

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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KEVIN SAWYER,

Claimant,

vs.

TRI-STATE CAST TECHNOLOGIES,

Employer,

and

GRANITE STATE INS. CO.,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5061623

ARBITRATION

DECISION

Head Note Nos.: 1803.1, 2502, 3200

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**STATEMENT OF THE CASE**

Keith Sawyer, claimant, filed a petition in arbitration seeking workers' compensation benefits against Tri-State Cast Technologies, employer, Granite State Ins. Co., insurer, and the Second Injury Fund of Iowa, for an alleged work injury date of September 21, 2017.

This case was heard on May 15, 2019, in Des Moines, Iowa, and considered fully submitted on July 17, 2019, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-11, Claimant's Exhibits 1-2, Defendants' Exhibits A-I, and testimony of the claimant.

**ISSUES**

1. Whether claimant has established a compensable claim against the Fund.
2. Whether claimant's entitlement to permanent partial disability (PPD) has commenced under section 85.34(2) (2017).

3. Whether claimant is entitled to industrial disability under section 85.34(2)(u);
4. The reasonableness of Sunil Bansal, M.D.'s charges;
5. Penalty for failure to pay appropriate permanency amount;
6. And the assessment of costs.

### **STIPULATIONS**

The parties stipulate claimant was an employee at the time of the alleged injury. They agree claimant sustained an injury on September 21, 2017, but dispute the nature and extent. All affirmative defenses have been waived. There are no medical benefits in dispute.

The parties agree that on the date of the alleged injury, claimant's gross earnings were \$416.50 per week. He was single and entitled to five exemptions. Based on the foregoing, the claimant's weekly benefit rate is \$299.21.

Prior to the hearing claimant was paid 12.143 weeks of compensation at a rate of \$299.21 per week. 8.714 weeks were for healing period and 3.429 weeks were designated as PPD payments.

### **FINDINGS OF FACT**

Claimant, Kevin Sawyer, was a 41-year-old man at the time of hearing. His educational history includes high school up to the tenth grade. He dropped out of school to obtain employment. He has worked continuously since that time. He admits to being a below average student with few computer skills.

His past work history includes factory work, cast-iron pouring, and meat cleanup. Most of his jobs have involved manual labor.

Claimant's medical history includes type 2 diabetes and previous complaints of neck pain and headaches including migraines in 2010 as documented in medical records of the Ottumwa Regional Health Center. (Joint Exhibit 1:8) He was the victim of an assault in October 2015 when he was struck by a family member in the back of the head with a coffee pot. (JE 2:1)

In the medical summary of Dr. Bansal, the independent medical examiner retained by the claimant, there is mention of a fall in 2010 wherein claimant injured his right leg. (Exhibit 1:7) Claimant fell down the ladder, scraping and cutting his leg. Id. His wound was treated by wrapping it.

On June 14, 2017, he received treatment to his right knee after jumping off a deck and landing on concrete. (JE 1:11) He was diagnosed with meniscal injury, immobilized and sent home. (JE 1:15)

On or about September 21, 2017, claimant was working at Tri-State Metals in the grinding room where parts are prepared for shipping. He was paid \$13.00 per hour and worked a 40 plus hour work week. While he was working, a piece of metal was caught in the bandsaw. The bandsaw ejected the piece and it struck claimant in the face.

He presented to the emergency room in Centerville for the facial injuries. (JE 4:1) He was transferred to Mercy Medical Center in Des Moines where he underwent an open reduction and internal fixation of the left zygomatic arch fracture and suturing of the facial laceration. (JE 5:9) During his initial checkup, he complained of blurriness in the left eye. (JE 6:6)

Within a week, claimant complained of migraines and decreased vision. (JE 7:1) He was seen at the Wolfe Eye Clinic by Jeffrey Collett, O.D., and was advised that a cataract had formed and recommended surgical removal. (JE 7:5) Despite this and the need for cataract removal, John R. Tribble, M.D., returned claimant to work with no restrictions. (JE 7:8) Surgical removal took place on November 17, 2017. (JE 7:12)

Claimant testified that he was told by a doctor that claimant's right eye would become damaged due to overcompensation for the left eye injury. However, there were no medical records that confirmed this.

