

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LONNIE FOSTER,

Claimant,

vs.

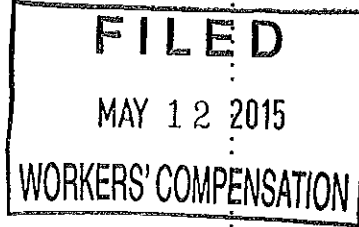
NASH FINCH CO.,

Employer,

and

XL SPECIALTY INSURANCE CO.,

Insurance Carrier,  
Defendants.



File No. 5045206

ARBITRATION

DECISION

Head Note Nos.: 1803; 1804; 2500;  
4000; 4100

STATEMENT OF THE CASE

Lonnie Foster, claimant, filed a petition in arbitration seeking workers' compensation benefits from Nash Finch Company (Nash Finch) and its insurer XL Specialty Insurance Company, as a result of an injury he sustained on August 6, 2012 that arose out of and in the course of his employment. This case was heard in Davenport, Iowa, and fully submitted on November 6, 2014. The evidence in this case consists of the testimony of claimant and Bruce Mailey and Claimant's Exhibits 1 through 13 and Defendants' Exhibits A through E.

ISSUES

1. Whether the injury is a cause of permanent disability and, if so;
2. The extent of claimant's disability.
3. Whether claimant is an odd-lot employee and entitled to permanent total disability.
4. The commencement date of any permanent disability benefits.
5. Whether claimant is entitled to payment of medical expenses.
6. Whether claimant is entitled to penalty benefits.

7. Assessment of costs.

The parties have stipulated claimant sustained an injury that arose out of and in the course of his employment with Nash Finch Company on August 6, 2012. The defendants have agreed to pay for the independent medical examination (IME) of Stanley Mathew, M.D. The parties agree the defendants shall receive credit for benefits it has been paying. The defendants were making ongoing payments at the time of the hearing. The parties stipulated the claimant's weekly rate is \$876.89 per week. This stipulated rate is accepted.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Lonnie Foster, claimant was 60 years old at the time of the hearing. Mr. Foster graduated from high school in 1972. After high school Mr. Foster attended the Iowa Diesel School for a year and obtained certification. He obtained his CDL in 1979. (Exhibit 6, page 3)

Mr. Foster was employed for 33 years with Nash Finch. During his entire career with Nash Finch he was a truck driver, except for six months when he first started his job. (Transcript, page 10) Mr. Foster described the exertion requirements of his job. For the most part his tractor trailer would be loaded in the morning, although at times he would need to load frozen food. After checking his load and his truck, he would make deliveries to various grocery stores. He would use a pallet jack to unload his truck. He describes that work as fairly physical. (Tr. p. 13)

On August 6, 2012, Mr. Foster was making a delivery in Dyersville, Iowa. While parked at a store he attempted to remove an axel pin that was stuck. Mr. Foster fell when he was pulling the axel pin out using both hands and feet. He described a snap in his right foot, then he fell on his buttocks, felt snaps in neck and back and hit his head. (Tr. p.14) Claimant drove back to Cedar Rapids, a 50 mile trip. (Tr. p. 40) On the way back, he called work and reported his injury. (Ex, 9, p. 1) After he finished his work, claimant went to see the physician designated by the defendants to provide treatment, Mark Taylor, M.D., at St. Luke's Work Well Clinic. (Tr. p. 15) Mr. Foster said at that time he was having headaches and pain in the neck, back, and the right foot. Mr. Foster has not worked since his injury on August 6, 2012. (Tr. p. 16) At the hearing, Mr. Foster said his medical conditions have not changed much since his injury.

The first record of depression occurred when Mr. Foster was being treated at University of Iowa Hospitals and Clinics (UIHC). Mr. Foster said that he talked to psychologists at UIHC and was prescribed medication for his depression by Joseph Chen, M.D. (Tr. pp. 24, 25) At the time of the hearing his primary care physician maintains this prescription and he was designated by the defendants to provide such care.

