BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARK KAMPAS,

Claimant,

vs.

CENTURION INDUSTRIES, INC. d/b/a A-LERT CONSTRUCTION SERVICES,

Employer,

and

ZURICH AMERICAN INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5042730

ARBITRATION

DECISION

Head Note Nos.: 1703; 1802; 1803; 2501; 2701; 2907

STATEMENT OF THE CASE

Claimant, Mark Kampas, filed a petition in arbitration seeking workers' compensation benefits from Centurion Industries, Inc., d/b/a A-Lert Construction Services, (A-Lert), employer, and Zurich American Insurance Company, insurance carrier, both as defendants. This matter was heard in Des Moines, Iowa, on February 17, 2016 with the final submission date of May 9, 2016.

Claimant initially filed a petition in this matter on February 21, 2013 alleging a date of injury of December 10, 2007. That petition came for hearing on January 14, 2014. The only issues submitted for determination, at that time, were if claimant was entitled to temporary benefits from December 13, 2008 through July 11, 2010, and rate.

An arbitration decision was issued on September 30, 2014. That decision found claimant was due temporary benefits from December 13, 2008 through July 11, 2010. The decision also found that claimant's rate was $877.27 per week.

Defendants filed a notice of appeal on October 13, 2014. A petition for cross-appeal was filed by claimant on October 17, 2014.

Claimant filed another petition on April 8, 2015 regarding the same injury. This is the petition that was heard by the undersigned on February 17, 2016.

On February 5, 2016, the commissioner filed a ruling for Stay of Appeal. That ruling found that the appeal would be stayed pending the outcome of the February 17, 2016 arbitration hearing. The ruling noted that following the arbitration decision for this matter, if the parties appealed this decision, that appeal would be consolidated with the previous appeal and would be reviewed by the commissioner in one appeal decision.

The parties did not appear to file a motion to bifurcate the petitions that were filed on February 21, 2013 and April 8, 2015. As the April 8, 2015 petition is not a review-reopening petition, the undersigned finds that the petition filed on April 8, 2015 is a petition bifurcated.

At hearing, defendants objected to exhibit 22 as being untimely served. In a February 25, 2016 ruling, exhibit 22 was admitted into the record and defendants were given the opportunity to rebut exhibit 22. Defendants filed exhibit J as a rebuttal. Exhibit J was admitted and made a part of the record.

At hearing, claimant's objected to exhibit C as being untimely served. Exhibit C was excluded as being untimely served under the rules of this agency. Claimant also objected to exhibit F as untimely served. That objection was withdrawn by an e-mail dated February 26, 2016.

The record in this case consists of claimant's exhibits 1 through 36, defendants exhibits A through B, and D through J, and testimony of claimant and Merry Tack.

ISSUES

1. The extent of claimant's entitlement to temporary benefits.
2. The extent of claimant's entitlement to permanent partial disability benefits.
3. Whether there is a causal connection between the injury and the claimed medical expenses.
4. Credit.
5. Costs.
6. Whether claimant is entitled to alternate medical care.

As noted, a prior arbitration decision found claimant was entitled to temporary benefits from December 13, 2008 through July 11, 2010. That matter is currently on appeal. This decision will only address claimant's entitlement to temporary benefits commencing on July 12, 2010.

FINDINGS OF FACT

Claimant was 59 years old at the time of the hearing. Claimant graduated from high school. He attended community college for a course in electronics, but did not graduate. Claimant was a foreman for a construction company where he did carpentry work. He worked at Alcoa as a forklift driver and flatbed truck operator. Claimant was self-employed doing carpentry and painting. He also did insulation work.

