1997, claimant worked as a maintenance worker in the parks department. During seasonal layoffs from 1992 to 1995, claimant worked in floral delivery. From 1997 to 2000, claimant worked as an equipment operator I in the street department. In December 2000, claimant began work as an equipment operator II, primarily tasked with snow removal and maintaining alleys. Duties also included occasional operation of a street sweeper or "wacker packer," a piece of equipment used to compact dirt and asphalt. (Claimant's testimony; CE2, p. 3) Beginning in November 2015, claimant began working part time sorting mail during the holiday season. He worked in this capacity again during the holiday season of 2016. (Claimant's testimony; CE2, p. 4)

The job description for the position of equipment operator II in the public works-street department, tasks the employee with performing skilled construction and street maintenance with heavy equipment. (DEM, pp. 83-85) The job description identifies workers have an assigned shift, generally Monday through Friday. It also notes workers will be required to respond to emergencies on weekends, evenings, and holidays; these emergencies are generally weather-related. The job description notes the possibility of significant overtime during severe snow or flooding. (DEM, p. 85) Defendant represented claimant's position required occasional lifting and carrying of up to 50 pounds and repetitive fine manipulating with the bilateral hands. (DEK, pp. 73-74)

On October 1, 2014, claimant was leaving the public works building, en route to observe project sites. As he turned the steering wheel, he felt a pop in his left shoulder area. He developed a sharp pain down the back of his left arm into his left hand, with accompanying numbness of his left thumb through index fingers. (Claimant's testimony) Claimant reported the injury to defendant. He reported a popping sensation of the left shoulder and inability to feel three digits of his left hand. (DEA, p. 1)

In the weeks preceding the October 1, 2014 incident, it is found that claimant earned the following wages:

Period Ending	Hours	Gross Earnings
June 27, 2014	40	$928.96

July 4, 2014	40	$993.19
July 11, 2014	40	$952.40
July 18, 2014	40	$998.55
July 25, 2014	40	$983.04
August 1, 2014	32	$808.07
August 8, 2014	40.9	$974.08
August 15, 2014	40	$1,005.51
August 22, 2014	40	$952.40
August 29, 2014	40	$1,029.19
September 5, 2014	40	$952.40
September 12, 2014	40	$998.55
September 19, 2014	44.5	$1,059.55
September 26, 2014	40	$998.55

(CE3, pp. 1, 8-18; DEQ, p. 96)

On October 6, 2014, claimant was seen at Allen Occupational Health. Claimant reported sustaining an injury to his shoulder on October 1, 2014. (JE1, p. 1) Acute left acromioclavicular (AC) arthropathy was diagnosed. Claimant was prescribed medication and referred for orthopedic consult with Thomas Gorsche, M.D. Claimant was permitted to continue full duty work. (CE1, pp. 4-5)

Per the referral, on October 14, 2014, claimant presented to Dr. Gorsche for left shoulder evaluation. (JE2, p. 1) Dr. Gorsche ordered x-rays and performed a physical examination, during which he noted paresthesias into the left upper extremity with neck flexion. Dr. Gorsche assessed left shoulder subacromial bursitis with a type III acromion and paresthesias into the left digits with cervical spine flexion. Dr. Gorsche ordered nerve conduction studies and injected the left shoulder subacromial space. He released claimant to regular work duties. (JE2, p. 2)

On October 21, 2014, claimant underwent EMG/nerve conduction studies (NCS) with Ivo Bekavac, M.D. (JE3, pp. 1-4)

Claimant returned to Dr. Gorsche on October 29, 2014 with continued shoulder and upper extremity complaints. Dr. Gorsche assessed left carpal tunnel syndrome and

left shoulder subacromial bursitis. He recommended carpal tunnel releases, with the left side performed first. No work restrictions were imposed. (JE2, p. 3) A representative of defendant posed questions to Dr. Gorsche; he issued responses on November 5, 2014. Thereby, Dr. Gorsche opined claimant's carpal tunnel syndrome was not related to the reported October 1, 2014 injury. (JE2, p. 5)

On November 19, 2014, defendant's counsel authored correspondence to claimant's counsel. Thereby, defendant represented no medical treatment would be authorized for carpal tunnel complaints, as Dr. Gorsche did not relate the carpal tunnel syndrome to the work injury. (CE5, p. 1)

On February 12, 2015, claimant presented to Ameer Almullahassani, M.D. of Allen Neurology. Dr. Almullahassani performed an examination and neurological evaluation of claimant's left arm and hand. Thereafter, he assessed likely left C6 radiculopathy. He ordered a cervical MRI and EMG/NCS. (JE4, p. 1) Claimant underwent the cervical MRI on February 17, 2015. (JE4, pp. 2-3) EMG/NCS followed on February 19, 2015 and revealed left C6 radiculopathy and left median neuropathy. Gabapentin was prescribed. (CE4, pp. 4, 6-7) Dr. Almullahassani ordered physical therapy for left arm and hand pain and numbness. Claimant participated in seven sessions during March 2015. (JE5, pp. 1-12)

On April 6, 2015, claimant presented to the University of Iowa Hospitals & Clinics (UIHC) neurosurgery department for examination by board-certified neurosurgeon, Chandan Reddy, M.D. (DEI, p. 42) Dr. Reddy assessed likely cervical radiculopathy from either C5-6 or C6-7 disc osteophyte complex. Dr. Reddy ordered a repeat cervical MRI, as well as x-rays and CT scan of the cervical spine. (JE6, p. 1)

Pursuant to Dr. Reddy's order, clamant underwent cervical MRI and CT scan on May 12, 2015. (JE6, pp. 3-5)

On June 15, 2015, claimant was examined by Jeanette Westendorf, RN of Allen Neurology. Claimant inquired if there was another medication which would be stronger than gabapentin for hand pain, numbness, and tingling. Ms. Westendorf increased claimant's gabapentin dosage and recommended splinting. She also advised claimant she would contact UIHC regarding treatment recommendations relative to his carpal tunnel syndrome. (JE4, p. 8)

Claimant underwent a cervical epidural steroid injection (ESI) on June 22, 2015. (JE6, pp. 5-6; JE7, pp. 6-8)

On August 24, 2015, claimant returned to UIHC. He underwent EMG/NCS per Dr. Reddy. (JE6, p. 6; JE8, pp. 1-5) Thereafter, claimant presented to Dr. Reddy. Claimant reported significant relief of neck pain radiation following ESI, but continued bilateral upper extremity and hand symptoms. Dr. Reddy performed a physical examination. He opined claimant's cervical MRI revealed C6-7 bilateral disc osteophyte

complex with bilateral foraminal stenosis. He opined the EMG/NCS suggested bilateral carpal tunnel syndrome, left greater than right. Dr. Reddy assessed severe left carpal tunnel syndrome in the setting of cervical spondylosis and double crush phenomenon. He recommended bilateral carpal tunnel release, left before right. (JE6, pp. 7, 13)

Claimant underwent a repeat cervical ESI on September 4, 2015. (JE7, pp. 16-18)

On October 12, 2015, claimant telephoned Dr. Reddy's office with complaints of increased neck pain. Dr. Reddy recommended claimant return to the clinic for examination. (JE6, p. 14) Accordingly, claimant returned to Dr. Reddy on October 19, 2015. Claimant reported worsening neck pain and digit numbness, without relief following a recent cervical ESI. Dr. Reddy assessed symptomatic cervical spine spondylosis with radiculopathy. Dr. Reddy opined claimant's symptoms were attributable to the work injury in October 2014. He scheduled C6-C7 anterior cervical discectomy and fusion (ACDF) for January 13, 2016. Dr. Reddy expressed belief the surgery would solve claimant's bilateral arm pain. He explained claimant's carpal tunnel syndrome was likely double-crush phenomenon, but opined claimant's primary problem was within the neck. (JE6, p. 15) Dr. Reddy specifically opined claimant's neck surgery was work related due to the onset of symptoms in the acute October 2014 event and also due to the repetitive nature of head and neck motion while operating heavy equipment. (JE6, p. 18)

On November 6, 2015, claimant's counsel authored correspondence to defendant's counsel and attached a copy of Dr. Reddy's October 19, 2015 medical note for review. Counsel requested reconsideration of defendant's denial of care. (CE5, p. 2)

On November 13, 2015, claimant filed an alternate medical care petition seeking authorization of cervical fusion at UIHC. On November 18, 2015, defendant filed an answer disputing liability on the claim. As a result, claimant's petition was dismissed by order dated November 19, 2015. By the order, defendant was barred from asserting lack of authorization as a defense to charges incurred in obtaining care of the condition for which defendant denied liability. (Agency file)

On November 18, 2015, defendant's counsel authored questions directed to Dr. Gorsche, with a copy of Dr. Reddy's October 19, 2015 note for review. (CE2, pp. 6-7) Dr. Gorsche provided answers to counsel's questions on December 6, 2015. Thereby, Dr. Gorsche stated claimant presented to him for left shoulder evaluation and made no mention of a neck injury. He also denied any prior documentation of a neck injury in the records. (JE2, p. 8)

On January 13, 2016, claimant underwent ACDF at C6-7 with Dr. Reddy. (JE6, pp. 28, 33)

Following surgery, claimant returned to Dr. Reddy on February 22, 2016. Claimant reported no longer experiencing neck pain or radicular pain down into the left arm. He reported persistent symptoms of left carpal tunnel syndrome, left greater than right. Claimant expressed eagerness to return to work. (JE6, p. 35) Dr. Reddy opined claimant was doing well post-ACDF and released claimant to return to work without restrictions on February 29, 2016. Dr. Reddy referred claimant to Ericka Lawler, M.D. for evaluation of carpal tunnel complaints. (JE6, pp. 36, 39)

On March 2, 2016, defendant's counsel authored correspondence to claimant's counsel. Thereby, counsel stated defendant denied claimant sustained a neck injury due to lack of reporting of an October 19, 2015 injury, as well as Dr. Gorsche's report indicating claimant did not report a neck injury during his evaluation. Given a recent assertion of October 1, 2014 as an alternative injury date, counsel represented defendant also denied a neck injury on that date based upon Dr. Gorsche's records. (CE5, p. 3)

On March 11, 2016, claimant presented to Annie Kontos, D.O. to establish a general course of maintenance care. Claimant was evaluated for a number of conditions and underwent laboratory studies. Dr. Kontos prescribed Chantix and referred claimant for a sleep study and colonoscopy. (JE9, pp. 6-7)