Mr. Foster was found eligible for Social Security Disability, with an onset date of August 6, 2012. (Tr. p. 27) He is also receiving long-term disability benefits through a program of insurance offered by his employer. Mr. Foster went to two classes offered by a community college to evaluate whether he may find an occupation that would be compatible with his limitations. At the time of the hearing he had contacted Iowa Department of Vocational rehabilitation, but was not yet receiving services. Mr. Foster said that due to the pain in his right foot he does not drive as much and his wife does most of the driving. He said he can drive for about one half hour.

Upon cross examination, Mr. Foster agreed that a CT scan of his head after the accident did not show any abnormality. He also agreed that Chad Abernathey, M.D. reviewed an MRI and concluded he could return to work. (Tr. p. 42) Dr. Abernathey did not recommend any surgical procedures. Mr. Foster said he called Nash Finch at that time to see if he could return to work and was told that Nash Finch had no work for him. (Tr. p. 42)

Mr. Foster testified that he did not receive notice from the defendants when they did not pay him workers' compensation. (Tr. p. 57) The records show that between August 17, 2012 and September 4, 2014, approximately 30 payments were late. (Ex. 12, pp. 1 – 4 highlighted in exhibit.) Defendants offered no explanation as to why these payments were late. Defendant stopped payment for a time from February 6, 2013 through March 20, 2013 and restarted them after getting a clarification from Dr. Chen. (Ex. 8, pp. 2, 3) There is no evidence in the record that defendants contemporaneously notified the claimant why it was stopping benefits.

The defendants sent Mr. Foster to the University of Iowa Hospital and Clinics for a two-week spine rehabilitation program under the direction of Dr. Chen. Claimant was provided restrictions by Dr. Chen at the end of this program. Mr. Foster said he provided those restrictions to Nash Finch and was not offered any work. (Tr. pp. 46, 47) Mr. Foster has not had any surgical procedures as a result of his work injury. Scott Ekroth, M.D., who treated Mr. Foster for his foot injury did not find any abnormalities in his foot and was offering no additional care. (Ex. E, p.10) Mr. Foster is not currently receiving any mental health counseling. His primary care physician does check his mood and provide a prescription for his depression. (Tr. pp. 66, 68) He has had knee surgery in 2013 for a condition not related to his work injury.

Scott Mailey, M.S., CDMS, testified at the hearing. Mr. Mailey said that based upon a review of records in this case he believed there were jobs available in the relevant marketplace for Mr. Foster. He stated that Mr. Foster was capable of gainful employment. (Tr. p. 71) Mr. Mailey stated claimant could do general delivery jobs, so long as they were within Dr. Chen's restrictions. He also opined Mr. Foster could do security work and certain types of cashier work. (Tr. p. 73) On August 29, 2014, Mr. Mailey wrote a letter to defendant's counsel. In this letter, he noted he had reviewed medical records of Drs. Chen, Abernathey and Mathew as well as a preliminary vocational report prepared by Kent Smith. He stated there were occupations that

Mr. Foster was qualified for and that there were current positions available in his relevant labor market. (Ex. C, p. 1)

On August 6, 2012, Mark Taylor, M.D., examined Mr. Foster. Dr. Taylor's assessment was head injury with scalp pain and right ankle pain. He recommended a head CT. (Ex. 1, pp. 2, 3) The CT scan was normal. (Ex. B, p.1) On August 8, 2012, Mr. Foster was sent to the emergency room after reporting increased headaches and blood coming out of his nose. (E. 1, p. 4) He saw Dr. Taylor that afternoon who recommended he remain off work and noted Mr. Foster may have post concussive syndrome. (Ex.1, p. 4)

On August 10, 2012, Mr. Foster went to the emergency room and reported right lower back/buttock pain that radiated down his right leg. (Ex. 1, p. 6) No acute trauma was identified. (Ex. 1, pp. 10, 11)

On August 15, 2012, Dr. Taylor assessed Mr. Foster with:

