BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VLADIMIR ALFONSO RAMIREZ RUIZ, Claimant, vs. HY-VEE, INC., Employer, UNION INSURANCE COMPANY OF PROVIDENCE, Insurance Carrier, Defendants.	No. 22004416.01 ARBITRATION DECISION Headnotes: 1803

I. STATEMENT OF THE CASE.

Claimant Vladimir Alfonso Ramirez Ruiz filed a petition in arbitration seeking workers' compensation benefits from the defendants, employer Hy-Vee, Inc. (Hy-Vee) and insurance carrier Union Insurance Company of Providence (Union), as well as the Second Injury Fund (Fund), but dismissed the Fund from the case during the hearing. (Hearing Transcript, pages 4–5) After the dismissal, the undersigned presided over an arbitration hearing held via live internet-based video on April 25, 2023, involving Ramirez Ruiz and the remaining defendants, Hy-Vee and Union.

Ramirez Ruiz participated personally and through attorney Mary C. Hamilton. The defendants participated by and through attorney Lindsey E. Mills. Meggan Hochbach served as the legal representative of Hy-Vee. Rafael Geronimo served as Spanish-English interpreter.

II. ISSUES.

Under Iowa Administrative Code rule 876—4.19(3)(*f*), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case. The parties identified the following disputed issues in the hearing report:

1) Is Ramirez Ruiz entitled to additional temporary partial disability (TPD) benefits and healing period (HP) or temporary total disability (TTD) benefits based on the determination of his weekly rate of workers' compensation?

2) What is the nature and extent of permanent disability, if any, caused by the alleged injury?

3) What is the weekly rate of workers' compensation to which Ramirez Ruiz is entitled?

4) Is Ramirez Ruiz entitled to alternate care?

5) Is Ramirez Ruiz entitled to recover the cost of an independent medical examination (IME)?

6) Is Ramirez Ruiz entitled to a penalty?

7) Is Ramirez Ruiz entitled to taxation of the costs against the defendants?

III. STIPULATIONS.

In the hearing report, the parties entered into the following stipulations:

1) An employer-employee relationship existed between Ramirez Ruiz and Hy-Vee at the time of the alleged injury.

2) Ramirez Ruiz sustained an injury on October 12, 2020, which arose out of and in the course of his employment with Hy-Vee.

3) The alleged injury is a cause of temporary disability during a period of recovery.

4) The commencement date for permanent partial disability (PPD) benefits is January 12, 2022.[1]

5) The alleged injury is a cause of permanent disability.

6) At the time of the stipulated injury, Ramirez Ruiz was:

    a) Married.

    b) Entitled to 3 exemptions.

[1] The parties identified the commencement date as a disputed issue in the hearing report. See Hr'g Rpt. § 5(d). Ramirez Ruiz identified the commencement date as February 1, 2022, and the defendants identified it was January 12, 2022. Id. In Ramirez Ruiz's post-hearing brief, he changed his position and adopted January 12, 2022, the date identified by the defendants, as the commencement date. (Cl. Brief, p. 15)

7) Prior to hearing, the defendants paid to Ramirez Ruiz 15 weeks of compensation at the rate $663.00 per week.

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity.

IV. FINDINGS OF FACT.

The evidentiary record in this case consists of the following:

- Joint Exhibits JE-1 through JE-3;
- Claimant's Exhibits 1 through 12;
- Defendants' Exhibits A through I; and
- Hearing testimony by Ramirez Ruiz.

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned makes the following findings of fact.

Ramirez Ruiz's first language is Spanish. (Hr'g Tr. pp. 22–23) He is able to understand some English but nonetheless has limitations to his comprehension of the language. (Hr'g Tr. pp. 22–23) Ramirez Ruiz needed an interpreter to help him participate in the hearing.