Claimant began with A-Lert in 1991 as an insulation applicator and applied insulation on pipes in factories. Claimant became a supervisor and later a foreman. (Exhibit A, deposition page 8)

As noted in the arbitration decision, claimant sustained an injury to his back on December 10, 2007 when he slipped on ice at the job site and fell on his back. (Ex. 22)

The arbitration decision indicates that after his work injury, claimant returned to the job site for A-Lert, but he was not able to do his regular job duties and was in pain. (Arb., pp. 2-3, September 30, 2014)

The arbitration decision also found claimant intended to get medical treatment from the employer, but that medical treatment was initially denied and delayed. The arbitration decision found that claimant's last day on his job with A-Lert was December 12, 2008. (Arb., pp. 3-4, September 30, 2014)

As noted in the arbitration decision, claimant was evaluated by Gregory Walker, M.D., on June 15, 2009 for an impairment rating. Dr. Walker opined that claimant's December 2007 injury either caused or materially aggravated a herniated disc at the L4-5 levels. He found claimant was at maximum medical improvement (MMI). He opined claimant might be a surgical candidate. He limited claimant to no lifting more than 30 pounds and no repetitive bending or twisting at the waist. He found claimant had a 20 percent permanent impairment to the body as a whole based on the AMA Guides to the Evaluation of Permanent Impairment, Fourth Edition. (Ex. 9, pp. 1-9)

Claimant returned to Dr. Walker on April 9, 2010. At that time, Dr. Walker opined claimant was "totally disabled" from his occupation and "probably other occupations" based on restrictions and medications. (Ex. 9, pp. 11-12)

On July 13, 2010, claimant underwent an independent medical evaluation (IME) with John Ciccarelli, M.D. Claimant was referred to Dr. Ciccarelli by defendant insurer. Dr. Ciccarelli opined claimant had a work-related herniated disc injury at the L4-5 level, contacting an L5 nerve root. He recommended an updated MRI. (Ex. 18, pp. 1-8)

On January 21, 2011, claimant underwent an L4-5 laminectomy and decompression and an L4-S1 fusion. Surgery was performed by Dr. Ciccarelli. (Ex. 18, pp. 24-25)

Claimant returned to Dr. Ciccarelli on February 8, 2011. Claimant was still experiencing back pain. Claimant was kept off work for the next three weeks. (Ex. 18, p. 14)

Claimant returned to follow up with Dr. Ciccarelli on May 17, 2011. Claimant was returned to work at light-duty with a 25-pound lifting restriction. (Ex. 18, p. 17)

On July 12, 2011, claimant returned to Dr. Ciccarelli. Claimant had improved leg pain. He was given permanent restrictions of a 25-30 pound lifting with no repetitive bending. (Ex. 18, p. 18)

In a September 22, 2011 note, Dr. Ciccarelli found that claimant had a 20 percent permanent impairment to the body as a whole. Claimant was found to be at maximum medical improvement as of July 12, 2011. (Ex. 18, p. 29)

On January 9, 2012, claimant was evaluated by Wade Lenz, M.D., for management of chronic back pain. Claimant was given morphine for pain and prescribed physical therapy. A TENS unit was also prescribed. (Ex. 1, p. 27)

On January 23, 2012, Dr. Ciccarelli opined that claimant would not be able to return to work at his prior job, or similar employment given his back surgery and pain. (Ex. 18, p. 21)

In a September 11, 2012 letter, Dr. Ciccarelli recommended against claimant having a spinal cord stimulator. This was because, in his experience, the spinal cord stimulator had minimum benefit. (Ex. 18, p. 32)

On October 4, 2012, claimant was evaluated by J. Joyce, M.D. Claimant had ongoing lower back pain and leg pain. An MRI was recommended. A spinal cord stimulator was discussed as a treatment option. (Ex. 8, pp. 1-2)

On November 2, 2012, claimant underwent a lumbar MRI. It showed a disc bulging at the L1-L2 levels and scarring at L4-5. (Ex. 16, pp. 1-2)

On December 20, 2012, claimant underwent injection at the L3-4 levels. (Ex. 8, p. 4) Records indicate the injection only gave claimant a 40 percent pain relief. (Ex. 5, pp. 1-2) On May 15, 2013, claimant was evaluated by John Dooley, M.D. Records indicate most conservative treatment had failed. Claimant was treated with pain medications. (Ex. 5, pp. 3-4)

