BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

OTONIEL MAYORGA, JR., Claimant, vs. SOY INVESTORS II, L.L.C., Employer, and NATIONWIDE AGRIBUSINESS INSURANCE COMPANY, Insurance Carrier, Defendants.	FILED FEB 05 2019 WORKERS COMPENSATION	File No. 5057957 ARBITRATION DECISION Head Note No.: 1402.40, 1802, 1803, 2501, 2907

STATEMENT OF THE CASE

Otoniel Mayorga, Jr., claimant, filed a petition for arbitration against Soy Investors II, L.L.C., as the employer and Nationwide Agribusiness Insurance Company, as the insurance carrier. This contested case proceeded to an in-person hearing in Des Moines on November 13, 2018.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 7 and Defendants' Exhibits A through C. All exhibits were received without objection. For clarity sake, claimant removed unnecessary pages from his exhibit set due to a rate agreement reached prior to commencement of trial. Therefore, Claimant's Exhibit 5 does not contain pages 32 through 40.

Claimant testified on his own behalf. Mr. Mayorga elected to testify through an interpreter. Defendants called Eric Weber to testify. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. The parties filed post-hearing briefs on December 3, 2018, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the stipulated December 22, 2014 injury caused a period of temporary disability and, if so, claimant's entitlement to temporary disability, or healing period, benefits.

2. Whether the stipulated December 22, 2014 injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits.

3. The proper commencement for permanent disability benefits, if any.

4. Whether claimant is entitled to payment, reimbursement, or other satisfaction of past medical expenses contained at Claimant's Exhibit 6.

FINDINGS OF FACT

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

Claimant, Otoniel Mayorga, Jr., is a 38-year-old gentleman, who was born in Mexico. Mr. Mayorga attended seven years of school in Mexico before immigrating to the United States in 1995. Claimant attended two additional years of schooling at North High School in Des Moines. Initially, claimant took English as a Second Language (ESL) courses, but was able to transition into taking classes in English during his tenure at North High School. Claimant was able to pass his classes in English but indicated that he received low grades. He was, unfortunately, expelled from school during his senior year and failed to obtain a diploma. Mr. Mayorga has not pursued or obtained a GED since leaving high school. He has no additional educational training.

Mr. Mayorga's work history is set forth at Claimant's Exhibit 3, page 23. It includes primarily physical labor type jobs. Claimant has worked in a mail room setting, in printing, as a dishwasher, performing pallet repair, for temporary staffing agencies, in construction, performing concrete work, in warehouses, as a general laborer, in meat packing, and most recently performing construction clean-up services. (Claimant's Exhibit 3)

Claimant began working for Soy Investors II, L.L.C., also referred to as Harvest Innovations in this record, in April 2011. (Claimant's testimony) Claimant worked in a production position and was required to perform physical labor, including lifting up to 50 pounds. (Claimant's Exhibit 5, pp. 41-43) On December 22, 2014, while performing typical job duties, claimant sustained a significant injury.

Mr. Mayorga's co-workers were attempting to place a large bag full of lentil beans over a hopper to unload the beans. Claimant attempted to assist his co-workers. As he reached up to untie the large bag, two hooks holding the large bag broke. The bag

weighed over 2,000 pounds and fell onto claimant's outstretched right arm and onto his right shoulder, trapezius, and neck area. Claimant was pinned in that position for approximately five minutes until his co-workers could release him. (Claimant's testimony)

The employer insisted that claimant be evaluated, and he was taken to the emergency room. The initial emergency room records demonstrate complaints of severe pain in the neck, right shoulder, and right leg. All x-rays were negative and claimant was discharged from the emergency room with a diagnosis of a contusion of the upper arm and released to return to work the next day. (Joint Ex. 1, pp. 1-4)

Mr. Mayorga returned to work for the employer on December 23, 2014. He neither requested nor required work restrictions upon his return to work. On January 21, 2015, claimant sought evaluation from his personal physician, Jose Angel, M.D. Dr. Angel evaluated claimant for anxiety. Claimant made no mention of his work injury when evaluated by Dr. Angel on January 21, 2015. Instead, Dr. Angel noted that claimant had no edema and full range of motion in his extremities. Dr. Angel made no notations of complaints in claimant's neck, right shoulder, back, or right leg at this visit. (Joint Ex. 2, p. 11)