Ramirez Ruiz was 37 years old at the time of hearing. (Hr'g Tr. p. 20) Ramirez Ruiz was born in El Salvador, where he graduated from high school, which spans three years there. (Hr'g Tr. pp. 21–22) While living in El Salvador, he took two years of business classes at university with a focus on accounting. (Hr'g Tr. pp. 21–22)

In 2007, Ramirez Ruiz was collateral damage to gang violence. (Hr'g Tr. p. 21) He was shot in the left arm. (Hr'g Tr. p. 21) The gunshot wound has caused Ramirez Ruiz to experience reduced strength in his left arm. (Hr'g Tr. p. 21)

Ramirez Ruiz moved to the United States in January 2015. (Hr'g Tr. p. 20) He first got a job with Tyson at a meatpacking plant, but he was physically unable to perform the job duties relating to fileting turkey breasts due to the functional limitations in his left arm caused by the gunshot wound. (Hr'g Tr. p. 23) Ramirez Ruiz's time with Tyson ended after about 3 months because of performance issues caused by the reduced strength in his left arm. (Hr'g Tr. p. 23)

After Ramirez Ruiz's employment at Tyson came to an end, Hy-Vee hired him to work in a warehouse. (Hr'g Tr. p. 24) He began working there in June 2015. (Hr'g Tr. p. 24) Ramirez Ruiz started in the position of product selector or picker. (Hr'g Tr. p. 24)

Not all pickers perform the same job duties. (Hr'g Tr. pp. 24–25) Employees bid for open picker jobs with different duties and Hy-Vee awards jobs based on seniority. (Hr'g Tr. p. 25) Because of this system, employees with less seniority typically have job duties that require walking eight or more hours per shift and employees with more seniority generally have less physically demanding duties. (Hr'g Tr. p. 25)

At the start of Ramirez Ruiz's tenure at Hy-Vee, his job duties required him to walk an extensive amount each workday. (Hr'g Tr. p. 25) Over time, Hy-Vee provided him with training on how to operate a forklift and trailers. (Hr'g Tr. p. 26) In the autumn of 2020, Ramirez Ruiz's job duties typically required him to spend about half his time operating machinery and about half his time on his feet. (Hr'g Tr. pp. 26-27)

For each of the 16 weeks leading up to October 12, 2020, Ramirez Ruiz had the following gross earnings from his employment at Hy-Vee:

- June 28, 2020: $1,296.72;
- July 5, 2020: $1,312.95;
- July 12, 2020: $1,054.65;
- July 19, 2020: $1,023.25;
- July 26, 2020: $1,033.71;
- August 2, 2020: $1,031.10;
- August 9, 2020: $1,046.80;
- August 16, 2020: $867.54.
- August 23, 2020: $1,023.25;
- August 30, 2020: $1,109.61;
- September 6, 2020: $1,209.06;
- September 13, 2020: $1,063.84;
- September 20, 2020: $1,080.83;
- September 27, 2020: $351.64;
- October 4, 2020: $446.20; and
- October 11, 2020: $1,121.39. (Ex. 6, p. 46; Ex. H, p. 61)

Thus, the evidence shows Ramirez Ruiz typically earned between $1,000.00 and $1,300.00 each week before the date of injury.

During the 13-week period before the date of the stipulated work injury, Hy-Vee paid Ramirez Ruiz two quarterly bonuses on September 27, 2020. (Ex. H, p. 61) One of the quarterly bonuses was in the amount of $200.22 and the other $1,028.25. (Ex. H, p. 61) Combined, the quarterly bonuses total $1,228.47.

On October 12, 2020, Ramirez Ruiz was near the end of his shift while working for Hy-Vee. (Hr'g Tr. p. 27) He was operating a pallet jack. (Hr'g Tr. pp. 27–28) An employee who was operating a forklift ran through a stop sign and onto Ramirez Ruiz's left foot, causing a crush injury. (Hr'g Tr. pp. 27–28; Ex. JE-1, p. 1) Hy-Vee transported Ramirez Ruiz to the emergency room (ER) for care that day. (Hr'g Tr. p. 28; Ex. JE-1, p. 1)

At the ER, Ramirez Ruiz underwent x-rays. (Hr'g Tr. p. 28; Ex. JE-1, p. 6) Because of the swelling in his injured foot, the x-rays did not show any fractures. (Hr'g Tr. p. 28; Ex. JE-1, p. 6) Patricia Harrison, M.D., sent Ramirez Ruiz home from the ER with the work restriction of not using his left foot at all and instructions to follow up with Chris Vandelune, D.O. (Ex. JE-1, pp. 3, 7)