On August 9, 2013, claimant underwent an implant of a trial spinal cord stimulator. Surgery was performed by Dr. Dooley. (Ex. 5, pp. 7-8) Records indicate claimant eventually declined a permanent spinal cord stimulator as the procedure worried him. (Ex. B, p. 9)

In an August 2013 letter, from the Social Security Administration, claimant was found to qualify for Social Security benefits commencing on June 2009. (Ex. 23)

Claimant had another epidural injection on November 12, 2013. This injection did not result in a significant reduction of symptoms. (Ex. B, p. 9)

In a September 18, 2014 letter, James Stuckmeyer, M.D., gave his opinions of claimant's condition following a review of records. Dr. Stuckmeyer did not treat claimant. He is a partner for Dr. Walker, who treated claimant, but later retired. Dr. Stuckmeyer opined that based on his review of the records, claimant had not reached MMI until he was released by Dr. Ciccarelli. He also opined that claimant would not be able to return to work in the construction industry. (Ex. 4)

Records indicate that further conservative treatment for claimant failed to alleviate symptoms. On June 30, 2014, claimant underwent an anterior lumbar interbody fusion from the L4-S1 levels. Surgery was performed by Robert Foster, M.D. (Ex. 6, p. 15)

Claimant returned in follow up with Dr. Foster on August 8, 2014. Claimant indicated a 50 percent improvement in symptoms. (Ex. 6, p. 16) On September 19, 2014, claimant again returned to Dr. Foster. He indicated further improvement, but he still had back and leg pain. (Ex. 6, p. 17)

On December 10, 2014, claimant returned to Dr. Lenz. Claimant had an improvement in symptoms following his second surgery. Claimant was continued on pain medication. Claimant indicated a desire to do aquatic physical therapy. (Ex. 1, p. 59)

On February 19, 2015, claimant completed physical therapy. He had improvement in symptoms, but still complained of pain. Claimant was released from physical therapy. (Ex. 6, p. 19)

In a September 10, 2015 letter, Dr. Foster found claimant was at MMI as of February 19, 2015. He indicated claimant still had chronic pain. He found claimant had a 23 percent permanent impairment to the body as a whole. This was based upon a finding that claimant fell in the DRE Category IV for the lumbar spine. He limited claimant to lifting no more than 50 pounds. (Ex. 2, p. 1)

In a November 30, 2015 report, John Kuhnlein, D.O., gave his opinions of claimant's condition following an IME. Claimant complained of constant lower back pain radiating to his hip and down his legs. Dr. Kuhnlein found causation troubling in claimant's case. This was because, according to Dr. Kuhnlein, records indicated claimant's back pain had resolved May 14, 2008. There was approximately a one year gap in medical records before back pain was even mentioned. Dr. Kuhnlein believed records showed claimant did not treat for two years after the date of injury and then began treating with Dr. Ciccarelli. Dr. Kuhnlein also questioned Dr. Ciccarelli's opinions regarding causation given the two year gap in treatment. Based on this, Dr. Kuhnlein believed it was reasonable to question if the lumbar pain from surgery done in 2011 and

2015 was related to the 2008 injury. Dr. Kuhnlein found the gaps in treatment troubling regarding causation. (Ex. B, pp. 1-16)

Dr. Kuhnlein opined that claimant had reached MMI as of May 14, 2008. He believed that based upon Dr. Compton's records, claimant fell between a DRE lumbar category I-II and assessed claimant as having a 2 percent permanent impairment. He did not believe claimant had any permanent restrictions. (Ex. B, pp. 16-18)

In a December 21, 2015 report, Lana Sellner, MS, CRC, gave her opinions of claimant's vocational opportunities. Ms. Sellner opined that if applying the full duty release from Dr. Compton, claimant would be capable of performing in all work categories. If Dr. Walker and Dr. Ciccarelli's restrictions were applied, claimant would be able to selectively perform at medium work jobs. If Dr. Kuhnlein's restrictions were applied, claimant could work in all job categories. (Ex. D)