He continued to have facial weakness on the left side along with pain and swelling. (JE 6:10)

On November 9, 2017, Simon K. Wright, M.D., Ph.D., found claimant to have good bony healing and anticipated a full recovery from that standpoint, but continued to have some nerve damage. (JE 6:13) Dr. Wright recommended a recheck of the nerve in four months.

He was seen in follow up for surgical removal of the cataract on November 22, 2017. (JE 7:13) Claimant reported headaches and blurred vision. On November 27, 2017, claimant was returned to work with no restrictions. (JE 7:18)

He was seen again in follow up at Wolfe Eye Clinic on December 13, 2017. (JE 7:15) His vision was better but he still had some light sensitivity. (JE 7:15)

At the March 6, 2018, checkup, claimant still had some pain and sensitivity to cold along with headaches in the left face. (JE 6:15) Dr. Wright recommended a neuro consult. (JE 6:16) On April 13, 2018, claimant was sent to Mercy Ruan Neurology Clinic for an evaluation of his headaches. (JE 8:1)

On September 13, 2017 hit by a 13 pound piece of metal in the left side of the face. Experienced a facial fracture and facial nerve laceration. Surgery performed. Required surgery on the left eye. Headaches started within 24 hours. Neck pain discomfort initially and then noticed within a month more neck pain. Headaches were daily but have reduced to three times each. Headaches feel like a bullet being shot through head, sharp behind the

eyes, holocranial throbbing, nausea at times, and light sensitivity. Headaches last 2-3 hours. Last time he had a problem with headaches was age 27 with dental procedure. Had migraines when he was a kid. Used to take ibuprofen until about 2 months ago. Now just dealing with it. When headaches at there [sic] strongest may feel a little dizzy but no other cranial nerve, motor, sensory, coordination or gait symptoms.

(JE 8:1) Michael Jacoby, M.D., found no neurological reason for the headaches but prescribed amitriptyline. (JE 8:2) Claimant did not feel the medication was helpful. (JE 6:17) There were no complaints of neck pain recorded in the emergency room records.

On September 10, 2018, Dr. Wright found claimant at maximum medical improvement (MMI) "from the standpoint of the craniofacial skeleton as well as soft tissue wounds. It is possible that additional management from a neurological standpoint would be of benefit." (JE 6:19) This was due to claimant's continued complaints of twitching in the left eye along with weakness. (JE 6:19)

Claimant returned to Wolfe Eye Clinic and was seen by Dr. Collett for worsening vision out of the right eye. (JE 7:21) He denied any pain, discomfort, flashes of light or floaters. Id. Examination revealed another cataract for which Ryan Vincent, M.D., recommended surgical removal. (JE 7:22) This surgery was scheduled for June 15, 2019.

Dr. Vincent could not confirm that the cataract was the result of the work injury although he did note that the "record really looks pretty similar to the story in the left eye". (JE 7:26, 28) The cataract could have been associated with diabetes but that "[t]he traumatic injury to his left eye in 2017 certainly may have accelerated the progression of the PSC in the left eye however." (JE 7:28)

On March 25, 2019, claimant underwent an IME with Dr. Bansal. (Ex 1) Claimant maintained he had weakness of the right leg stemming from the 2010 incident.

Mr. Sawyer continues to have weakness of his right leg, and trips and falls easily. There is some numbness and tingling, the most intense between his foot and knee. This area is also very sensitive. He now has to take breaks to sit after he has been standing for a while. There have been times when his right leg has given way while he is walking, and he has fallen.

(Ex 1:8)

As it relates to his face, claimant maintains he suffers from facial numbness, nerve damage causing his eye to close and blindness in the right eye. He also suffers from dizziness going up and down stairs and can only walk for approximately 45 minutes before needing to rest. (Ex 1:9) He also suffers from migraines. (Ex 1:9) Dr.