Claimant continued to work for the employer without medical restrictions from December 23, 2014 through the date of his termination on February 10, 2015. (Claimant's testimony) On February 10, 2015, the employer terminated claimant for violation of a safety rule. Specifically, claimant failed to wear and refused to wear a safety harness while working off the ground. Claimant's supervisor testified, and exhibits demonstrate, that claimant had specific training on the requirements of harness use when working at heights. Claimant disputes the issue and asserts that he had worked at heights in the past without the use of a harness. Regardless, the employer elected to terminate claimant for this safety violation.

On February 20, 2015, claimant sought evaluation at Mercy Medical Center's emergency room. He noted the injury approximately eight weeks prior. He reported right shoulder symptoms that were moderate in nature with no radiating pain. He also reported occasional paresthesias in the right arm. Claimant was encouraged to use over-the-counter medications for his symptoms and released with a shoulder sprain diagnosis. (Joint Ex. 3, pp. 48-50)

On February 24, 2015, claimant returned to Dr. Angel's office. In that office note, the nurse practitioner noted that claimant was involved in the December 22, 2014 accident. At that time, claimant reported pain in his right shoulder and that his right arm was weaker. There is also mention of symptoms occasionally into claimant's right leg. The nurse practitioner noted tenderness of the right shoulder but also noted full range of motion of the right shoulder and neck. The formal diagnosis at that appointment was a right shoulder strain. (Joint Ex. 2, p. 12)

On March 27, 2015, claimant returned to the emergency room. At this evaluation, claimant reported gradual onset of paraspinous muscle strain and spasm with symptoms in his neck and thoracic spine. The formal diagnosis rendered was a back strain and spasm and claimant was again discharged without further workup or treatment. (Joint Ex. 3, pp. 56-58)

On that same date, claimant submitted to an evaluation by a physician defendants authorized. Specifically, Richard S. Bratkiewicz, M.D., evaluated claimant. Dr. Bratkiewicz noted, "the patient has positive answers for any area of the body was asked." Claimant reported symptoms in the neck, back, chest wall and lower extremities according to Dr. Bratkiewicz's note. Claimant specifically reported right ankle symptoms that had been "bothersome for the past 3 days." (Joint Ex. 4, p. 82)

Dr. Bratkiewicz ordered a right shoulder MRI to rule out any objective pathology. He also imposed a 10-pound lifting restriction until the MRI was completed and reviewed. However, Dr. Bratkiewicz appeared skeptical that claimant had any significant pathology. (Joint Ex. 4, p. 82)

The right shoulder MRI occurred on April 2, 2015. It was unremarkable. (Joint Ex. 6) Claimant refused a return appointment with Dr. Bratkiewicz after the MRI was completed. Therefore, there was a delay in claimant obtaining a return evaluation with Dr. Bratkiewicz.

Claimant seeks healing period benefits while he was off work from February 10, 2015 through March 31, 2015. Claimant had already proven he could continue working his pre-injury job and confirmed that he could still return to his job at the time of hearing. I find that claimant had not achieved maximum medical improvement by March 31, 2015 but that he was capable of performing substantially similar work throughout this period.

Ultimately, claimant did request to be re-evaluated and Dr. Bratkiewicz saw claimant again on July 2, 2015. Dr. Bratkiewicz noted residual discomfort in claimant's right shoulder, but claimant also acknowledged that he was capable of performing all aspects of his new job at that time. Dr. Bratkiewicz noted full abduction and full internal and external rotation of claimant's right shoulder. He also noted that claimant's neck was not tender. Dr. Bratkiewicz opined that claimant had achieved maximum medical improvement and released him to return to work without medical restrictions. (Joint Ex. 4, pp. 85-86)

Dr. Bratkiewicz subsequently left the clinic where claimant had been treating. Defendants requested that another physician review the clinic records and offer an opinion on permanent impairment. David T. Berg, D.O., performed that record review and authored a report dated November 4, 2016. Dr. Berg opined that claimant required no permanent medical restrictions and that claimant did not qualify for any permanent impairment under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition.