Ms. Sellner located jobs for claimant in his geographical labor market applying restrictions given by Dr. Walker, Dr. Ciccarelli, Dr. Kuhnlein, and Dr. Compton. (Ex. D)

In a January 11, 2016 report, Richard Neiman, M.D., gave his opinions of claimant's condition following an IME. Dr. Neiman indicated he had reviewed Dr. Kuhnlein's report and disagreed with Dr. Kuhnlein's opinion regarding causation. Dr. Neiman found claimant had a 33 percent impairment to the body as a whole. Using Table 15-7 of the Guides, he opined claimant was disabled from all occupations. Claimant was recommended to periodically lie down and not to lift more than 5-10 pounds. Dr. Neiman opined that claimant was totally disabled. (Ex. 3, pp. 1-5)

In a January 19, 2016 report, Lewis Vierling, M.S., CRC, gave his opinions of claimant's vocational opportunities. He opined claimant had a loss of access to 95 percent of the jobs he was qualified to perform. (Ex. 22)

In a March 29, 2016 report, Ms. Sellner indicated she had reviewed the vocational report from Mr. Vierling. Ms. Sellner agreed that based solely on Dr. Neiman's opinions claimant had a 100 percent loss to the labor market. Using restrictions given by Dr. Compton, claimant had no loss of access to the labor market. Based on restrictions given by Dr. Foster, claimant had between 18 and 47 percent loss of access to the labor market. Based on restrictions given by Dr. Ciccarelli, claimant had a 49-55 percent loss of access to the labor market. Based upon restrictions given by Dr. Walker, claimant had between a 60-82 percent loss of access to the labor market. Based on Dr. Kuhnlein's restrictions, claimant had no loss of access to the labor market. (Ex. J)

Claimant testified in deposition and hearing that he has not applied for any jobs since December 2008. No physician has restricted claimant from working. (Ex. A, dep. pp. 43-44)

Throughout hearing, claimant testified while standing, or while on his knees, due to back pain.

Claimant testified he has difficulty sleeping due to back pain. He says it hurts for him to sit, walk, or stand. He testified he does not believe he could return to any of his prior jobs due to limitations and lack of strength. Claimant said he has difficulty with bending or reaching up.

Merry Tack testified she is claimant's sister. Ms. Tack testified that claimant was very active and outgoing before his injury. Ms. Tack testified that claimant is now in pain all the time. She testified claimant is limited in doing most activities.

Ms. Tack testified that she went to claimant's second surgery. She said the claimant was unable to drive himself home after surgery and she stayed in a hotel room to help claimant during his surgery.

CONCLUSIONS OF LAW

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

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

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

Defendants contend, in a post-hearing brief, that claimant reached MMI as of May 14, 2008 and is not entitled to additional temporary benefits. (Defendants' Post Hearing Brief, pp. 16-21)

As noted in the arbitration decision, claimant carried his burden of proof that he is entitled to temporary benefits from December 13, 2008 through July 11, 2010. (Arb., p. 7, September 30, 2014) Based on the doctrine of res judicata, defendants are prohibited from relitigating temporary benefits for this period of time. Winnebago Industries, Inc. v. Haverly, 727 N.W.2d 567, 571 (Iowa 2006).

In a September 22, 2011 note, Dr. Ciccarelli opined claimant was at MMI as of July 17, 2011. (Ex. 18, p. 29) This opinion was corroborated by Dr. Stuckmeyer. (Ex. 4)

On June 30, 2014, claimant underwent a second lumbar fusion. (Ex. 6, p. 15) Claimant was found to be at MMI from that surgery on February 19, 2015. (Ex. 2, p. 1)

Based upon these records, claimant is due healing period benefits from July 11, 2010 through July 17, 2011, and from June 30, 2014 through February 19, 2015.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits. Claimant contends he is permanently and totally disabled. Defendants content that claimant has little, if any, industrial disability.