Dr. Vandelune ordered a computed tomography (CT) scan of Ramirez Ruiz's injured foot. (Ex. JE-1, pp. 9–11) Jack Avalos, M.D., read the CT scan to show a minimally displaced comminuted fracture involving the mid and distal aspect of the cuboid, a fracture of the plantar base of the proximal third metatarsal, and a small linear avulsion injury involving the plantar aspect of the navicular. (Ex. JE-1, p. 11) Dr. Vandelune referred Ramirez Ruiz to Emily Anzmann, D.P.M., a podiatrist at Cherokee Regional Medical Center. (Ex. JE-1, p. 13)

Beginning on October 13, 2020, the defendants paid to Ramirez Ruiz workers' compensation classified as temporary total disability (TTD) at the time. (Ex. F, p. 46) The parties agree the stipulated work injury caused permanent disability and dispute the nature and extent of that disability. (Hr'g Report; Def. Post-Hr'g Brief; Cl. Post-Hr'g Brief) Thus, under Iowa law, these benefits are properly categorized at present as healing period (HP) benefits.

Ramirez Ruiz was a full-time employee at Hy-Vee at the time of the stipulated work injury. (Hr'g Tr. p. 6) Hy-Vee paid him by the hour. (Ex. G, p. 60) Consequently, the defendants calculated Ramirez Ruiz's weekly workers' compensation benefit rate in part based on his weekly earnings for the 13 weeks before the date of injury. (Ex. H, p. 61) They deemed representative his earnings of $867.54 for the week of August 16, 2020; $351.64 for the week of September 27, 2020; and $446.20 for the week of October 4, 2020, even though these weeks of earnings were not within the typical weekly range for Ramirez Ruiz. (Ex. H, p. 61) $12,232.46 is the sum of Ramirez Ruiz's gross earnings for those 13 weeks. (Ex. H, p. 61)

With respect to the quarterly bonuses, the defendants did not include the entirety of the $1,228.47 in bonuses Hy-Vee paid Ramirez Ruiz on September 27, 2020, in its average weekly wage calculation. (Ex. H, p. 61) Instead, Hy-Vee took every quarterly bonus it paid to Ramirez Ruiz during the 12-month period pre-dating the work injury, added them together, and divided by 52 to create a 52-week average of $61.08. (Ex. H, p. 61) They then multiplied $61.08 by 13, which equals $794.01, and added that amount to $12,232.46, the total sum of the gross earnings for the 13 weeks before the date of injury, for a total gross earnings amount of $13,026.47. (Ex. H, p. 61) The defendants

then divided that amount by 13 and rounded to the nearest whole dollar for an average weekly wage of $1,002.00. (Ex. H, p. 61)

The parties have stipulated that Ramirez Ruiz was married at the time of injury and was entitled to three exemptions. The defendants calculated his average weekly wage at $1,002.00 for workers' compensation purposes. Using the ratebook spreadsheet published by the agency and in effect on October 12, 2020, the defendants determined Ramirez Ruiz's rate to be $663.00 per week. (Ex. H, p. 61) This is the weekly benefit amount the defendants paid Ramirez Ruiz in TTD/HP benefits for the 16-week period during which he was entitled to such benefits, from October 13, 2020, through February 2, 2021. (Ex. F, p. 46; Ex. 5, pp. 39, 42)

On October 29, 2020, Ramirez Ruiz saw Dr. Anzmann (Ex. JE-1, p. 13) Dr. Anzmann noted his foot was swollen and discolored. (Ex. JE-1, p. 13) She also noted he complained of pain he rated at 9 out of 10 and that he was not sleeping because the pain was so bad. (Ex. JE-1, p. 13) Dr. Anzmann recommended conservative care and placed Ramirez Ruiz's left foot in a below-knee fiberglass cast. (Ex. JE-1, p. 16) She prescribed tramadol for use as needed. (Ex. JE-1, p. 16) Dr. Anzmann restricted Ramirez Ruiz's activities to "strictly non weight bearing to the left lower extremity." (Ex. JE-1, p. 18) She opined that she expected significant reduction in swelling within two weeks and scheduled Ramirez Ruiz for a follow-up appointment at that time. (Ex. JE-1, p. 16)