Claimant's personal physician, Dr. Angel, opined that he is not qualified to perform impairment ratings but opined that claimant likely has permanent impairment as a result of a cervical myofascial syndrome and chronic pain syndrome. Dr. Angel opined that these diagnoses were causally related to the December 22, 2014 work injury. (Joint Ex. 2, p. 46)

Mr. Mayorga also obtained an independent medical evaluation performed by Sunil Bansal, M.D., on November 18, 2016. Dr. Bansal documented right-side neck pain that radiated to the right shoulder. Claimant reported constant right arm pain with movement and occasional numbness and tingling in some of the fingers on his right hand. Dr. Bansal also documented complaints of thoracic back pain and right ankle pain. (Claimant's Ex. 1, p. 5)

Dr. Bansal opined that claimant sustained a neck injury as a result of the work injury on December 22, 2014. Dr. Bansal further opined that claimant's right shoulder symptoms were referred pain from the cervical spine. Dr. Bansal did not offer a causation opinion linking claimant's thoracic spine symptoms, low back symptoms, or right leg symptoms. (Claimant's Ex. 1, p. 8)

Dr. Bansal opined that claimant should have a cervical MRI. Claimant does not request such diagnostic testing at this time. Therefore, Dr. Bansal opines that claimant achieved maximum medical improvement on November 11, 2016. He assigns no permanent impairment to claimant's right shoulder. However, Dr. Bansal opines that claimant sustained seven percent permanent impairment of the whole person as a result of his neck injury. He recommends that claimant avoid lifting more than 25 pounds over head level and that claimant avoid repeated neck motion or maintaining his neck in a posturally flexed position for more than 15 minutes at a time. (Joint Ex. 1, p. 10)

When I consider the competing medical opinions in this record, I find the opinions offered by Dr. Bansal to be most convincing. Even Dr. Bratkiewicz recorded ongoing symptoms when he last evaluated claimant. In light of the ongoing symptoms, I find Dr. Berg's zero percent impairment rating to be unconvincing.

I find that claimant sustained a neck injury as a result of the December 22, 2014 work injury. I find that claimant's symptoms continue through the date of hearing. I find that claimant has proven by a preponderance of the evidence that he sustained permanent impairment and permanent disability as a result of the injury.

I accept Dr. Bansal's seven percent permanent impairment rating as accurate. I also accept Dr. Bansal's restrictions and find that it would be difficult for claimant to lift more than 25 pounds above head level, work with repeated neck motion or maintain a posturally flexed neck during work for extended periods of time. I also accept Dr. Bansal's opinion that claimant has achieved maximum medical improvement as of November 11, 2016 because he has not sought a neck MRI or further treatment since Dr. Bansal evaluated him.

During his testimony, claimant conceded that he could perform many of his prior jobs even after this injury date, including his work for Soy Investors. However, claimant also identified jobs that required overhead work and that he likely could not perform in his current condition. I find that claimant has lost the ability to perform some of the jobs that he previously performed.

I find that claimant proved he sustained at least a contusion of the right shoulder. However, he did not prove that he sustained a permanent injury to the right shoulder, his back or his right leg.

Mr. Mayorga has sought alternate employment since his injury. I find that he is motivated to continue working within his current abilities. He has some minimal language barriers. He is fluent in English, but requested an interpreter because he has a larger vocabulary in Spanish. He would be able to functionally converse with employers and co-worker on the job site, however. Mr. Mayorga estimated that he could read approximately 80 percent of items in English. I find that his language barrier would be minimal and he is likely capable of functioning in an employment setting in the English language.

Having considered claimant's age, educational background, employment history, his ability to return to or retrain for work, the situs and severity of his injury, his permanent impairment rating and permanent work restrictions, his language barrier, motivation to work, as well as all other industrial disability factors outlined by the Iowa Supreme Court, I find that Mr. Mayorga has proven he sustained a 25 percent loss of future earning capacity as a result of the December 22, 2014 work injury at Soy Investors II, L.L.C.

Mr. Mayorga seeks award of past medical expenses contained at Claimant's Exhibit 6. Review of those medical expenses demonstrates that the charges contained therein are for medical treatment, diagnostic testing, physical therapy, or other medical evaluations that are related to, or required to rule out injuries as a result of, the December 22, 2014. Therefore, I find that claimant has proven the charges outlined and contained in Claimant's Exhibit 6 are causally related to the December 22, 2014 work injury.