#### ASSESSMENT

1. Head injury with scalp contusion
2. Possible cervical strain
3. Right ankle and foot strain
4. Right low back and leg pain

(Ex. 1, p. 15)

On September 26, 2012, Dr. Abernathey examined Mr. Foster for neck pain and low back pain. Dr. Abernathey's impression was:

IMPRESSION/RECOMMENDATIONS: Mr. Lonnie Foster clinically presents with spinal strain following a work related injury. I do not recommend an aggressive neurosurgical stance due to a paucity of clinical and radiographic findings. I favor further conservative management in this setting. . . .

(Ex. A, p. 1)

On June 16, 2014, Dr. Abernathey wrote:

1. I would consider the patient to have experienced spinal strain without objective findings. His neural elements are well decompressed on his MRI studies and his neurologic function is intact. I do not recommend an aggressive neurosurgical management.
2. I do not identify any impairment or permanent restrictions in this case.

(Ex. A, p. 2)

Dr. Ekroth examined Mr. Foster's right foot on October 4, 2012. His assessment was right foot contusion. He did not have a specific answer as to the source of Mr. Foster's foot pain. (Ex. 1, p. 27) Mr. Foster was placed back in an E-boot. On November 1, 2012, Dr. Ekroth noted Mr. Foster was still in pain and a MRI was recommended. (Ex. 1, p. 30) The MRI did not show any definite cause for Mr. Foster's foot pain. (Ex. 1, p. 33)

On December 13, 2012, Mr. Foster's wife informed Dr. Taylor that she had concerns about Mr. Foster's memory. (Ex. 1, p. 35)

On February 6, 2013, claimant was examined by Dr. Chen at UIHC. Dr. Chen noted that the majority of his pain is likely myofascial. (Ex. 1, p. 44) On March 27, 2013, Mr. Foster was evaluated by the Spine Rehabilitation Program at UIHC. The initial behavioral diagnostic impressions were:

Initial Diagnostic Impressions:

Axis I: 296.32 Major Depressive Disorder, recurrent, moderate  
Axis II: 799.9 Diagnosis Deferred on Axis II  
Axis III: Chronic back and neck pain; morbid obesity  
Axis IV: Financial problems, occupational problems  
Axis V: Global Assessment of Functioning (GAF): 60

(Ex. 1, p. 55)

Cognitive behavioral therapy was recommended and participation in a two-week spine rehabilitation program was recommended. (Ex. 1, pp. 56, 59, 67) Mr. Foster completed the spine rehabilitation program between May 6, and May 17, 2013. Dr. Chen recommended continuation of his home therapy program and exercise and limiting lifts of 30 pounds to no more than four times an hour and repetitive lifting to 15 pounds. (Ex. 1, p. 107) In addition to the lifting restrictions he was provided restriction of occasional twisting, bending, reaching, stooping, squatting, kneeling, pushing and pulling. Finally, Dr. Chen wrote Mr. Foster is required to have a 5 minute break every 60 minutes. (Ex. 1, p. 111) On July 10, 2013, Dr. Chen provided a 6 percent impairment rating for claimant's neck condition and a 6 percent for his spine condition. He provided a 12 percent to the whole body. (Ex. 1, p. 119) He provided the following restrictions:

Mr. Foster has the following permanent restrictions:

He is able to lift 25 pounds on an occasional basis (defined as up to 1/3 of a workday).

He is able to lift 15 pounds on a repetitive basis (defined as 1/3 to 2/3 of a workday).

He is limited to occasional twisting, bending, reaching, stooping, squatting, kneeling, pushing and pulling (defined as up to 1/3 of a workday).