On March 15, 2016, claimant's counsel authored correspondence to Dr. Reddy, purporting to summarize Dr. Reddy's expressed opinions. Dr. Reddy expressed agreement with the statements on April 4, 2016. Thereby, Dr. Reddy stated he continued to recommend bilateral carpal tunnel releases and was aware claimant was previously diagnosed with carpal tunnel symptoms in the 1990s. Dr. Reddy opined claimant's work duties aggravated his carpal tunnel syndrome to the point he now required bilateral carpal tunnel releases. (JE6, pp. 41-42)

In the weeks preceding Dr. Reddy's April 4, 2016 opinion, which was later stipulated to by the parties as claimant's date of injury in the carpal tunnel syndrome claim, it is found that claimant earned the following wages:

Period Ending	Hours	Gross Earnings
December 11, 2015	40	$980.80
December 18, 2015	40	$1,026.95
December 25, 2015	40	$980.80
January 1, 2016	58.1	$1,424.61
January 9, 2016	44	$1,078.88
January 15, 2016	40	$1,026.95

January 22, 2016	40	$980.80
January 29, 2016	40	$1,026.95
February 5, 2016	40	$980.80
February 12, 2016	40	$1,026.95
February 19, 2016	16	$392.32
February 26, 2016	0	$46.15
March 4, 2016	52.6	$1,289.75
March 11, 2016	40	$1,026.95
March 18, 2016	40	$980.80
March 25, 2016	40	$1,026.95
April 1, 2016	40	$980.80

(CE3, pp. 6, 33-42; DEP, pp. 93, 95)

On April 11, 2016, claimant's counsel authored correspondence to defendant's counsel. Counsel requested defendant reconsider denial of liability for the carpal tunnel condition, given Dr. Reddy's opinion causally relating the condition to claimant's work activities. (CE5, p. 4)

On April 25, 2016, claimant filed a petition for alternate medical care seeking authorization of bilateral carpal tunnel releases. Defendant disputed liability for the claim on April 28, 2016, leading to a dismissal of claimant's petition on May 4, 2016. By the dismissal, the deputy ordered that if claimant sought to recover charges incurred in obtaining the care for which defendant denied liability, defendant was barred from asserting lack of authorization as a defense for those charges. (Agency file)

On May 9, 2016, defendant's counsel authored correspondence to claimant's counsel. Thereby, counsel advised defendant denied claimant's April 4, 2016 carpal tunnel injury claim, based upon Dr. Gorsche's November 5, 2014 opinion that claimant's carpal tunnel syndrome was not work-related, as well as a lack of report of injury to defendant. (CE5, p. 5)

Claimant returned to Dr. Gorsche in follow up on May 18, 2016. Following examination, Dr. Gorsche assessed bilateral carpal tunnel syndrome. (JE2, p. 9) Dr. Gorsche opined claimant's carpal tunnel syndrome was not related to an October 1, 2014 injury, but was related to claimant's job duties at defendant. Dr. Gorsche also

opined it was medically possible for an individual to have cervical radiculopathy with a main complaint of shoulder pain. He deferred to a neck specialist on the question of causation of claimant's neck condition. (JE2, p. 12)

On May 31, 2016, claimant's counsel authored correspondence to defendant's counsel. Claimant's counsel inquired if defendant now accepted claimant's carpal tunnel injury given Dr. Gorsche's report. (CE5, p. 6)

Pursuant to Dr. Reddy's referral, on June 13, 2016, claimant presented to the UIHC orthopedics department for evaluation by Ericka Lawler, M.D. (JE10, p. 1) Dr. Lawler is board certified in orthopedic surgery with a specialty in hand surgery. (DEH, p. 32) Claimant reported resolution of neck and radicular arm pain following ACDF, but unchanged hand numbness. Dr. Lawler opined claimant's EMG showed bilateral carpal tunnel syndrome. (JE10, p. 1) She assessed carpal tunnel syndrome, left greater than right, in the setting of possible continued cervical radiculopathy. Dr. Lawler recommended proceeding with surgical releases. (JE10, p. 2)

On June 13, 2016, defendant's counsel authored correspondence to claimant's counsel and advised that defendant now authorized Dr. Gorsche to treat claimant's carpal tunnel syndrome. (CE5, p. 7)

On June 14, 2016, claimant filed another alternate care petition seeking authorization of carpal tunnel releases, based upon defendant's failure to authorize care despite causation opinions linking the carpal tunnel conditions and claimant's work duties. (Agency file) On June 20, 2016, defendant advised claimant an appointment had been scheduled with Dr. Gorsche to treat claimant's carpal tunnel syndrome. (CE5, p. 8) On June 22, 2016, defendant filed an answer to claimant's alternate medical care petition and advised care had been authorized with Dr. Gorsche. (Agency file) On June 24, 2016, defendant advised claimant it would not authorize care at UIHC. (CE5, p. 10)

The alternate care matter proceeded to telephonic hearing before the undersigned and a decision was filed on June 28, 2016. By the decision, the undersigned determined claimant appropriately relied upon defendant's prior denial of liability when he sought care with Dr. Lawler. It was determined defendant did not offer prompt, reasonable treatment. I further expressed belief defendant's position, to deny care and then question claimant's choice to seek care, was disingenuous. I found it would be unreasonable to interrupt the established physician-patient relationship between claimant and Dr. Lawler. As a result, I ordered Dr. Lawler be designated as a treating physician for claimant's carpal tunnel syndrome. (Agency file)

On July 5, 2016, claimant underwent left endoscopic carpal tunnel release performed by Dr. Lawler. (JE10, pp. 6-8) Claimant was removed from work pending follow up. (JE10, p. 9)

Claimant returned to the UIHC orthopedics department on July 21, 2016, in follow up of carpal tunnel surgery. He was examined by Reed Trettin, PA-C. Claimant reported slight improvement in numbness following left-sided release. Mr. Trettin noted claimant had not returned to work and described claimant as "adamant" that he not return to work until after completion of right-sided release. (JE10, p. 10) Mr. Trettin noted he attempted to provide claimant with a work status, but claimant "adamantly refused to return to work." He noted significant time was spent discussing appropriate restrictions, but claimant refused to return to work until after right-sided release which was scheduled in approximately one week. From a medical standpoint, Mr. Trettin noted claimant could return to work light duty with restrictions of a 2 to 3 pound lift. (JE10, p. 11) Mr. Trettin authored a separate work status form indicating claimant was unable to return to work following left-sided surgery and upcoming right-sided release on July 28, 2016 and subsequent recovery. (JE10, p. 14) Mr. Trettin also authored another work status form stating claimant could return to work with restrictions of light duty work and a 2 to 3 pound maximum lift with the left upper extremity. (JE10, p. 15)

At his deposition, claimant testified he did not believe it made "sense" to return to work between his carpal tunnel release surgeries. (DER, pp. 112) Claimant testified he received an off-work note from Mr. Trettin, which he took to defendant. (DER, p. 113) Claimant testified he later received a phone call from his supervisor, Tony Pauley, advising claimant he was to be at work. Claimant refused, stating he had an off-work excuse. (DER, p. 113)

At evidentiary hearing, claimant testified Mr. Trettin informed him claimant was able to return to work with restrictions. Claimant testified he informed Mr. Trettin that he did not want to return to work until after the right-sided release had been completed; claimant expressed belief it did not make sense to return to work for only a few days prior to right-sided surgery. Claimant testified he received an off-work excuse and provided that to defendant. Claimant later received a call advising him that he was to be at work; he did not recall an offer of a specific light duty assignment. At that time, claimant learned of Mr. Trettin's contradictory work release note. Claimant testified he was confused regarding the competing notes. He did not present to work at defendant. (Claimant's testimony)

Tony Pauley, operations supervisor for defendant's street department and claimant's supervisor, testified at evidentiary hearing. Mr. Pauley testified he telephoned claimant following receipt of Mr. Trettin's work status form imposing work restrictions. Mr. Pauley testified he advised claimant that light duty work was available and he should present to work. Mr. Pauley testified claimant has experienced a number of injuries at defendant and light duty was always offered within imposed restrictions. (Mr. Pauley's testimony)

Mr. Pauley's testimony at the time of evidentiary hearing was direct and consistent with the evidentiary hearing. His demeanor was excellent and gave the undersigned no reason to doubt his veracity. Mr. Pauley is found credible.

Defendant paid temporary total disability benefits from July 5, 2016 through July 22, 2016. Healing period benefits for the periods ending July 21, 2016; August 4, 2016; and August 9, 2016 were issued on July 26, 2016; August 9, 2016; and August 16, 2016; respectively. Defendant paid indemnity benefits for the week between carpal tunnel surgeries. Defendant labeled these benefits as permanent partial disability benefits. Benefits were paid at a weekly rate of $584.28. Defendant paid temporary total disability benefits from July 28, 2016 through August 10, 2016. (CE4, pp. 9-10) Defendant's counsel authored correspondence to claimant's counsel on July 28, 2016. Counsel noted claimant had been released to return to work with restrictions and defendant had work available to claimant within those restrictions. As claimant did not present to work, defendant considered indemnity benefits paid during this period to be permanent partial disability benefits. (CE5, p. 11)

On July 28, 2016, claimant underwent open right carpal tunnel release with Dr. Lawler. (JE10, pp. 16-18) Claimant was removed from work until August 10, 2016. (JE10, p. 19)

Claimant returned to the UIHC orthopedics department on August 9, 2016 and was seen by Mr. Trettin. Mr. Trettin imposed work restrictions of light duty activities, with maximum lifts of 1 pound with the right upper extremity and 10 pounds with the left upper extremity. (JE10, p. 24) Following imposition of restrictions, defendant offered and claimant accepted a light duty assignment performing secretarial and filing work. (Claimant's testimony)

On August 10, 2016, claimant's counsel authored correspondence to defendant's counsel. Thereby, counsel represented claimant's last indemnity check covered the period of July 22, 2016 through July 28, 2016, despite claimant being off work following carpal tunnel surgery. As claimant was off work, counsel believed claimant was due temporary total disability benefits from July 28, 2016 through August 9, 2016. Counsel also requested payment of medical mileage associated with the August 9, 2016 appointment at UIHC. (CE5, p. 12)