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

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

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

A loss of earning capacity due to voluntary choice or lack of motivation to return to work is not compensable. Copeland v. Boone Book and Bible Store, File No. 1059319 (App. November 6, 1997); Snow v. Chevron Phillips Chemical Co., File No. 5016619 (App. October 25, 2007). See Also Brown v. Nissen Corp., 89-90 IAWC 56, 62 (App. 1989) (no prima facie showing that claimant is unemployable when claimant did not make an attempt for vocational rehabilitation).

Claimant was 59 years old at the time of hearing. He graduated from high school. Claimant has worked as a foreman at a construction company. He has done carpentry work. He has worked as a forklift driver and as a flatbed truck operator. Claimant was also self-employed doing carpentry and painting work.

Claimant has had two fusion surgeries to the lumbar spine. Following his first surgery, Dr. Ciccarelli found that claimant had a 20 percent permanent impairment to the body as a whole. (Ex. 18, p. 29) Dr. Ciccarelli opined claimant could not return to

work at his prior position or similar employment. (Ex. 18, p. 21) This opinion was corroborated by the opinion of Dr. Stuckmeyer. (Ex. 4)

Following the second surgery, Dr. Foster found claimant had a 23 percent permanent impairment to the body as a whole. This evaluation was arrived at by using the DRE method and taking into consideration claimant's prior surgery of Dr. Ciccarelli. (Ex. 2, p. 1)

Dr. Kuhnlein opined that claimant had a two percent permanent impairment to the body as a whole. (Ex. B) However, Dr. Kuhnlein's opinions regarding permanent impairment are based on a finding of fact that claimant did not seek medical treatment for approximately two years. As noted above, the prior arbitration decision found that claimant's lapse of medical care was due to defendants' denial of treatment. I have a great deal of respect for the opinions of Dr. Kuhnlein. However, as his opinion regarding permanent impairment is contrary to a finding of fact and conclusion of law already made in the prior arbitration decision, it is found that Dr. Kuhnlein's opinions regarding permanent impairment are not convincing.

Dr. Neiman opined claimant had a 33 percent permanent impairment to the body as a whole and that claimant was limited to lifting 5 to 10 pounds. Dr. Neiman noted in his rating of claimant, that his rating was based upon the range of motion method in the Guides.

Dr. Neiman is the only physician in this case, to evaluate claimant's permanent impairment using range of motion method of the Guides. The Guides indicate that the DRE method is preferred for an individual who has a distinct injury. (Guides, p. 739) For these reasons, it is found Dr. Neiman's opinions regarding permanent impairment and restrictions are found not convincing.

The record indicates claimant is receiving Social Security Disability benefits. (Ex. 23) The Social Security Administration did find that claimant was disabled under the Social Security Disability Act. The award letter does not indicate what impairments qualified claimant as disabled. The law from the Federal Social Security Act is different from that of the Iowa Workers' Compensation Act. The findings of the Social Security Disability determination services are found to be useful in determining claimant's industrial disability, but are not controlling.

Mr. Vierling opined claimant had lost access to 90 percent of all jobs in the labor market. (Ex. 22) Mr. Vierling's opinions regarding employability appear to be based upon the opinions of Dr. Neiman. As noted above, Dr. Neiman's opinions regarding permanent impairment are found not convincing. Ms. Sellner also gave opinions regarding claimant's vocational opportunities. Ms. Sellner found that claimant could return to work in some capacity, if the opinions of other physicians, other than Dr. Neiman, were taken under consideration. As the opinions of Dr. Neiman regarding permanent impairment restrictions are found unconvincing, the opinions of Ms. Sellner regarding claimant's possibilities of returning to work are found more convincing.

Claimant testified he has not attempted to find work or applied for any jobs since 2008. No doctor has restricted claimant for prohibiting him to returning to work.