(Ex. 1, p. 125)

On September 16, 2013, Mr. Foster returned to Dr. Chen because of many crying spells. Dr. Chen diagnosed depression and provided a prescription. (Ex. 1, p 127) Claimant was referred to his primary care physician, Bradley, Beer. On July 3, 2014, Dr. Chen agreed with a letter written by defendants' attorney that stated the MRI and EMG did not show objective findings outside of normal changes and that Mr. Foster has a 25-pound lifting limitation. (Ex. 1, p. 174)

On April 28, 2014, Stanley Mathew, M.D., performed an independent medical examination. Dr. Mathew's impression was:

IMPRESSION:

- 1.Chronic neck pain.
- 2.Chronic low back pain.
- 3.Right ankle calcaneous fracture, calcaneal navicular joint degenerative joint disease secondary to trauma.
- 4.Severe depression, posttraumatic stress.
- 5.Gait, balance, and coordination deficits.
- 6.Right ankle weakness.
- 7.Cognitive deficits, memory deficits, possible likely traumatic brain injury.

(Ex. 2, pp. 11, 12)

Dr. Mathew related his diagnosis to the August 6, 2012 work injury. He found claimant was at maximum medical improvement (MMI) for his neck, back, head injury (concussive symptoms) and right ankle. (Ex. 2, pp. 12, 13) Dr. Mathew recommended lifting restrictions of 15 pounds repetitively. For claimant's head injury he should avoid stressful situations in any environment that will elicit headaches and will need to write things down regularly due to cognitive memory deficits. For the right ankle injury he recommended avoiding heavy lifting, prolonged walking and running, prolonged standing, squatting, lifting not more than 15 pounds. (Ex. 2, pp. 13, 14)

On May 16, 2014, Mark Mittauer, M.D., performed an independent psychiatric evaluation. His DSM-IV Diagnoses was in part:

- Axis I: 1. Major Depressive Disorder, Severe without psychotic features (296.23)
2. Anxiety Disorder, NOS (claustrophobia-like symptoms) (300.00)
  3. Generalized Anxiety Disorder (300.02)
  4. Breathing related sleep disorder (obstructive sleep apnea)

Axis II: Non diagnosis

Axis III: Allergic rhinitis, headaches, obese, hypertension, history of renal stones, left carpal tunnel syndrome symptoms, gastroesophageal reflux disease, asthma, gout, hypercholesterolemia, borderline diabetes, sleep apnea, chronic pain in multiple areas of his body.

Axis IV: Severe psychosocial stressors: financial stress, uncertainty about his future employability, dealing with chronic pain and several medical problems, unable to perform usual activities as regards housework, yard work, and participate in hobbies, dealing with severe depression and anxiety.

Axis V: Current GAF=45.

(Ex. 3, p. 12)

Dr. Mittauer wrote that claimant's prognosis was poor and that as long as Mr. Foster experiences persistent pain and associated ramifications, (employability and financial), of his work injury he will experience persistent depression and anxiety. (Ex. 3, pp.12, 13)

Dr. Mittauer found Mr. Foster's depression and general anxiety disorder was related to his August 6, 2012 work injury. (Ex. 3, p. 13) Dr. Mittauer stated that Mr. Foster's Major Depressive Disorder and his Generalized Anxiety Disorder would interfere with competitive employment. (Ex. 3, p. 14) I find that Mr. Foster's Major Depressive Disorder and General Anxiety Disorder are causally related to his work injury.

Kent Jayne, M.A. M.B.A., CRC, performed a vocational assessment of Mr. Foster. (Ex. 4, pp. 1 - 19) Mr. Jayne concluded Mr. Foster was precluded from the competitive labor market. (Ex. 4, p. 19)

Mr. Foster has proven that he had injury to the whole body including his back, neck head, and mental. His claim is an industrial disability under Iowa Code section 85.34 (2)(u). He has also proven permanent injury to his right foot.

Mr. Foster has an industrial disability. I find Mr. Foster has the physical restriction as set forth by Dr. Mathew and the psychiatric restriction set forth by Dr. Mittauer. He cannot perform his past work. He has been found disabled by the Social Security Administration and his long-term disability carrier. Given his work history, limited skills and education, physical and psychological limitations he has a 100 percent loss of earning capacity.