Defendant referred claimant to board-certified orthopedic surgeon, Todd Harbach, M.D., to address whether claimant's conditions were causally related to the October 2014 injury and/or claimant's job duties. (JE11, p. 1; DEF, p. 28) Dr. Harbach examined claimant on August 11, 2016 and Dr. Harbach issued a report the following day, August 12, 2016. Dr. Harbach noted claimant's history of cervical and carpal tunnel complaints. He reviewed claimant's medical records, imaging, and diagnostic tests. Dr. Harbach also performed a physical examination. (JE11, pp. 4-8)

Following interview, records review, and examination, Dr. Harbach issued the following diagnoses of work-related conditions: left C7 radiculopathy; asymmetric disc bulge/herniation at C6-C7, adequately treated; and bilateral carpal tunnel syndrome, appropriately treated. (JE11, p. 10) Dr. Harbach specifically opined the October 2014 event either herniated or worsened the disc herniation at C6-C7 and increased left

upper extremity C7 radiculopathy. He also opined claimant's work duties caused the severe bilateral carpal tunnel syndrome. (JE11, p. 9)

On August 29, 2016, claimant returned to Dr. Lawler in follow up of carpal tunnel releases. Dr. Lawler noted claimant had returned to work and was tolerating his duties well. Claimant reported he was ready to perform full duty, without restrictions. (JE10, p. 25) Dr. Lawler released claimant to work without restrictions. (JE10, pp. 26, 29)

On September 2, 2016, defendant's counsel authored correspondence to Dr. Reddy and inquired if claimant had achieved maximum medical improvement (MMI) and if so, what the extent of claimant's permanent impairment would be. (JE6, p. 43)

On September 13, 2016, defendant's counsel directed correspondence to claimant's counsel and represented defendant accepted liability for claimant's neck condition based upon Dr. Harbach's report. Counsel represented a check for temporary total disability benefits for the period of January 13, 2016 through February 29, 2016 would be forthcoming. (CE5, p. 14)

Defendant requested Dr. Harbach issue a permanent impairment rating relative to claimant's cervical spine condition. (JE11, p. 11) On September 19, 2016, Dr. Harbach opined by the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, claimant fell within DRE Cervical Category IV, warranting a permanent impairment rating of 25 percent whole person based upon the successful one-level fusion. (JE11, p. 12)

On September 20, 2016, defendant issued claimant temporary total disability benefits regarding claimant's neck injury for the period of January 13, 2016 through February 29, 2016. (CE4, pp. 2-3, 5-7)

Claimant telephoned Dr. Reddy's office on October 12, 2016 and reported complaints of sharp pain between the shoulder blades which radiated up through the neck, with associated headaches. A prescription for oxycodone was issued. (JE6, pp. 44-45)

Defendant's counsel directed correspondence to Dr. Reddy on October 13, 2016 and again requested Dr. Reddy's opinions on MMI and the extent of permanent impairment. (DEC, p. 8) Dr. Reddy issued responses on October 18, 2016. Dr. Reddy opined claimant achieved MMI on February 22, 2016, but noted claimant called on October 12, 2016 with complaints of neck pain requiring medication. Dr. Reddy opined claimant fell within the AMA Guides, DRE Cervical Category III, warranting a permanent impairment rating of 15 percent whole person. (JE6, p. 46)

Claimant telephoned Dr. Reddy's office again on November 1, 2016 with complaints of neck pain. (JE6, p. 48)

On November 11, 2016, defendant's counsel authored correspondence to claimant's counsel. Thereby, counsel represented defendant intended to pay the 15 percent whole person rating imposed by Dr. Reddy. Such a rating entitled claimant to 75 weeks of benefits and would be paid at a weekly rate of $630.00. Counsel represented a check for the accrued 37 weeks of benefits, from February 29, 2016 through November 12, 2016, would be issued shortly. The remaining benefits would be paid weekly through August 5, 2017. (DED, p. 13)

On November 15, 2016, claimant returned to UIHC for evaluation with Dr. Reddy. Claimant first underwent repeat cervical MRI. (JE6, pp. 49-50) During evaluation with Dr. Reddy, claimant reported neck and shoulder blade pain. Dr. Reddy opined the cervical MRI revealed C4-5 and C5-6 mild central stenosis with bilateral foraminal stenosis. Dr. Reddy recommended fusion of the C4-5 and C5-6 levels. (JE6, p. 51) The C4-5, C5-6 ACDF was scheduled for January 26, 2017. (JE6, p. 48)

On November 15, 2016, defendant issued payment for permanent partial disability benefits regarding claimant's neck injury for the period of February 29, 2016 through November 12, 2016. (CE4, pp. 1-2) Defendant continued to pay permanent partial disability benefits regarding claimant's neck injury through January 26, 2017, when claimant required the second neck surgery. (CE4, pp. 1-7)

Claimant returned to Mr. Trettin on January 2, 2017 with complaints of extreme pain and numbness of the left hand. Mr. Trettin noted claimant was currently being treated for a neck condition. (JE10, p. 30) He informed claimant his symptoms may continue to improve for up to 6 to 12 months post-releases. Mr. Trettin also relayed belief some of claimant's symptoms may be related to his cervical condition. Mr. Trettin released claimant without restrictions, but discussed activity modification and minimizing trauma to the hands. (JE10, p. 31)

On January 26, 2017, claimant underwent C4-5, C5-6 ACDF with Dr. Reddy. (JE6, pp. 59, 67-69) Dr. Reddy removed claimant from work pending follow up. (JE6, p. 72) Defendant resumed payment of temporary total disability benefits. (CE4, pp. 1-7)

On February 28, 2017, Dr. Reddy authored a medical excuse note. Thereby, he noted claimant underwent neck surgery on January 13, 2016 and January 26, 2017, as well as bilateral carpal tunnel surgeries on July 5, 2016 and July 28, 2016. Dr. Reddy opined the conditions stemmed from claimant's longstanding job as a heavy machine operator. (JE6, p. 73)

On March 10, 2017, claimant's counsel authored correspondence to defendant's counsel. Thereby, counsel represented claimant's indemnity checks were consistently two days late and the last check received covered the period of February 18, 2017 through February 25, 2017. Claimant's counsel authored updated correspondence and represented that on March 13, 2017, a check covering the period of February 25, 2017

through March 4, 2017 had been received. Counsel noted the check had been issued March 7 and mailed March 9, 2017. Defendant's counsel authored a response to claimant's counsel on March 16, 2017. Thereby, counsel represented checks were typically mailed the day after approval at the city council meeting. (CE5, p. 15)

Claimant returned to Dr. Reddy on March 28, 2017. Dr. Reddy opined claimant was doing well post-surgery and could return as needed. He released claimant to return to work without restrictions on May 8, 2017. (JE6, pp. 75, 79)

Claimant was also seen by Dr. Lawler on March 28, 2017. Claimant relayed no difficulties with his right hand, but continued pain of the left hand. (JE10, p. 34) Dr. Lawler opined claimant's wrist and hand would continue to improve with time. She placed claimant at MMI and imposed no restrictions related to his hands. Dr. Lawler noted she would calculate claimant's permanent impairment rating upon request. (JE10, p. 35)

On May 3, 2017, claimant's counsel authored correspondence to defendant's counsel. Thereby, counsel inquired if a permanent impairment rating had been received from Dr. Lawler and requested payment of medical mileage. (CE5, p. 16) That same date, a representative of defendant authored correspondence to Dr. Lawler, requesting an impairment rating relative to claimant's carpal tunnel syndrome. (DEC, p. 12)

Following surgery, temporary total disability benefits regarding claimant's neck injury continued until May 8, 2017, at which time benefits were converted to permanent partial disability benefits. Permanent partial disability benefits continued to be paid weekly at the time of evidentiary hearing. (CE4, pp. 1-8)

On May 23, 2017, claimant telephoned the UIHC neurosurgery department and requested a refill of pain medication. Nahom Teferi, M.D. advised claimant to fill his pain medications with his primary care provider or a local pain clinic. (JE6, pp. 80, 82)

On May 24, 2017, claimant's counsel authored correspondence to defendant's counsel. Thereby, counsel represented claimant returned to work on May 8, 2017, but had been experiencing gradually worsening pain between his shoulder blades and in the bilateral arms. Counsel represented claimant telephoned Dr. Reddy's office on May 23, 2017 and requested pain medication, but was advised to procure a prescription from his primary care provider or a pain specialist. Counsel requested authorization of a pain specialist. (CE5, p. 17)

Defendant's counsel authored a response on May 30, 2017 and stated he would contact Dr. Reddy to inquire if a pain specialist was required. (CE5, p. 18)

On June 2, 2017, defendant's counsel authored correspondence to Dr. Reddy. Thereby, he inquired if claimant required any further cervical treatment relative to the

work injury. On June 19, 2017, Dr. Reddy replied and stated claimant did not require further treatment of his cervical spine. (JE6, p. 81)

On June 9, 2017, claimant's counsel authored correspondence to defendant's counsel. Thereby, counsel inquired as to authorization of claimant's request for pain specialist evaluation of neck complaints. With respect to claimant's bilateral carpal tunnel syndrome, counsel requested a second opinion due to ongoing hand complaints and also inquired if Dr. Lawler had opined as to claimant's permanent impairment. (CE5, p. 19)

Defendant's counsel authored a response on June 9, 2017. Counsel advised he was awaiting Dr. Reddy's response regarding the necessity of a pain specialist. Counsel represented an impairment rating had been requested from Dr. Lawler, without response. Counsel also denied any request to transfer claimant's care from Dr. Lawler and inquired if claimant sought an independent medical examination. (CE5, p. 20)

On June 16, 2017, claimant filed an alternate medical care petition seeking authorization of a pain specialist for claimant's neck complaints. (Agency file) On June 20, 2017, defendant's counsel authored correspondence to claimant's counsel. Thereby, he advised Dr. Reddy did not recommended further neck treatment. (CE5, p. 22) In response, claimant requested to return to Dr. Reddy for further neck evaluation, as well as to Dr. Lawler for hand evaluation. (CE5, p. 23) On June 23, 2017, defendant's counsel advised claimant was free to contact Drs. Reddy and Lawler for appointments. (CE5, p. 24) Thereafter, claimant voluntarily dismissed his alternate medical care petition on June 23, 2017. (Agency file)