Bansal recorded that claimant suffered migraines in the distant past but not after 2006 when claimant's teeth were removed. (Ex 1:9)

Dr. Bansal concluded that the blunt force trauma caused left facial nerve injury and traumatically aggravated claimant's existing bilateral cataracts. (Ex 1:11) For the right knee injury, he assessed a 2 percent lower extremity impairment for loss of sensory discrimination in the sural nerve distribution. For the fracture, Dr. Bansal assessed a 3 percent whole person impairment and a 38 percent vision impairment for the cataracts. (Ex 1:11)

On May 2, 2019, Robert D. Rondinelli, M.D., performed a record review and concluded the following:

**Question #1: As to Mr. Sawyer's left eye, right eye, face, neck, and shoulder, what is his medical diagnosis and condition:**

**Answer:** Within medical probability, Mr. Sawyer suffered a contusion of his left eye and a posttraumatic aggravation of a preexisting underlying mature cataract. He has a history of cataract formation documented by Dr. Collett who saw him on September 27, 2017 pre-op noting bilateral posterior sub-capsular cataracts, very symptomatic, worse on the left than the right side, with much more significant left cataract. There also was evidence of a contusion of the eyeball and the orbit of the left eye and his preliminary assessment was no retinal injury, although the view was limited by the dense cataract. His case was approved by Workers' Compensation and he underwent a left eye cataract surgical repair and lens transplant on November 17, 2017. In follow-up he showed an uncorrected vision of his right (unoperated) eye of 20/30 +2SN and of his left (operated) eye of 20/25 and "Impression: Pseudophakia left eye" with good post-op recovery. In final follow-up on December 13, 2017, his uncorrected vision in his right eye remained at 20/30 + 2SN and his uncorrected vision on the left had improved to 20/20 SN He was returned to work with no restrictions.

With respect to his right eye, he has a history of cataract formation documented by Dr. Collett who noted bilateral posterior sub-capsular cataracts, very symptomatic, but worse on the left than the right side as was noted above. The right eye cataract was also noted by John Tribble, MD, ophthalmologist, on November 9, 2017, although the severity was much worse on the left than the right eye. These were mature cataracts according to Dr. Tribble.

With respect to his left face, Mr. Sawyer suffered a fracture of his left zygomatic arch, which was verified by CT of his maxillofacial sinus on his date of injury of September 21, 2017. He also suffered an incomplete left facial nerve injury which was verified intraoperatively. On September 22,

2017, he underwent an open reduction and internal fixation of his left zygomatic arch fracture and left wound exploration with facial nerve identification and primary anastomosis of the left zygomatic and left buccal branches and intermediate closure of a left facial wound 10 cm in extent.

With respect to Mr. Sawyer's neck and shoulder complaints, the evidence that I have reviewed and summarized above indicates no neck trauma history and his CT of his head and cervical spine showed no acute intracranial abnormality and no cervical spine fracture or malalignment respectively. I have no information concerning a shoulder problem in this case.

(Ex F4) Dr. Rondinelli opined that claimant's left eye contusion as well as the left eye vision loss occurred as a direct result of the work injury. (Ex F5) Dr. Rondinelli did not attribute the right eye cataract issue to the work injury, but instead maintained it was a pre-existing condition that worsened during the same period of time as his left eye trauma. (Ex F5) In a follow up letter with Dr. Collett, he confirmed that the right eye was "not necessarily associated with the work injury." (Ex I1)

There are many different causes of a PSC. This could be associated with his diabetes as well since there is a known risk for a PSC with diabetes. The traumatic injury to his left eye in 2017 certainly may have accelerated the progression of the PSC in the left eye however.

(Ex I1)

Dr. Rondinelli also did not attribute any neck and/or shoulder problems to the work injury. (Ex F5) Dr. Rondinelli agreed with the 3 percent impairment for the facial fracture with an additional 2 percent for the facial weakness and pain and 2 percent for the incomplete facial nerve injury. (Ex F5) On May 10, 2019, claimant presented for an in-person evaluation with Dr. Rondinelli. (Ex F8) Dr. Rondinelli's opinions were largely unchanged although the examination revealed lower vision.

Physically, he appears to have a dense opaque cataract in his right eye, etiology unclear. His left eye visual acuity, though not 20/20 as previously noted post-operatively by Dr. Collett, has been sustained at 20/30 according to my assessment on today's date.

(Ex F8) Claimant's gait was also impaired due to lack of confidence in his vision.

His physical examination reveals a non-physiological gait dysfunction characterized by tenuous apprehension, hesitancy of motor planning, and conviction that his existing depth perception will likely cause him to fall. His neuromuscular and musculoskeletal examination are essentially normal with respect to requirements of normal gait function with the exception of his claimed visual impairment.