#### REASONING AND CONCLUSIONS OF LAW

The parties agree claimant had an injury that arose out of and in the course of his employment with Nash Finch. I previously found that claimant has an industrial injury and his injury is to be evaluated under Iowa Code section 85.34 (2)(u).

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 and inability to engage in employment for which the employee is fitted. 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).

A finding of impairment to the body as a whole found by a medical evaluator does not equate to industrial disability. Impairment and disability are not synonymous. The degree of industrial disability can be much different than the degree of impairment because industrial disability references to loss of earning capacity and impairment references to anatomical or functional abnormality or loss. Although loss of function is to be considered and disability can rarely be found without it, it is not so that a degree of industrial disability is proportionally related to a degree of impairment of bodily function.

Factors to be considered in determining industrial disability include the employee's medical condition prior to the injury, immediately after the injury, and presently; the situs of the injury, its severity, and the length of the healing period; the work experience of the employee prior to the injury and after the injury and the potential for rehabilitation; the employee's qualifications intellectually, emotionally, and physically; earnings prior and subsequent to the injury; age; education; motivation; functional impairment as a result of the injury; and inability because of the injury to engage in employment for which the employee is fitted. Loss of earnings caused by a job transfer for reasons related to the injury is also relevant. Likewise, an employer's refusal to give any sort of work to an impaired employee may justify an award of disability. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980). These are matters which the finder of fact considers collectively in arriving at the determination of the degree of industrial disability.



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

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W. 2d 614, 617 (Iowa 1995).

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

The refusal of defendant-employer to return claimant to work in any capacity is, by itself, significant evidence of a lack of employability. Pierson v. O'Bryan Brothers, File No. 951206 (App. January 20, 1995). Meeks v. Firestone Tire & Rubber Co., File No. 876894, (App. January 22, 1993); See also, 10-84 Larson's Workers' Compensation Law, section 84.01; Sunbeam Corp. v. Bates, 271 Ark. 609 S.W.2d 102 (1980); Army & Air Force Exchange Service v. Neuman, 278 F. Supp. 865 (W.D. La. 1967); Leonardo v. Uncas Manufacturing Co., 77 R.I. 245, 75 A.2d 188 (1950). An employer who chooses to preclude an injured worker's re-entry into its workforce likely demonstrates by its own action that the worker has incurred a substantial loss of earning capacity. As has previously been explained in numerous decisions of this agency, if the employer in whose employ the disability occurred is unwilling to accommodate the disability, there is no reason to expect some other employer to have more incentive to do so. Estes v. Exide Technologies, File No. 5013809 (App. December 12, 2006).

There was vocational evidence from Mr. Mailey and Mr. Jayne. I find Mr. Jayne's evidence more convincing. His report was more complete, included testing and considers Mr. Foster's psychiatric limitations.

It is true that the MRI and other objective testing do not show a specific injury. He is not a candidate for surgery. However, the records from Drs. Chen, Beer, Matthews and Mittauer show that Mr. Foster has a severe injury on August 6, 2012 that has had a devastating effect on his ability to work.

I previously found that Mr. Foster had a 100 percent loss of earning capacity. This is based upon his limitations- physical and psychiatric, his age, education and all of the factors of industrial disability. I find that claimant is permanently and totally disabled. This entitles Mr. Foster to indemnity benefits so long as he is permanently disabled. Commencement date for these benefits is August 7, 2012.

As I have found Mr. Foster permanently and totally disabled I do not need to make any determination concerning whether he is an odd-lot employee.

Claimant is asking for penalties for late payments of weekly benefits. Pursuant to Iowa Code section 85.30 and applicable case law including Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 261-262 (Iowa 1996) and Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 234-236 (Iowa 1996), weekly benefits are to be paid by the end of a compensation payment week composed of seven calendar days. For example, if the first day of the compensation week is a Monday, full payment of the weekly compensation is due the following Monday. Id. at 235. The first compensation payment week begins with the first day of entitlement, if the first day of entitlement is the injury date or if the first day is within the statutory grace period, the first compensation payment week will begin on the 11th day after the injury. Id. Payments are considered made on the date of delivery to claimant or, if mailed, the date the payment was placed in the United States Mail depository. Id. at 236. If payments are not made when due, a penalty is not only proper but mandatory in the absence of a reasonable explanation. Christensen 554 N.W.2d at 261.