On June 19, 2017, claimant's work vehicle was struck from behind by a trailer and resulted in neck pain. Claimant reported the event to defendant and was referred to medical care. (Claimant's testimony) That same day, claimant presented to Allen Occupational Health for evaluation with Steven Olsen, D.O. Dr. Olsen ordered cervical spine x-rays. He imposed a restriction of no equipment operation. (JE1, pp. 6-8) On June 23, 2017, Dr. Olsen removed the work restriction and provided a full duty work release. (JE1, p. 9)

On July 5, 2017, claimant returned to personal physician, Dr. Kontos. He complained of chronic right hip pain, pain between the shoulder blades radiating to the right flank and hip, and pain of the thoracic, lumbar, and cervical regions. Dr. Kontos referred claimant back to UIHC for further neck evaluation and prescribed physical therapy and pain management for claimant's back complaints. (JE9, pp. 8, 14) X-rays were completed the following day, with both revealing degenerative changes of the cervical and thoracic spine. (JE9, pp. 16-17)

On July 11, 2017, claimant's counsel authored correspondence to defendant's counsel. Thereby, counsel advised Dr. Reddy had left UIHC and as a result, claimant

had secured an appointment with another physician in the neurosurgical department. Counsel inquired if said appointment would be authorized. (CE5, p. 25)

On July 13, 2017, defendant's counsel responded to claimant's inquiry. Counsel denied authorization of care with the UIHC neurosurgery department, in reliance upon Dr. Reddy's prior opinion that no care was required. (CE5, p. 26)

The following day, July 14, 2017, claimant's counsel authored correspondence to defendant's counsel and requested defendant designate a new neurosurgeon for claimant's neck complaints. (CE5, p. 27)

Claimant returned to Dr. Lawler in follow up on July 14, 2017. Claimant complained of continued left hand pain and spasms bilaterally throughout the work day. Dr. Lawler noted claimant suffered with left hand numbness in the C5/C6 distribution. She opined it was unclear if the symptom was related to persistent carpal tunnel or persistent nerve issues related to the cervical spine. Dr. Lawler performed a left carpal tunnel injection in an attempt to alleviate the symptoms. She imposed no activity restrictions. (JE10, pp. 41, 44) Claimant telephoned a few days later and reported no pain relief with the left carpal tunnel injection. (JE10, p. 46)

On July 19, 2017, defendant's counsel responded to inquiry from claimant's counsel and denied authorization of a neurosurgeon, again based upon Dr. Reddy's lack of recommendation for further care. (CE5, p. 28; DED, p. 16)

On July 24, 2017, claimant filed an alternate medical care petition due to asserted refusal by defendant to authorize a treating physician after Dr. Reddy's departure. The matter proceeded to telephonic hearing before the undersigned and resulted in an alternate medical care decision dated August 4, 2017. At hearing, claimant requested authorization of a treating neurosurgeon to assume claimant's care. The undersigned found it was unreasonable for defendant to leave claimant without care merely six months post-multilevel fusion and without any determination claimant had achieved MMI. Defendant was ordered to designate a neurosurgeon to assume claimant's care. (Agency file)

Claimant returned to Dr. Kontos on August 2, 2017. Dr. Kontos opined claimant's x-rays of the lumbar and cervical spine revealed degenerative changes. She opined claimant's lumbar spine MRI revealed diffuse disc bulge with facet hypertrophy at L4-5 and L5-S1. She referred claimant for neurosurgical evaluation. (JE9, p. 18)

On August 10, 2017, claimant presented to the Allen Center for Pain Management and was examined by Ashar Afzal, M.D., for complaints of neck pain radiating into the arms. (JE12, p. 1) Dr. Afzal opined the recurrence of symptoms could be secondary to formation of scar tissue or degenerative spondylitic changes. He requested an updated cervical MRI. (JE12, p. 3) Claimant testified Dr. Afzal was not

authorized by defendant to provide care. Claimant sought Dr. Afzal's treatment due to continued pain and lack of treatment from defendant. (Claimant's testimony)

On August 30, 2017, claimant presented to board-certified neurosurgeon, Chad Abernathey, M.D. (DEE, p. 18) Dr. Abernathey noted he examined claimant at the request of the insurance carrier regarding chronic neck and right arm pain; he specifically noted a request for a neurosurgical opinion regarding residual right upper extremity pain and paresthesias. Dr. Abernathey recommended an updated cervical MRI. (JE13, p. 1)

On September 1, 2017, defendant's counsel directed correspondence to claimant's counsel. Thereby counsel represented that permanent partial disability benefits would continue until November 15, 2017, as opposed to August 5, 2017, due to intermittent healing period benefits which had been owed earlier that year. (DED, p. 17)

Claimant underwent cervical MRI and returned to Dr. Abernathey on September 18, 2017. (JE13, pp. 2-3) Dr. Abernathey opined claimant's MRI revealed post-surgical change with good decompression of neural elements. He also noted intact neurologic function on examination. Dr. Abernathey recommended observation as opposed to an aggressive neurosurgical stance. Dr. Abernathey noted claimant might benefit from pain clinic assessment; claimant represented he would discuss such care with Dr. Kontos. (JE13, p. 1)

On September 19, 2017, claimant was grading an alley when he struck a sidewalk. The impact jarred claimant and resulted in significant pain down his right side. Claimant reported the event to defendant and was referred to medical care. (Claimant's testimony) That same day, claimant presented to Allen Occupational Health and was examined by board-certified occupational and environmental medicine physician, Sarvenaz Jabbari, M.D. (DEG, p. 30) Claimant complained of pain of the neck down to mid-back, as well as the shoulders and left hip. Claimant relayed he had struck a sidewalk with a grader while at work and requested pain control. (JE1, pp. 10-11) Dr. Jabbari recommended use of over-the-counter medication and advised claimant to consider a job change. (JE1, p. 12) She released claimant to return to work full duty. (JE1, p. 13) Additionally, she recommended claimant see his primary care provider for assignment of permanent restrictions for a described personal condition which resulted in increased pain with "minor insult." (JE1, p. 12)

Following evaluation by Dr. Jabbari, claimant presented to Dr. Kontos on September 20, 2017. Claimant complained of neck pain into the bilateral upper extremities, as well as thoracic and upper abdominal pain. Dr. Kontos noted Dr. Abernathey had recommended conservative treatment. Accordingly, she referred claimant back to Dr. Afzal for injections. Claimant declined narcotic medications, despite severe pain. Dr. Kontos prescribed Lyrica, Trazadone, and Cymbalta. She removed claimant from work from September 20, 2017 through September 22, 2017 due to beginning Lyrica. Dr. Kontos opined claimant had nerve pain stemming from the

initial injury and resulting scar tissue. (JE9, pp. 21, 26) She directed a note to Dr. Jabbari, opining claimant's back and neck issues were work-related and permanent work restrictions should be determined by the authorized providers. (JE9, p. 27) Claimant testified the Lyrica initially helped with neck pain and improved his ability to sleep; some time later, the drug's effectiveness ceased. Claimant testified he was unable to use the Cymbalta and Trazadone, as the prescriptions made him sleepy and prevented him from operating machinery. (Claimant's testimony)

On September 28, 2017, claimant's counsel authored correspondence to defendant's counsel. Thereby, counsel argued it was unreasonable for claimant to travel to Dubuque, Iowa for pain management services as directed by defendant and requested designation of a local provider. Counsel also noted he had not received an impairment rating for claimant's bilateral carpal tunnel conditions, or an updated impairment rating for claimant's neck. (CE5, p. 29)

On October 3, 2017, defendant's counsel authored correspondence to Dr. Gorsche and requested he perform an impairment rating examination relative to claimant's bilateral carpal tunnel. (CE5, p. 31)

On October 4, 2017, claimant filed an alternate medical care petition seeking authorization of a pain specialist in Waterloo, as opposed to Dubuque. The matter proceeded to telephonic hearing and the undersigned issued an alternate medical care decision on October 18, 2017. By the decision, the undersigned found designation of a pain specialist located over 180 miles round trip from claimant's residence was unreasonable due to the presence of appropriately-qualified pain management specialists at minimal distance from claimant's residence. Defendant was ordered to designate a pain management physician in Waterloo and if authorization was not done within 10 days, Dr. Afzal would become authorized to provide pain management services. (Agency file)

On October 20, 2017, claimant returned to Dr. Lawler with complaints of continued left hand paresthesias and numbness of the radial three digits. Claimant also reported difficulty with gripping and frequent dropping of objects. Dr. Lawler noted claimant was treating with Dr. Abernathey for radiating bilateral neck pain to the elbows. (JE10, p. 48) Claimant underwent EMG/NCS that date, which Dr. Lawler opined revealed mild left carpal tunnel compression, as well as interval improvement in motor and sensory latency of the median nerve. (JE10, p. 51; JE14, pp. 1-3) Dr. Lawler opined she did not believe claimant's residual symptoms were coming from carpal tunnel syndrome and most likely were related to cervical spine pathology. As a result, she deferred to a spine physician on the matter of impairment attributable to these symptoms. Dr. Lawler imposed no restrictions relative to carpal tunnel syndrome. (JE10, p. 51)

Dr. Abernathey authored a letter to defendant's counsel dated October 23, 2017. Thereby, he opined claimant had achieved MMI. Dr. Abernathey opined claimant

sustained a 25 percent whole person impairment relative to his neck condition, based upon chronic pain, decreased range of motion, and undergoing a three-level fusion with instrumented allograft. Dr. Abernathey noted this rating incorporated Dr. Reddy's prior 15 percent whole person rating, with an additional 10 percent whole person impairment. (JE13, p. 4)

Claimant returned to Dr. Gorsche on November 1, 2017 for an impairment rating evaluation relative to his bilateral carpal tunnel syndrome. Claimant complained of bilateral hand cramping with squeezing, as well as left-sided numbness and tingling of the thumb, index, and long digits. Dr. Gorsche performed a physical examination, but declined to issue a permanent impairment rating without updated nerve conduction studies. Dr. Gorsche opined claimant could continue regular duty work. (CE2, pp. 13-14)

On November 2, 2017, claimant presented to pain management physician, Gayathry Inamdar, M.D. Dr. Inamdar's record noted claimant presented at the referral of Dr. Abernathey. Following examination, Dr. Inamdar recommended bilateral cervical facet joint injections at C4-5, C5-6, and C6-7. (JE15, pp. 1-2) Defendant authorized claimant's care with Dr. Inamdar. (Claimant's testimony)