(Ex F9) Dr. Rondinelli suspected that there was a psychological overlay contributing to claimant's headaches and anxiety with walking. (Ex F10)

Claimant was deemed to have voluntarily quit from the defendant employer after he failed to show for work on February 6, 7, and 8, 2018. (Defendants' Exhibit A5) Claimant testified that he missed too much work due to his headaches, many of which were triggered by lights. He found new employment driving a forklift but quit after a few months. He then found a new job at West Liberty Foods. His starting wage was \$12.78 per hour. (Ex B1) In his pre-placement physical form, he admitted to being under a doctor's care but made no mention of any leg impairment. (Ex C1) On May 15, 2018, claimant underwent an employment evaluation where his ability to lift and carry up to 40 pounds, grip, pinch, and rotate was measured. (JE 10:1) He was passed at all levels. (JE 10)

The essential functions of the West Liberty Foods position required him to prepare boxes, carry the boxes to the meat loading table, and move pallets. (Ex B2) To carry out those tasks, he would be required to front carry approximately 30 pounds and occasionally lift 72 pounds from floor to waist. (Ex B2) After a month, claimant was deemed to have voluntarily quit as of June 21, 2018, for failure to report to work and for failure to contact the employer regarding an illness. (Ex B4) Claimant was able to read from Exhibit B4 without problem.

He was hired by JBS, a meat processing plant, and worked there for approximately two to three months. He missed a lot work because of his headaches. He believes he is not able to work in a place with bright lights. There is no medical doctor who has found photosensitivity to lights. Dr. Bansal's restrictions were to avoid driving and safety sensitive tasks. (Ex 1:12)

Other than his vision issues, he gets dizzy and sick to his stomach while walking and he suffers from depression and memory problems. He does not handle large crowds well and feels self-conscious over his scar. He has a large visible scar on the left side of his face.

Claimant does not have a driver's license but that lack predates the injury. His personnel records show attendance problems prior to the injury. (Ex A:3) However, before September 21, 2017, claimant had not been fired from any position and since his injury, he has been fired repeatedly.

### **CONCLUSIONS OF LAW**

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).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial

Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An



occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

Defendants admit that claimant sustained an injury to his left eye, but dispute any other injuries arising out of the work injury. An eye injury is considered a scheduled member disability. Claimant asserts that his injury is not limited to his left eye, but also his right eye and his face. He also asserts, in the alternative, that he is entitled to recovery from the Second Injury Fund of Iowa. If it is found that claimant has sustained an industrial disability arising out of the work injury, he is not entitled to recovery from the Fund. Iowa Code section 85.64.

Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves v. Eagle Iron Works, 331 N.W.2d 116; Simbro v. DeLong's Sportswear 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

If an actual impairment occurs to an unscheduled portion of the body, a disability has been sustained to the body as a whole. See Lauhoff Grain Co. v. McIntosh, 395 N.W.2d 834, 840-41 (Iowa 1986). Permanent disfigurement of the face or head is not to exceed one hundred fifty weeks. Iowa Code section 85.34.

The uncontroverted opinion evidence is that claimant sustained a left eye injury resulting in the development of a cataract that required surgical removal and lens replacement. Further, the work injury resulted in facial weakness, pain, nerve injury, as well as a disfiguring scar. Based on those injuries, claimant's loss is industrial in nature. His injury is not simply a permanent disfigurement or isolated to an eye. Therefore, claimant is not entitled to any monies from the Fund.

Claimant asserts he suffers from headaches, neck pain, and a right eye cataract arising out of the work injury. Claimant initially complained of headaches after the removal of the cataract a few months after the injury. He was eventually sent to a neurologist and prescribed medications. Claimant did not find the medications to be helpful, but he did not follow up with Dr. Jacoby for any further care for his headaches. His complaints of headaches were not consistent and there was scant expert opinion connecting the work injury with migraines. Dr. Bansal, for example, included migraines in the subjective portion of the report, but not in the diagnosis section and he did not provide an impairment rating due to the headaches. (Ex 1:10-11) There were no restrictions imposed related to headaches either.