Claimant has a 23 percent permanent impairment to the body as a whole. He cannot return to work to his prior job or in similar occupations. He has not looked for work since December 2008. Claimant has had two lumbar fusions. He has work restrictions that limit him to returning to the construction industry. When all factors are considered, it is found claimant has an 80 percent loss of earning capacity, or industrial disability.

For the same rationale used in determining claimant's industrial disability, claimant also is not to be found an odd-lot employee.

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

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

Defendants contest a number of expenses. First, defendants contest that they are not liable for expenses for claimant's sister to stay overnight for two nights in Burlington. The record indicates that claimant's sister did drive claimant to and from his home in Clinton to surgery in Burlington. The record indicates that is approximately a two-hour drive from Clinton to Burlington. No good reason is shown why claimant's sister should be reimbursed for two nights stay in a motel, when claimant's sister lived two hours away from the place of surgery. Defendants are not liable for motel costs for claimant's sister.

Claimant also seeks reimbursement for cupping and massage treatment given by Medical Associates. (Ex. 35) The record indicates this therapy was recommended by an authorized treating physician, Dr. Lenz. The unrebutted testimony from claimant was Dr. Lenz recommended and authorized cupping and massage therapy. Claimant's unrebutted testimony is that this treatment was beneficial to his lumbar problems. Defendants are liable for the costs associated for cupping and massage, including medical mileage. (Ex. 35)

Defendants are liable for all other uncontested medical bills.

The next issue to be determined is credit.

Claimant contends that defendants are not due credit for any potential overpayment of temporary benefits citing Swiss Colony v. Deutmeyer, 789 N.W.2d 129 (Iowa 2010).

Claimant's asserted application of Swiss Colony v. Deutmeyer is erroneous. In Swiss Colony, the contested issue was whether section 85.34(5) "is the exclusive remedy for the overpayment of ***permanency*** benefits by employers" (emphasis added). The over-payment of temporary disability benefits was not at issue. This only makes sense since the Swiss Colony Court ignored the application of section 85.34(4) in its discussion and section 85.34(4) is directly on point regarding the issue of overpayment of temporary disability benefits under sections 85.33(1), 85.34(1) and 85.33(2).

Defendants are entitled to a credit for any overpayment of temporary benefits. The credit may be applied towards permanency benefits owed to claimant pursuant to Iowa Code section 85.34(4). See: McBride v. Casey's Marketing Company, File No. 5037617 (Remand February 9, 2015).

The next issue to be determined is costs.

Claimant seeks reimbursement for phone conference with Dr. Foster. (Ex. 34, p. 4) This conference does not appear to have resulted in a report for hearing. Costs found at Exhibit 34, page 4 are not reimbursable under rule 876 IAC 4.33.

Defendants are liable for other costs as detailed in Exhibit 34.

The final issue to be determined is whether claimant has carried his burden of proof he is entitled to alternate medical care.

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

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not

reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

The record does not indicate claimant communicated his dissatisfaction with the care given to him by defendants. Claimant has also failed to identify what alternate medical care he seeks. Given this record, claimant has failed to carry his burden of proof he is due alternate medical care.

ORDER

THEREFORE IT IS ORDERED:

That defendants shall pay claimant healing period benefits from July 12, 2010 through July 17, 2011, and from June 30, 2014 through February 19, 2015 at the rate of eight hundred seventy-seven and 27/100 dollars ($877.27) per week.

That defendants shall pay claimant four hundred (400) weeks of permanent partial disability benefits commencing on July 18, 2011 through June 30, 2014, and recommencing on February 20, 2015 at the rate of eight hundred seventy-seven and 27/100 dollars ($877.27) per week.

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

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

That defendants shall receive credit for benefits previously paid as detailed above.

That defendants shall pay medical expenses as detailed above.

That defendants shall pay costs as detailed above.

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

Signed and filed this 19th day of July, 2016.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.