Defendants specifically challenge two emergency room visits and the charges related to those visits as being unauthorized. Specifically, defendants challenge claimant's emergency room visits to Mercy Medical Center on February 20, 2015 and March 27, 2015.

Review of the February 20, 2015 emergency room note demonstrates that claimant's neck and shoulder had no swelling and that claimant reported only moderate pain at the time. (Joint Ex. 3, p. 48) Claimant had several weeks between the injury date and February 20, 2015 to seek additional care. There is no obvious reason why he needed to seek an emergency room evaluation on February 20, 2015. It is not apparent

to me that the care sought on February 20, 2015 at the emergency room was truly emergent.

However, claimant testified that he spoke with the insurance carrier and they authorized him to go to the emergency room. (Tr., p. 61) Defendants introduced no contrary evidence. Therefore, I find that defendants authorized the emergency room visit of February 20, 2015.

Mr. Mayorga again presented to the emergency room on March 27, 2015. (Joint Ex. 3, pp. 57-58) Review of that medical record demonstrates that the physician recorded a history of "gradual onset of paraspinous muscle strain and spasm." (Joint Ex. 3, p. 57) There is no obvious emergent situation identified in the March 27, 2015 emergency room records. I find that the treatment obtained at the Mercy Medical Center emergency room was not emergent in nature on March 27, 2015.

Claimant introduced no evidence that the emergency room evaluation on March 27, 2015 was authorized by defendants. Instead, it appears this evaluation and treatment was not authorized care. I find that the care rendered at the emergency room on March 27, 2015 did not provide a more favorable outcome than would likely have been achieved by care that was authorized by the employer. Rather, the emergency room physician on March 27, 2015 merely examined claimant, diagnosed a back strain and spasm and discharged claimant with prescription medications. This clearly could have been accomplished in a clinical setting and outside of the emergency room.

CONCLUSIONS OF LAW

The parties stipulated that claimant sustained a work injury on December 22, 2014. (Hearing Report) However, there is a dispute about the specific nature of the injuries sustained, including dispute about whether claimant sustained a back or right leg injury. Therefore, the initial disputed issue I must decide is whether the December 22, 2014 injury caused injury to, or materially aggravated, claimant's back or right leg.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy

of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Having found that claimant did not prove he sustained a back injury or right leg injury by a preponderance of the evidence, I conclude that claimant has failed to prove compensable injuries to his back or right leg. However, having found that claimant did prove he sustained injuries to his neck and right shoulder, I conclude claimant has proven he sustained neck and right shoulder injuries that arose out of and in the course of his employment.

Mr. Mayorga asserts that he is entitled to healing period benefits from February 10, 2015 through March 31, 2015 as a result of his injuries. 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).

I found that claimant achieved maximum medical improvement after March 31, 2015. The employer terminated claimant on February 10, 2015. However, having found that claimant had demonstrated his ability to continue performing substantially similar work prior to February 10, 2015, I conclude that claimant cannot establish a claim for temporary disability, or healing period, benefits from February 10, 2015 through March 31, 2015.

Mr. Mayorga also asserts that he sustained permanent disability as a result of his neck and right shoulder injuries. Having found that Mr. Mayorga did not prove a permanent injury to his right shoulder, I conclude that he has failed to establish entitlement to permanent disability as a result of a right shoulder injury. However, I found that Mr. Mayorga did prove he sustained permanent disability related to a neck

injury arising out of the stipulated December 22, 2014 work injury. Therefore, I conclude that claimant is entitled to an award of permanent disability in some amount.

The parties appropriately stipulate that any award of permanent disability should be an award of industrial disability pursuant to Iowa Code section 85.34(2)(u). (Hearing Report) 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.

Having considered claimant's age, educational background, employment history, language barriers, the situs and severity of his injury, his permanent impairment and permanent work restrictions, ability to retrain or return to work, his motivation, as well as all other factors of industrial disability identified by the Iowa Supreme Court, I found that Mr. Mayorga proved he sustained a 25 percent loss of future earning capacity. This is equivalent to a 25 percent industrial disability and entitles claimant to 125 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(u).