On November 15, 2017, Dr. Gorsche opined as to the extent of permanent impairment resulting from claimant's carpal tunnel syndrome. He opined claimant sustained no ratable impairment of the right upper extremity based upon a lack of paresthesias, normal strength, and normal two-point discrimination. Dr. Gorsche opined claimant sustained permanent impairment of 2 percent left upper extremity due to loss of sensation. (JE2, pp. 15-16)

At the referral of claimant's counsel, claimant presented to board-certified physical medicine and rehabilitation physician, Farid Manshadi, M.D. for independent medical examination (IME) on November 15, 2017. (CE1, p. 13) Dr. Manshadi issued a report containing his findings and opinions dated December 4, 2017. Dr. Manshadi reviewed claimant's medical records and summarized claimant's care for the neck and carpal tunnel conditions. (CE1, pp. 1-8) Dr. Manshadi performed a physical examination. (CE1, p. 9)

At the time of evaluation, claimant reported he continued to work in his pre-injury position for defendant. Claimant also reported continued symptoms of his neck and hands. With respect to his neck complaints, claimant reported good and bad days. He reported increased pain with sleeping on his right side, excessive bending or stooping, jarring movements, or striking a bump or curb in his grader. With respect to his hands, claimant reported weakness and dropping of items with activities requiring constant gripping. (CE1, p. 8)

Following records review, interview, and examination, Dr. Manshadi authored opinions regarding claimant's permanent impairment and need for restrictions. Dr.

Manshadi opined claimant sustained a 25 percent whole person impairment due to his neck injury, referencing DRE Cervical Category IV. As a result of the neck condition, Dr. Manshadi recommended permanent restrictions of: avoidance of any activity which would expose claimant to jarring or which requires repetitious movement of the neck side-to-side or in flexion or extension; and no lifting more than 40 to 50 pounds. (CE1, p. 9) Dr. Manshadi opined claimant suffered a 12 percent upper extremity impairment for sensory deficits in the left upper extremity due to carpal tunnel syndrome. He opined claimant's right upper extremity did not reveal any significantly abnormal sensory or motor findings and accordingly, did not rate any permanent impairment. Dr. Manshadi recommended permanent restrictions due to the carpal tunnel syndrome of: avoidance of activities requiring repetitious or sustained gripping activities with either hand; and avoidance of activities requiring repetitious flexion or extension of either hand. (CE1, p. 10)

On December 5, 2017, defendant's counsel authored correspondence to claimant's counsel. Thereby, counsel represented defendant would issue a check for the impairment rating assigned by Dr. Gorsche relative to claimant's carpal tunnel conditions. (CE5, p. 33)

Claimant returned to Dr. Inamdar for injections on December 11, 2017. Dr. Inamdar excused claimant from work for one day. (JE15, p. 3)

On December 12, 2017, defendant issued claimant payment for 2.5 weeks of permanent partial disability benefits related to the carpal tunnel conditions at a weekly rate of $584.28. (CE4, pp. 10-11)

Claimant's counsel directed correspondence to Dr. Abernathey dated December 13, 2017, whereby counsel purported to restate Dr. Abernathey's opinions as expressed in a prior conference. Dr. Abernathey expressed agreement with the statements on December 15, 2017. Thereby, Dr. Abernathey opined claimant did not require permanent restrictions from a neurological standpoint. Dr. Abernathey agreed he reviewed Dr. Manshadi's IME report and opined the recommended restrictions were reasonable and medically appropriate from a physical medicine and rehabilitation perspective. (JE13, pp. 5-6)

Claimant returned to Dr. Inamdar on January 8, 2018. Claimant reported the facet injections worked well. He reported the neck pain was now worse on the right side, which Dr. Inamdar noted might be causing claimant's right shoulder pain. Accordingly, he scheduled claimant for right-sided medial branch blocks at C4 through C7. (JE15, p. 4)

In response to further inquiry from defendant's counsel, on January 10, 2018, Dr. Abernathey expressed the opinion that claimant did not require any permanent restrictions relative to his neck injury. (JE13, p. 7)

Claimant continues to work as an equipment operator II for defendant. During winter months, he operates one of the newer road graders rented by defendant. During the spring and summer months, claimant operates an older grader which is owned by defendant. Claimant works full duty and accepts overtime, including plowing snow. Claimant has continued to receive annual pay raises pursuant to a union-negotiated contract. Beyond surgical recovery periods, claimant has not missed work due to his work injuries. He does miss time for personal travel. (Claimant's testimony)

Mr. Pauley testified claimant is capable of performing all his duties, without accommodations. He testified claimant has not declined any overtime due to his physical conditions. Claimant also volunteers to perform posted duties which bring a higher rate of pay or the ability to use newer equipment. Due to claimant's seniority, he performs very little shoveling or raking. During a flood in 2016, claimant expressed difficulty lifting sandbags; as a result, Mr. Pauley assigned claimant to operate a loader. Beyond this instance, Mr. Pauley has observed no difficulties by claimant in performing his duties. Mr. Pauley described claimant as a good equipment operator. (Mr. Pauley's testimony)

Claimant testified he continues to experience neck pain, which comes and goes. With quick movements, a sharp pain arises in the right side of claimant's neck. Claimant testified he has lost range of motion of his neck. He testified the injections performed by Dr. Inamdar are helpful and he no longer experiences radiating pain into his right shoulder; he remains under Dr. Inamdar's care. Claimant testified his symptoms worsen when operating an older road grader which lacks shock absorbers. He has also altered the manner in which he operates equipment, by turning the position of his body instead of simply turning his head. (Claimant's testimony)

Claimant testified he continues to suffer with cramping and numbness of his hands. He testified the cramping is present bilaterally, left worse than right. Numbness is only present in his left hand, specifically in three digits. Claimant complained of a loss of grip strength bilaterally, left greater than right, which results in more frequent dropping of items. As a result of his symptoms, claimant alternates hands when driving and avoids washing dishes. He denied any ongoing pain or loss of strength. Claimant reported the cramping symptom occurs while operating the grader. Defendant purchased specialized mechanics' gloves in effort to reduce vibration on claimant's hands, but the gloves lack the sensitivity needed to operate the grader and accordingly, claimant does not wear the gloves. (Claimant's testimony)

Claimant utilizes over-the-counter medication to treat flares in his symptoms. (Claimant's testimony)

Roberta Brooks serves as senior claims representative for the third party administrator used by defendant for workers' compensation and liability claims. Ms. Brooks handled claimant's claims in conjunction with Cheryl Huddleston at defendant. Ms. Brooks testified to the process defendant uses to pay lost time or permanency

claims. Ms. Brooks testified these claims for benefits must be approved by the city council prior to payment. Accordingly, the third party administrator sends claims to the city council for approval; once approved, the third party administrator is notified the claims are approved and benefit checks are issued. Ms. Brooks testified city council meetings take place on Monday nights. At that time, the city council considers claims for benefits due for the prior Monday through Friday workweek. Ms. Brooks testified she typically receives an approval notice on Tuesday. Generally, the benefit check is cut and mailed on Wednesday. Therefore, for a work week ending on Friday, the benefit check is mailed the following Wednesday. (Ms. Brooks' testimony)

Ms. Brooks testified claimant has received weekly indemnity checks since November 2016 and defendant is currently in the process of paying the 25 percent whole person rating for the neck injury. Ms. Brooks testified claimant's neck injury was initially denied based upon a lack of report of a neck injury and Dr. Gorsche's records. Through subsequent investigation, Dr. Harbach causally related claimant's neck injury to the work injury and opined claimant sustained permanent impairment. Ms. Brooks testified defendant promptly began payment of this rating, plus interest. Ms. Brooks testified she made multiple requests for a permanency rating from Dr. Lawler, to no avail. As a result, she sought a rating from Dr. Gorsche and upon receipt, promptly paid the impairment rating, plus interest. As of the date of hearing, defendant had paid 2.5 weeks of benefits for the carpal tunnel condition. Ms. Brooks testified benefits were initially paid at a weekly rate of $584.28 due to a calculation error on her part, as she divided claimant's earnings by 14 weeks instead of 13 weeks. Once she realized her error, Ms. Brooks took steps to correct the underpayment. (Ms. Brooks' testimony)

Ms. Brooks' testimony was clear and knowledgeable. Her demeanor gave the undersigned no reason to doubt her veracity. Ms. Brooks is found credible.

CONCLUSIONS OF LAW

In File No. 5054780 (Date of Injury: October 1, 2014)

The first issue for determination is whether claimant is entitled to temporary disability benefits from September 20, 2017 through September 22, 2017 and December 12, 2017. At the time of hearing, defendant stipulated claimant was entitled to healing period benefits on December 12, 2017; therefore, only the period of September 20 through September 22, 2017 need be addressed by this decision.

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).

A partial review of claimant's cervical treatment prior to this period is instructive in consideration of this issue. On January 26, 2017, claimant underwent his second cervical fusion surgery. Claimant followed up with surgeon, Dr. Reddy, on March 28,

2017, at which time he released claimant to return to work full duty in early May 2017. On May 23, 2017, claimant telephoned UIHC and requested additional pain medication, but was advised to procure such prescriptions from his primary care provider or a pain clinic. Claimant requested authorization of a pain specialist, to no avail. He ultimately filed an alternate care petition seeking such care, but voluntarily dismissed the petition when defendant authorized a return visit to Dr. Reddy. At this time, claimant learned Dr. Reddy had left UIHC, yet defendant failed to authorize a new neurosurgeon to assume claimant's care. Claimant was forced to file another alternate care petition to obtain a treating physician. As a result of that alternate care matter, the undersigned determined it was unreasonable for defendant to leave claimant without a treating provider mere months following multilevel cervical fusion and accordingly, ordered defendant to designate a new neurosurgeon to assume claimant's treatment. Defendant designated Dr. Abernathey, who examined claimant on August 30, 2017, but did not provide treatment recommendations pending updated studies. On September 18, 2017, Dr. Abernathey opined claimant might benefit from pain clinic evaluation. The following day, claimant suffered a flare in symptoms following an event at work. Defendant referred claimant to Dr. Jabbari, who advised claimant to see his personal physician for permanent restrictions.