Claimant has shown approximately 30 late payments. Defendants offered no evidence as to why the payments were late. They have not offered a reasonable excuse as to why the payments were late.

Defendant's argued in their brief that diagnostic tests did not show abnormalities and that Dr. Abernathy opined claimant could return to work unrestricted. There is no evidence presented that that information was contemporaneously conveyed to the claimant as the reason for non-payment of benefits. Neither party calculated the amount of the delayed payments. Using Exhibit 12, it appears over \$17,000.00 in payment were delayed. Some of the delay was a few days, other delays were longer. In this case I chose to impose a \$5,000.00 penalty upon the defendants. This is sufficient penalty to let the defendants know how serious and important it is to timely

pay benefits, but acknowledges that the full 50 percent penalty is not appropriate for these particular delays.

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).

Mr. Foster has requested payment of medical expenses not paid by defendants as well as continued psychological treatment. As Mr. Foster's Major Depressive Disorder and General Anxiety Disorder are causally related to his work injury, defendant shall provide medical psychological/psychiatric treatment.

Mr. Foster has also requested payment for Dr. Beer's services for his medical management of Mr. Foster's psychiatric medication. Dr. Beer was selected to do this by and authorized physician, Dr. Chen. This makes Dr. Beer an authorized physician. Defendants shall pay the medical expense of Dr. Beer as set forth in Exhibits 1, pages 152 – 187 and Exhibit 11 pages 1 – 6.

Mr. Foster has requested certain costs. He has requested reimbursement for two independent medical examinations. He is requesting \$850.00 for the independent medical (psychiatric) examination of Dr. Mittauer. He has requested \$1,288.50 for the IME of Dr. Mathew. Under Iowa Code section 85.39:

If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall . . . be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice. . . .

The Iowa Supreme Court has ruled that the plain reading of section 85.39 limits the injured worker to one IME, regardless of the number of leading examinations obtained by the employer or its insurance carrier. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

Claimant is entitled to payment of one examination under this statute. I award the cost of Dr. Mathew's IME of \$1,288.50. I do not award the costs of Dr. Mittauer pursuant to Iowa Code section 85.39. I decline to award this expense as a cost under Iowa Code 86.40 as the more specific language in 85.39 and cases interpreting this section provide for the payment of only one IME. The Iowa Court of Appeals recently indicated that an IME is not a cost allowed by rule 4.33. See Des Moines Area Regional Transit Authority v. Young, No. 14-0231 (Iowa Ct. App., October 1, 2014). The Iowa

Supreme Court is considering the issue of whether an IME can be assessed as a costs. Until further clarification from the courts, I am not awarding the costs of two IME reports. I am awarding in my discretion the filing fee of \$100.00 and the vocational report of \$2,749.50 pursuant to 876 IAC 4.33 (6) and (7).

ORDER

Defendants shall pay to claimant permanent total disability benefits for an indefinite period of time during the period of claimant's disability at the rate of eight hundred seventy-six and 89/100 dollars (\$876.89) per week from August 7, 2012

Defendants shall pay the medical expenses as set forth in this decision.

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

Defendants shall have credit for the prior benefits they have paid in this case.

Defendants shall pay claimant five thousand dollars (\$5,000.00) in penalty benefits.


Defendants shall pay the costs as set forth in this decision.

Defendants shall pay all accrued benefits in a lump sum.

Defendants shall pay interest as provided in Iowa Code section 85.30.

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

Signed and filed this 12<sup>th</sup> day of May, 2015.

  
JAMES F. ELLIOTT  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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JFE/kjw

**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.