The parties also dispute the proper commencement date for permanent disability benefits. In this case, claimant returned to work the day after the work injury. He failed to prove entitlement to any healing period benefits. When the claimant returns to work, permanent disability benefits should commence. Evenson v. Winnebago Industries, Inc., 881 N.W.2d 360 (Iowa 2016). Therefore, I conclude that permanent partial disability benefits should commence in this case on December 23, 2014.

Finally, claimant asserts a claim for past medical expenses contained in Claimant's Exhibit 6. 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 raised two separate defenses. They challenged emergency room visits on February 20, 2015 and March 27, 2015, as being unauthorized medical treatment. Pursuant to Iowa Code section 85.27, defendants are entitled to select the authorized medical providers for compensable work injuries. Defendants conceded liability at the time of the two emergency room visits in February and March 2015.

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

> If the employer chooses the care, the employer shall hold the employee harmless for the cost of care until the employer notifies the employee that the employer is no longer authorizing all or any part of the care and the reason for the change in authorization. An employer is not liable for the cost of care that the employer arranges in response to a sudden emergency if the employee's condition, for which care was arranged, is not related to the employment.

Having found that the evidence demonstrated defendants authorized the February 20, 2015 emergency room visit, I conclude defendants are obligated to hold claimant harmless for those charges. Iowa Code section 85.27(4).

However, I found that claimant introduced no evidence to establish that defendants authorized the March 27, 2015 emergency room visit. The treatment rendered at the emergency room on March 27, 2015 was found not to be emergent in nature. Instead, those charges must be evaluated as unauthorized medical care. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193 (Iowa 2010).

When a claimant abandons the protections of Iowa Code section 85.27 and seeks unauthorized medical care, the employer is not liable for those medical charges unless the claimant can establish that the unauthorized medical care is beneficial and provides a more favorable medical outcome than would likely have been achieved through authorized medical care. Id. In this instance, I found that the treatment rendered at Mercy Medical Center's emergency room were relatively routine, including issuance of prescription medications for claimant's symptoms. Having found that this type of treatment could have been accomplished in a clinical setting and did not require a visit to the emergency room, I also found that the treatment on March 27, 2015 did not provide a more favorable outcome than would likely have been achieved through authorized medical care selected by the employer. I conclude that claimant failed to establish entitlement to payment or reimbursement for the emergency room charges incurred on March 27, 2015. Id.; Brewer-Strong v. HNI Corporation, 913 N.W.2d 235 (Iowa 2018).

Defendants also assert a challenge to medical treatment after April 22, 2015 as not being causally related to the December 22, 2014 work injury. Having reviewed the medical expenses contained in Claimant's Exhibit 6, I found that they were causally related to the December 22, 2014 work injury. Therefore, I conclude that defendants are liable for payment, reimbursement of a third-party payor, reimbursement of claimant, or indemnification of claimant for all past medical expenses contained in Claimant's Exhibit 6. Iowa Code section 85.27.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant one hundred twenty-five (125) weeks of permanent partial disability benefits commencing on December 23, 2014.

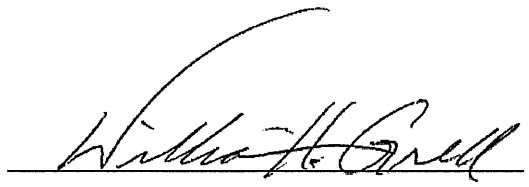
All weekly benefits shall be paid at the stipulated rate of four hundred eighty-eight and 91/100 dollars ($488.91) per week.

The employer and insurance carrier 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).

With the exception of the emergency room charges from Mercy Medical Center's emergency room on March 27, 2015, defendant shall pay all medical expenses contained in Claimant's Exhibit 6 by holding claimant harmless and paying said charges directly to the medical providers, reimbursing any third-party payor, or reimbursing claimant for any out-of-pocket expenses.

Defendants employer and insurance carrier 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 5th day of February, 2019.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

James C. Byrne
Attorney at Law
1441 – 29TH Street, Suite 111
West Des Moines, Iowa 50266
jbyrne@nbolawfirm.com

Deborah Stein
Attorney at Law
666 Walnut St., Ste. 2302
Des Moines, IA 50309
steind8@nationwide.com

WHG/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.