In this context, on September 20, 2017, claimant presented to personal physician, Dr. Kontos, with complaints of neck pain. Dr. Kontos noted Dr. Abernathey recommended conservative care. As a result, she referred claimant back to Dr. Afzal for injections. She also issued prescriptions for Lyrica, Trazadone, and Cymbalta. She removed claimant from work for the period of September 20, 2017 through September 22, 2017 due to starting use of Lyrica.

Defendant argues claimant is not entitled to healing period benefits for the claimed period of September 20 through September 22, 2017 as Dr. Kontos was an unauthorized provider. It is true that Dr. Kontos was not an authorized provider; however, defendant left claimant without active evaluation and treatment of his cervical injury from March 28, 2017 until August 30, 2017. Defendant offered authorized treatment only upon order of the undersigned. Dr. Abernathey, on September 18, 2017, recommended conservative care. Dr. Kontos provided conservative care. It is also relevant that Dr. Abernathey's recommendation for pain management also became the subject of an alternate care proceeding, after defendant designated a physician located 180 miles round trip from claimant's residence. The undersigned then ordered defendant to designate a pain management physician in Waterloo, Iowa. Claimant was ultimately seen by Dr. Inamdar on November 2, 2017. Therefore, claimant did not receive authorized pain management until five months following his initial request to UIHC for pain medication.

Under these facts, claimant behaved reasonably in seeking care from Dr. Kontos. The care rendered by Dr. Kontos was reasonable and necessary in treatment of a compensable condition. Dr. Kontos' care was also in line with that recommended by Dr. Abernathey and which defendant did not contemporaneously provide. Furthermore, Dr.

Kontos provided care a day following a flare in claimant's symptoms and for which Dr. Jabbari recommended seeing his personal physician for imposition of permanent restrictions. Claimant testified he received relief with use of Lyrica, as prescribed by Dr. Kontos. The care provided by Dr. Kontos was beneficial, reasonable and necessary in treatment of a work-related condition. As a result, claimant is entitled to healing period benefits for the claimed period of September 20 through September 22, 2017, during which Dr. Kontos had removed claimant from work.

The next issue for determination is the extent of claimant's industrial disability.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The parties have stipulated claimant's disability shall be evaluated industrially.

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.

Claimant was 51 years of age on the date of evidentiary hearing. He did not finish high school, but later obtained his GED. Claimant's only other formal education consists of completion of five months of machinist courses; he did not earn a degree or certification. Claimant's work history prior to his hire at defendant consists primarily of maintenance, janitorial, and processing positions. These types of work consistently involved physical, manual labor. Claimant began work at defendant in 1989 and since that time, he has held positions as a maintenance worker, equipment operator I, and equipment operator II. Claimant's supervisor described claimant as a good operator. Claimant's position is one which maximizes his earnings and comports with his interests

and aptitudes. Given claimant's age, experience, and lack of formal education, he is not likely an attractive candidate for retraining.

As a result of a stipulated neck injury, claimant underwent ACDF at C6-7 in January 2016. Following this surgery, Dr. Reddy opined claimant fell within DRE Cervical Category III, warranting a permanent impairment rating of 15 percent whole person. Dr. Harbach opined claimant fell within DRE Cervical Category IV, warranting a more significant 25 percent whole person rating. Thereafter, claimant underwent a second fusion surgery in January 2017, consisting of ACDF at C4-5, C5-6. Following this surgery, Dr. Abernathey rated claimant's permanent functional impairment as 25 percent whole person, adding a 10 percent impairment to the prior opinion of Dr. Reddy. Dr. Manshadi opined claimant fell within DRE Cervical Category IV, warranting a permanent impairment rating of 25 percent whole person. Given the consistency of these opinions, it is determined claimant sustained a permanent functional impairment of 25 percent whole person as a result of the October 2014 neck injury.

Following the second fusion procedure, Dr. Reddy released claimant to return to work full duty in May 2017. Claimant returned to work as an equipment operator II and has demonstrated motivation to continue his employment, despite issues with obtaining ongoing treatment of his injury. He remained employed in his pre-injury position on the date of evidentiary hearing. Claimant continues to accept overtime, has not missed work due to his physical condition, and has received union-negotiated raises. Claimant has altered the manner in which he performs his duties, specifically by positioning his body to avoid the need to move his neck. He testified his symptoms worsen with use of old equipment. Claimant's supervisor, Mr. Pauley testified claimant is capable of performing his duties without accommodations. Mr. Pauley noted claimant performs little physical labor due to his seniority. Mr. Pauley also permitted claimant to run equipment instead of filling sandbags on one occasion; however, this occurred prior to claimant's second surgery.

It appears claimant is not forced to perform manual labor due to the nature of his seniority; therefore, it is reasonable to conclude claimant might require some accommodation were he required to perform the entire range of duties which fall within his title absent seniority. However, both treating neurosurgeons, Drs. Reddy and Abernathey, opined claimant did not require permanent restrictions. These opinions are more consistent with claimant's ability to resume full duty employment than the restrictions recommended by Dr. Manshadi and which would likely preclude claimant's continued employment in his position. It is therefore determined claimant does not require formal permanent restrictions as a result of the October 2014 cervical injury.

Claimant testified his cervical symptoms come and go. In addition to pain, claimant suffers with decreased range of motion of his neck. Claimant receives relief with the injections performed by Dr. Inamdar and remains under Dr. Inamdar's care.

Upon consideration of the above and all other relevant factors of industrial disability, it is determined claimant sustained a 35 percent industrial disability as a result of the stipulated work-related injury of October 1, 2014. Such an award entitles claimant to 175 weeks of permanent partial disability benefits (35 percent x 500 weeks = 175 weeks), commencing on the stipulated date of February 29, 2016.

The next issue for determination is the proper rate of compensation.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings is excluded, however. Section 85.36(6).

The parties dispute claimant's gross earnings for purposes of computation of his proper rate of compensation. Claimant's gross earnings were found *supra*, for the weeks preceding claimant's October 1, 2014 injury. The parties dispute whether the week ending August 1, 2014, in which claimant worked 32 hours, is properly included in computation of claimant's gross earnings. Defendant argues the week is properly included. Claimant seeks exclusion of this week as unrepresentative and accordingly, uses the week ending June 27, 2014 in his computation.

There is no evidence in the record establishing the reason claimant worked only 32 hours during this week, as opposed to his typical 40 hours per week. Claimant argues this week is clearly not reflective of claimant's customary earnings. Although claimant does typically work 40 or more hours per week; I am unwilling to exclude a week as unrepresentative based solely on the fact claimant worked fewer hours in that week. I believe further evidence is required to establish the reason claimant was precluded from working 40 hours per week. To exclude a week simply for including fewer than 40 hours could also lead to the argument for exclusion of weeks simply for including greater than the typical 40 hours per week. I believe neither scenario would fairly reflect claimant's gross average weekly wage.

Accordingly, I include the week ending August 1, 2014 in computation of claimant's gross average weekly wage. During the 13 weeks preceding claimant's injury, claimant earned $12,705.48, resulting in a gross average weekly wage of $977.34 ($12,705.48 / 13 weeks = $977.34).

The parties also dispute claimant's marital status and exemptions at the time of the October 2014 injury. While claimant initially represented he divorced in 2014 and was separated/living apart from his now ex-wife at the time of the injury, there is no evidence claimant's divorce was finalized prior to his work injury. Rather, claimant testified the two began the process of divorce in 2014, but the divorce was not final until 2015. This testimony is supported by claimant's 2014 federal tax returns, in which claimant and his now-former spouse filed jointly, with two exemptions. Although not always determinative, tax records are good evidence of marital status and entitlement to exemptions. DeRaad v. Fred's Plumbing and Heating, File No. 1134532 (App. January 16, 2002). On the evidence presented, it is determined claimant was married and entitled to two exemptions at the time of his October 1, 2014 work injury.

As claimant's gross average weekly wage was $977.34 and he was married and entitled to 2 exemptions, his proper rate of compensation is $620.20.

The next issue for determination is whether defendant is responsible for claimed medical expenses.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

When dealing with unauthorized care, to be entitled to payment, claimant must establish the care was rendered on a compensable claim. That being established, claimant must establish that the care provided on the compensable claim was both reasonable and the outcome more beneficial than the care offered by the defendants. Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010).

Claimant requests defendant be found responsible for claimed medical expenses which can be classified in two categories: medical care obtained prior to defendant's acceptance of liability and medical care obtained after defendant accepted liability, but arguably failed to provide prompt treatment.

The first category includes treatment with and ordered by Dr. Almullahassani in February and March 2015. At the time of Dr. Almullahassani's treatment and ordered cervical MRI, EMG/NCS, and physical therapy, defendant had not accepted claimant's neck as a compensable injury. Defendant had provided evaluation of claimant's left shoulder with Dr. Gorsche; however, Dr. Gorsche did not evaluate claimant's neck as the potential source of claimant's symptoms. Dr. Almullahassani evaluated claimant due to ongoing complaints and raised the potential of a cervical etiology of claimant's

symptoms. Dr. Almullahassani's treatment led to identification of the source of claimant's symptomatology and led to further evaluation and surgery with Dr. Reddy. Despite Dr. Reddy's October 2015 opinion causally relating claimant's neck injury to the work injury of October 2014 and claimant's repetitive work duties, defendant denied liability for claimant's condition. This denial persisted until September 2016, following receipt of Dr. Harbach's August 2016 opinion. Dr. Almullahassani's treatment was rendered on a compensable claim, at a time when defendant had not admitted liability nor offered treatment for claimant's neck injury. The care offered and charges incurred were reasonable and beneficial, as the care led to discovery of the cervical etiology of claimant's condition. Defendant is held responsible for charges incurred in conjunction with Dr. Almullahassani's care in February and March 2015, as claimed in Claimant's Exhibit 6.

The second category includes treatment with Drs. Kontos and Afzal from July through September 2017. At the time claimant obtained this unauthorized care, defendant had accepted liability for claimant's neck injury. However, an ongoing dispute occurred regarding whether claimant required ongoing care of his cervical complaints during this period. Claimant was last seen by authorized physician, Dr. Reddy, on March 28, 2017. Claimant regularly requested further evaluation due to increased or continued symptoms; defendant failed to arrange care for claimant. Claimant was forced to file an alternate care petition in June 2017, which he voluntarily dismissed due to defendant's authorization of a return appointment with Dr. Reddy. However, Dr. Reddy had left UIHC and was unavailable to treat claimant. Defendant refused to designate a new physician to treat claimant's neck condition until ordered to do so by the undersigned in an August 4, 2017 alternate care decision. Defendant then designated Dr. Abernathey, who evaluated claimant on August 30, 2017 but did not provide treatment recommendations pending updated imaging. On September 18, 2017, Dr. Abernathey opined claimant might benefit from pain clinic assessment. This referral to a pain management physician was also resolved via order of the undersigned in an alternate care decision dated October 18, 2017.