Thus, the claimant has not carried his burden of proof as it relates to his complaints of headaches and/or migraines.

Similarly, there is little evidence that claimant developed neck pain arising out of the work injury. Dr. Bansal did not include neck pain in his diagnosis section or in any

discussion of impairment ratings. Therefore, the claimant has not carried his burden to prove that the neck pain was causally connected to the work injury.

The evidence regarding whether the right eye cataract and subsequent need for surgery is related to the work injury is mixed. Dr. Rondinelli, the independent medical examiner retained by the defendants, concludes that it is not. Dr. Collett, claimant's treating eye doctor, had a more nuanced opinion stating that the progression of the posterior subcapsular cataract (PSC) in the right eye could have been related to the diabetes or the traumatic injury "certainly may have accelerated the progression of the PSC in the left eye." While Dr. Collett writes "left eye" in his letter, it appears to have been a scrivener's error as he was being questioned about the claimant's right eye. Dr. Bansal, the claimant's independent medical examiner, maintains the right eye injury was a byproduct of claimant's left eye injury. Dr. Vincent noted that the development of the cataract in the right eye was "pretty similar to the story in the left eye." (JE 7:26)

The claimant did not have vision problems prior to his left eye injury. Following surgical repair of his left eye, he recovered enough to regain 20/20 vision although that deteriorated over time.

Based on the foregoing, and giving great weight to the fact that claimant was symptom free in his eyes prior to the injury and that the development of the cataract was similar in both eyes, it is found that claimant sustained injuries to the right eye as well arising from the work injury.

Because claimant was receiving additional treatment to the right eye, he is not at MMI and therefore no permanent disability can be assessed at this time. Claimant's right eye vision is severely impaired and he is currently not employed.

The parties stipulated that entitlement to healing period/temporary total disability is not in dispute and therefore no adjudication of claimant's benefits following his right eye surgery are addressed in this decision.

Claimant returned to work following a period of recovery for his left eye but was ultimately let go due to lack of attendance on or about February 8, 2018. (Ex A:3-5) He obtained new employment repeatedly but was terminated and/or quit from all positions. His last employment was with JBS Swift, which ended in November 2018. On November 19, 2018, it was determined that claimant needed surgical repair. (JE 7:26) Claimant has not returned to work since that surgery.

Claimant maintains he is entitled to a penalty for nonpayment of permanency. Defendants paid 3.429 weeks of permanency. Dr. Rondinelli, the defendants' retained expert assessed a 7 percent whole person rating or 35 weeks. Due to the fact that the permanency has yet to be established, award of a penalty benefit would be premature at this time. Penalty shall be determined when permanency is ripe for adjudication.

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

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (Iowa Ct. App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa Ct. App. 2008).

Under the statutory changes in Iowa Code section 85.39, "[a]n employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection, shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted."

Defendants argue that Dr. Bansal's fees of \$2,882.00 are not reasonable given that the report included an impairment rating for the right leg which was part of the Second Injury Fund claim and unrelated to the work injury of September 21, 2017. Dr. Bansal's report is thirteen pages. Approximately five pages discuss claimant's left leg injury. Therefore, the appropriate fees and costs to be assessed under Iowa Code section 85.39 along with 876 Iowa Administrative Rule 4.33, would be 8/13 of the charges billed by Dr. Bansal for a total of \$1,773.54.

### ORDER

THEREFORE, it is ordered:

Claimant has sustained an industrial injury arising out of and in the course of his employment on September 21, 2017.

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

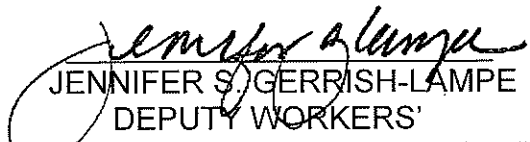
The Fund has no responsibility to an industrial loss.

The penalty issue is not ripe for adjudication.

That defendants shall reimburse claimant for the report and examination of Dr. Bansal as identified in the decision.

That defendants shall pay the costs of this matter pursuant to rule 876 IAC 4.33 including the report of Dr. Bansal included above.

Signed and filed this 11th day of October, 2019.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jean Dickson (via WCES)  
Randall Schueller (via WCES)  
Tonya Oetken (via WCES)

**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.