As a result of the ongoing dispute regarding defendant's responsibility for further care, claimant was effectively left without treatment of his cervical complaints for a six-month period. During this time, claimant behaved reasonably in seeking treatment with Drs. Kontos and Afzal. Drs. Kontos and Afzal provided reasonable treatment for a compensable neck injury. The care received proved beneficial in addressing claimant's pain complaints and leading to further evaluation at UIHC. The care was certainly more beneficial in treating claimant's symptoms than defendant's offer of no care. Accordingly, defendant is responsible for expenses incurred in treatment with Drs. Kontos and Afzal during the period of July through September 2017, as identified in Claimant's Exhibit 6.

The next issue for determination is whether defendant is responsible for payment of medical mileage.

Claimant incurred transportation expenses in conjunction with treatment of his October 2014 neck injury. In Claimant's Exhibit 7, claimant requested medical mileage for visits to authorized providers, Drs. Abernathey and Inamdar; unauthorized providers Drs. Almullahassani, Kontos, and Afzal; and IME physician, Dr. Manshadi. By post-hearing brief, defendant agreed to payment of mileage associated with visits to Drs. Abernathey and Inamdar. As set forth *supra*, I determined claimant's unauthorized care with Drs. Almullahassani, Kontos, and Afzal during the claimed period are defendant's responsibility; defendant is accordingly, responsible for associated mileage costs. Finally, claimant requests payment of medical mileage associated with Dr. Manshadi's IME. Defendant is correct that this mileage is not defendant's responsibility under section 85.27; however, defendant is responsible for transportation expenses associated with an IME under section 85.39. Defendant is responsible for claimed medical mileage with Drs. Abernathey, Inamdar, Almullahassani, Kontos, Afzal, and Manshadi, as identified in Claimant's Exhibit 7.

The next issue for determination is whether claimant is entitled to penalty benefits under Iowa Code section 86.13 and, if so, how much.

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. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (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 also 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 commissioner shall 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.

Claimant asserts entitlement to penalty benefits regarding defendant's payment of both temporary and permanent partial disability benefits.

Claimant seeks penalty benefits on delayed weekly benefits based upon defendant's initial denial of claimant's cervical injury. Upon review of the entirety of the record, I find defendant did possess a sufficient, reasonable basis to deny claimant's cervical claim. Specifically, defendant's reliance upon claimant's lack of specific report of a neck injury, as well as the opinions of Dr. Gorsche, was not unreasonable. Following receipt of Dr. Reddy's opinion causally relating claimant's condition to the work injury, defendant investigated further by seeking evaluation by Dr. Harbach. After issuance of Dr. Harbach's opinion, defendant admitted liability and commenced payment of benefits. I find defendant possessed reasonable cause to initially delay claimant's benefits and accordingly, no penalty benefits are warranted on this basis.

Claimant also seeks penalty benefits on temporary disability benefits delayed as a result of delays in issuance of weekly benefit checks. Review of the supplied indemnity payment logs reveals claimant was paid healing period benefits following his second fusion surgery, specifically from January 26, 2017 through May 8, 2017. This period totals over 14 weeks of benefits and of those weeks, only one check was issued timely. Each other check was 2 to 5 days late, with the vast majority of checks issued 3 days after conclusion of the compensable week. Defendant attributes this 2 to 5 day delay to the process in place at defendant to seek authorization of benefit payments from the city council. The fact defendant has this policy in place does not make the policy reasonable or excuse any resultant delay. Benefits are due weekly at the end of the compensable week. Defendant's policy results in improper delay in payment of weekly benefits to which injured workers are due and accordingly, a penalty is warranted. A penalty of $1,000.00 is appropriate for untimely issuance of temporary disability benefits.

Claimant also seeks penalty benefits for delay in payment of claimant's impairment rating following the initial fusion surgery. Defendant accepted liability and began issuing payment for healing benefits in September 2016. On September 19, 2016, Dr. Harbach opined claimant suffered a permanent impairment of 25 percent whole person. On October 19, 2016, Dr. Reddy opined claimant suffered a 15 percent whole person impairment. Despite these two opinions, defendant did not issue payment for permanent partial disability benefits until November 15, 2016. Based upon the parties' stipulation permanent partial disability benefits commenced February 29, 2016, over 36 weeks of benefits had accrued by the time of this initial payment. Defendant's initial denial of claimant's claim possessed a reasonable basis. However, the basis for delaying in payment of permanent partial disability benefits for nearly two months following Dr. Harbach's opinion and one month following Dr. Reddy's opinion, is not satisfactorily explained. It is also worthy of note that the vast majority all of the permanent partial disability checks issued after this initial payment were delayed 3 days after conclusion of the compensable week due to defendant's policy on approval by the city council. Given the unreasonable delay in payment of claimant's impairment rating,

as well as the routine late payment of weekly benefits, a penalty on permanent partial disability benefits is warranted. A penalty of $2,500.00 is imposed for delayed payment of claimant's permanent impairment rating and routine delay in issuance of weekly permanent partial disability checks.

The next issue for determination is whether defendant is responsible for payment of interest on late indemnity benefits.

Defendant shall pay interest on unpaid weekly benefits as set forth in Iowa Code section 85.30. Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018). Following issuance of this decision, if the parties are unable to reach agreement on interest owed on benefits in this claim, a request for rehearing may be submitted on this issue with specific computations.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33.

Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** 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 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. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called

> or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

By Claimant's Exhibit 8, claimant requests taxation of the costs of: $100.00 filing fee, medical record procurement, and the $250.00 report of Dr. Abernathey. While Dr. Manshadi's IME expense is listed, defendant agreed to pay this expense prior to evidentiary hearing. The costs of filing fee and Dr. Abernathey's report are taxable costs under rule 4.33 and are taxed to defendant. The cost of medical record procurement is not identified as a taxable cost in rule 4.33 and accordingly, I decline to tax that requested cost to defendant.

Defendant is taxed with costs in the amount of $350.00 ($100.00 + $250.00 = $350.00).

In File No. 5055929 (Date of Injury: April 4, 2016)

The first issue for determination is whether claimant refused suitable work from July 22, 2016 through July 27, 2016.

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).

If an employer offers "suitable work" to an injured employee, the employee must accept the work or waive the right to partial, temporary total, and healing period benefits. If an employer fails to offer suitable work, section 85.33(3) will not disqualify the employee from receiving benefits regardless of the employee's motive for refusing the unsuitable work. Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 559 (Iowa 2010). The Iowa Supreme Court has endorsed consideration of factors personal to an employee in determination of whether an employer has offered suitable employment. The geographic proximity of the proposed light duty work assignment is one such factor. See Neal v. Annett Holdings, Inc., 814 N.W.2d 512 (Iowa 2012).

Claimant received indemnity benefits for the claimed period of July 22, 2016 through July 27, 2016. The parties, however, dispute whether benefits paid during this period are properly classified as temporary disability or permanent partial disability benefits. On the facts of this case, the first relevant inquiry is whether claimant was medically restricted from participating in work during this period. Mr. Trettin's contemporaneous medical note clearly demonstrates claimant was capable of working with restrictions. Claimant's belief that it didn't make "sense" to return to work for only a few days is irrelevant within the statutory scheme and facts of this case. Claimant was physically capable of returning to work; the only reason Mr. Trettin authored contradictory notes was to satisfy claimant's refusal to return to work. Defendant contacted claimant and advised him to return to work. Claimant refused. Although a light duty offer of a specific work assignment may not have been extended, it is highly relevant that over the course of claimant's injuries at defendant, light duty was always offered to claimant within imposed restrictions. On the facts of this case, it is determined the period of July 22, 2016 through July 27, 2016 does not represent additional temporary disability benefits. It has been established that claimant was physically capable of working within restrictions, defendant made a sufficient offer of suitable work, and claimant refused to present for such work. Accordingly, indemnity benefits paid for the period of July 22, 2016 through July 27, 2016 are properly considered permanent partial disability benefits for the carpal tunnel injury of April 4, 2016.

The next issue for determination is the extent of permanent disability to claimant's bilateral upper extremities.

Under the Iowa Workers' Compensation Act permanent partial disability is categorized as either to a scheduled member or to the body as a whole. See section 85.34(2). Section 85.34(2)(a)-(t) sets forth specific scheduled injuries and compensation payable for those injuries. The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). Compensation for scheduled injuries is not related to earning capacity. The fact-finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent

disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

The parties stipulated claimant's disability was a scheduled member disability to the bilateral upper extremities. Two physicians have offered opinions with respect to the extent of claimant's permanent functional impairment as a result of the carpal tunnel condition: Dr. Gorsche and Dr. Manshadi. Neither physician opined claimant sustained ratable permanent impairment of the right upper extremity. With respect to the left upper extremity, Dr. Gorsche opined claimant suffered a 2 percent upper extremity impairment based on loss of sensation, while Dr. Manshadi opined claimant suffered a 12 percent upper extremity impairment for sensory deficits.

Upon review of the entirety of the evidentiary record, I afford greatest weight to the opinion of Dr. Gorsche with respect to the extent of claimant's functional impairment. I find Dr. Gorsche's opinion is more consistent with the opinion of claimant's treating surgeon, Dr. Lawler, than is the opinion of Dr. Manshadi. Dr. Lawler opined claimant's October 2017 EMG/NCV revealed mild left carpal tunnel compression. She opined claimant's residual symptoms of left hand paresthesias and radial three digit numbness were most likely related to claimant's cervical spine pathology, as opposed to carpal tunnel syndrome. Dr. Lawler also opined claimant did not require permanent restrictions as a result of the carpal tunnel condition. Dr. Lawler's opinions support a determination of a minimal ratable permanent impairment, as does claimant's testimony of limited functional limitations attributable to the carpal tunnel syndrome. Dr. Gorsche's opinion is most consistent with Dr. Lawler's opinions. Dr. Manshadi's opinion lacks sufficient specificity to explain the notably larger permanent impairment rating and fails to address the question of whether any of claimant's residual symptoms are related to the cervical condition as opposed to carpal tunnel condition.

Based upon the foregoing, it is determined claimant sustained no ratable permanent impairment to his right upper extremity and a permanent impairment of 2 percent to the left upper extremity. The parties stipulated claimant's disability should be computed as a disability to the scheduled bilateral upper extremities. Utilizing the AMA Guides Table 16-3, a 2 percent upper extremity impairment converts to a 1 percent whole person impairment. Claimant is therefore entitled to 5 weeks of permanent partial disability benefits (1 percent x 500 weeks = 5 weeks), commencing on the stipulated date of August 10, 2016. Defendant is entitled to credit for permanent partial disability benefits paid, including for the period of July 22, 2016 through July 27, 2016.

The next issue for determination is the proper rate of compensation.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings is excluded, however. Section 85.36(6).

The parties dispute claimant's gross earnings for purposes of computation of his proper rate of compensation. Claimant's gross earnings were found *supra*, for the weeks preceding claimant's April 4, 2016 injury. The parties agree that the weeks ending February 19, 2016 and February 26, 2016 are not representative weeks and should be excluded; I adopt this exclusion in my computation. The parties do dispute whether two weeks of earnings are properly included in computation of claimant's gross average weekly wage. I must, therefore, determine whether the weeks ending January 1, 2016 and March 4, 2016 are properly considered as representative weeks which should be included in computation of claimant's gross average weekly wage. During the weeks ending January 1, 2016 and March 4, 2016, claimant worked 58.1 hours and 52.6 hours, respectively.

Claimant's timesheets for these weeks were included at Claimant's Exhibit 3, pages 33 and 39. Review of these timesheets reveal claimant performed overtime during these weeks related to snow removal. Snow removal is one of claimant's job duties. The job description for claimant's position states workers will be required to respond during weather-related emergencies and noted significant overtime may be required during severe snow events. Snow removal is a primary component of claimant's job and overtime to respond to snow events is specifically contemplated in claimant's job description. It is, therefore, proper to include weeks involving overtime hours due to snow removal in computation of claimant's gross average weekly wage.

The weeks ending January 1, 2016 and March 4, 2016 are included in computation of claimant's gross average weekly wage. The weeks ending February 19, 2016 and February 26, 2016 are excluded from the computation. Given these inclusions and exclusions, claimant's gross average weekly wage is computed utilizing the weeks ending December 25, 2015 through April 1, 2016. Claimant's gross earnings during the included 13 weeks within this period total $13,831.99. Claimant's gross average weekly wage is therefore, $1,064.00 ($13,831.99 / 13 weeks = $1,064.00). The parties stipulated claimant was single and entitled to one exemption. Claimant's proper rate of compensation is $621.61.

The next issue for determination is whether defendant is responsible for payment of medical mileage. By Claimant's Exhibit 7, claimant requested payment of medical mileage associated with care with a number of providers. It appears the only providers who offered care regarding claimant's carpal tunnel conditions are Drs. Lawler and Gorsche. By post-hearing brief, defendant agreed payment would be paid for mileage associated with care with Drs. Lawler and Gorsche. Accordingly, no independent determination on claimant's entitlement to medical mileage under section 85.27 is required. Claimant also requested medical mileage associated with Dr. Manshadi's IME; this expense was ordered to be paid by defendant in File No. 5054780.

The next issue for determination is whether claimant is entitled to penalty benefits under Iowa Code section 86.13 and, if so, how much.

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. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (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 also 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 commissioner shall 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.

Claimant asserts entitlement to penalty benefits regarding defendant's payment of both temporary and permanent partial disability benefits.

For the period of July 5, 2016 through July 19, 2016, defendant timely paid healing period benefits, but these benefits were underpaid, given payment at a weekly

rate of $584.28. The benefits were paid in a timely manner; however, they were underpaid, even by the rate calculation identified at hearing by defendant as proper. A simple mathematical error appears to have been the cause of the underpayment, yet computation of rate is defendant's responsibility. Defendant must exercise diligence in these computations and there does not appear to be a reasonable excuse for this error. By Ms. Brooks' testimony, defendant has now taken steps to correct the rate computation. A penalty for underpayment of weekly rate is warranted; I find a penalty of $20.00 appropriate.

For the period of July 19, 2016 through July 21, 2016 and July 28, 2016 through August 9, 2016, claimant was entitled to healing period benefits from defendant. Benefits checks during these periods were consistently issued 4 to 6 days following the end date for the benefit period. In total, 2 weeks and 2 days of healing period benefits were delayed. Additionally, benefits were paid at a weekly rate of $584.28, below the rate proposed by defendant at evidentiary hearing and below the rate set by the undersigned in this decision. Defendant attributes this 4 to 6 day delay to the process in place at defendant to seek authorization of benefit payments from the city council. The fact defendant has this policy in place does not make the policy reasonable or excuse any resultant delay. Benefits are due weekly at the end of the compensable week. Under defendant's policy, benefits which come due on Friday will not be paid until the following Wednesday. This policy results in improper delay in payment of weekly benefits to which injured workers are due and accordingly, a penalty is warranted. Benefits for 2 weeks and 2 days of healing period benefits were delayed and underpaid; a penalty of $700.00 is appropriate on these delayed and underpaid benefits.

Permanent disability benefits were not paid by defendant until December 12, 2017. Dr. Lawler placed claimant at MMI on March 28, 2017. Defendant inquired with Dr. Lawler on at least one occasion regarding issuance of an impairment rating. Eventually, on October 3, 2017, defendant requested an impairment rating from Dr. Gorsche. While an initial delay awaiting an opinion from Dr. Lawler might have been excusable, defendant does have an obligation to timely obtain an impairment rating opinion. Waiting six months, spanning multiple requests by claimant, is not a reasonable delay in seeking an impairment rating on a scheduled member injury.

Dr. Gorsche assigned a permanent impairment rating of 2 percent left upper extremity or 1 percent whole person on November 15, 2017. Defendant did not issue payment for the rating until one month later. I find no compelling reason why benefits were not issued for nearly one month following a rating from a physician chosen by defendant. When benefits were issued, defendant paid only 2.5 weeks as opposed to the 5 weeks of benefits warranted by Dr. Gorsche's rating. Even providing defendant the benefit of classifying the period of July 22, 2016 through July 27, 2016 as permanent partial disability benefits, defendant's permanent partial disability payment did not meet the opinion rendered by its chosen physician. Additionally, such benefits were again paid at the incorrect rate of $584.28.

Given defendant's delay in obtaining a permanent impairment rating, delay in paying the rating once issued, failure to pay the entirety of the rating, and payment of benefits at an underpaid rate, a penalty is warranted. Dr. Gorsche's rating entitled claimant to 5 weeks of permanent partial disability benefits, payable at a weekly rate of $621.61. A penalty of $1,500.00 is appropriate.

The next issue for determination is whether defendant is responsible for payment of interest on late indemnity benefits.

Defendant shall pay interest on unpaid weekly benefits as set forth in Iowa Code section 85.30. Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018). Following issuance of this decision, if the parties are unable to reach agreement on interest owed on benefits in this claim, a request for rehearing may be submitted on this issue with specific computations.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33.

Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** 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 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. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses,

> doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

By Claimant's Exhibit 8, claimant requests taxation of the costs of: $100.00 filing fee, medical record procurement, and the $500.00 report of Dr. Reddy. While Dr. Manshadi's IME expense is listed, defendant agreed to pay this expense prior to evidentiary hearing. The costs of filing fee and Dr. Reddy's report are taxable costs under rule 4.33 and are taxed to defendant. The cost of medical record procurement is not identified as a taxable cost in rule 4.33 and accordingly, I decline to tax that requested cost to defendant.

Defendant is taxed with costs in the amount of $600.00 ($100.00 + $500.00 = $600.00).

ORDER

THEREFORE, IT IS ORDERED:

In File No. 5054780 (Date of Injury: October 1, 2014 Cervical Spine)

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendant shall pay unto claimant healing period benefits at the weekly rate of six hundred twenty and 20/100 dollars ($620.20) for the period of September 20, 2017 through September 22, 2017 and December 12, 2017.

Defendant shall pay unto claimant one hundred seventy-five (175) weeks of permanent partial disability benefits commencing February 29, 2016 at the weekly rate of six hundred twenty and 20/100 dollars ($620.20).

Defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an

annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendant shall pay claimant's prior medical expenses and medical mileage submitted by claimant at the hearing as set forth in the decision.

Defendant shall pay penalty benefits in the amount of three thousand five hundred and 00/100 dollars ($3,500.00).

Defendant shall pay interest on the penalty benefits from the date of this decision. See Schadendorf v. Snap On Tools, 757 N.W.2d 330, 339 (Iowa 2008).

Defendant shall receive credit for benefits paid.

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

Costs are taxed to defendant pursuant to 876 IAC 4.33 in the amount of three hundred fifty and 00/100 dollars ($350.00) as set forth in the decision.

In File No. 5055929 (Date of Injury: April 4, 2016 Carpal Tunnel Syndrome)

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendant shall pay unto claimant five (5) weeks of permanent partial disability benefits commencing August 10, 2016 at the weekly rate of six hundred twenty-one and 61/100 dollars ($621.61).

Defendant shall pay accrued weekly benefits in a lump sum.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendant shall pay claimant's prior medical mileage as set forth in the decision.

Defendant shall pay penalty benefits in the amount of two thousand two hundred twenty and 00/100 dollars ($2,220.00).

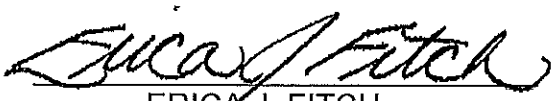
Defendant shall pay interest on the penalty benefits from the date of this decision. See Schadendorf v. Snap On Tools, 757 N.W.2d 330, 339 (Iowa 2008).

Defendant shall receive credit for benefits paid.

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

Costs are taxed to defendant pursuant to 876 IAC 4.33 in the amount of six hundred and 00/100 dollars ($600.00) as set forth in the decision.

Signed and filed this 8th day of March, 2019.



ERICA J. FITCH
DEPUTY WORKERS'
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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.