Ramirez Ruiz returned to Dr. Anzmann on November 10, 2020. (Ex. JE-1, p. 20) He reported that the tramadol had helped mitigate the pain in his injured foot. (Ex. JE-1, p. 20) Dr. Anzmann noted Ramirez Ruiz still had significant edema in the dorsal aspect with no swelling in the ankle or toes. (Ex. JE-1, p. 21) She also observed atrophy in his left calf. (Ex. JE-1, p. 21) Further, Dr. Anzmann observed on examination that Ramirez Ruiz had tenderness to palpation of the dorsal aspect of his left foot. (Ex. JE-1, p. 22) She renewed his prescription for tramadol, continued his non-weight-bearing restriction, and ordered him to return in 2 weeks for a cast change. (Ex. JE-1, p. 22)

On November 24, 2020, Ramirez Ruiz had his follow-up appointment with Dr. Anzmann. (Ex. JE-1, p. 24) He reported he still had some pain from time to time but, overall, it had improved over the previous few weeks. (Ex. JE-1, p. 24) Dr. Anzmann noted in pertinent part:

> Neurovascular status intact to the patient's left foot. Good capillary refill noted to the digits. Patient still with moderate edema noted to the left midfoot area. He is able to move his toes appropriately. Patient has full range of motion at the ankle joint with minimal pain. Continued tenderness to palpation over the dorsal aspect of the second third and fourth metatarsal bases.

(Ex. JE-1, p. 25)

X-rays showed Ramirez Ruiz's bones were healing. (Ex. JE-1, pp. 26, 28) Dr. Anzmann changed Ramirez Ruiz's cast and maintained his restriction of strict non-weight-bearing activities with his left lower extremity. (Ex. JE-1, p. 26) She arranged for a follow-up exam in two weeks and planned a CT scan at that time to further evaluate the healing progress in his left foot. (Ex. JE-1, p. 26)

Ramirez Ruiz reported back on December 10, 2020, stating his pain was much better, he was rarely having any issues, and he was not taking any pain medication. (Ex. JE-1, p. 30) Dr. Anzmann noted in pertinent part:

> Neurovascular status intact to the patient's left foot. Good capillary refill noted to the digits. Patient still with moderate edema noted to the left midfoot area. He is able to move his toes appropriately. Patient has full range of motion at the ankle joint with minimal pain. He is able to perform active range of motion at his ankle joint pain-free. No tenderness to palpation along the dorsal aspect of the metatarsal bases or midfoot joints.

(Ex. JE-1, p. 31)

A CT scan showed Ramirez Ruiz's fractures were healing with a remaining nonunion of a fracture of the mid posterior aspect of the cuboid and osteoporosis consistent with disuse. (Ex. JE-1, pp. 31–32, 34–36) Dr. Anzmann transitioned him into a tall cam boot, released him to begin to slowly progress to weightbearing as tolerated on his left foot, and prescribed an at-home exercise regimen and physical therapy. (Ex. JE-1, pp. 32–33) However, she did not release Ramirez Ruiz to return to work until after his next scheduled follow-up exam on January 11, 2021, at which time she anticipated he would progress to be full weightbearing without crutches. (Ex. JE-1, pp. 33, 37)

On December 16, 2020, Ramirez Ruiz began physical therapy with Kayla Koch, P.T. (Ex. JE-1, p. 38) Ramirez Ruiz rated his pain as 7 out of 10 into the left midfoot and described it as "throbbing." (Ex. JE-1, p. 39) Koch noted left calf atrophy. (Ex. JE-1, p. 39)

Ramirez Ruiz's condition generally improved with physical therapy and at-home exercises. (Ex. JE-1, pp. 39–56) In the first three weeks, he increased his strength and range of motion while reducing his symptoms. (Ex. JE-1, pp. 39–56) Consequently, Ramirez Ruiz was able to transition from using two crutches to one. (Ex. JE-1, pp. 39–56, 62)

Dr. Anzmann saw Ramirez Ruiz for a follow-up exam on January 18, 2021. (Ex. JE-1, p. 57) He noted how physical therapy was aiding his recovery. (Ex. JE-1, p. 57) However, Ramirez Ruiz shared that he still had some weakness in his ankle and tenderness on the outside of his injured foot. (Ex. JE-1, p. 57) But the pain was not so bad that he was taking pain medication for it. (Ex. JE-1, p. 57) On examination, Dr. Anzmann noted in pertinent part:

> Neurovascular status intact to the patient's left foot. Good capillary refill noted to the digits. Edema has completely resolved to the patient's left foot. Blistering has completely healed at this time to the lateral aspect of his foot. Patient has full range of motion at the ankle joint with minimal pain. Patient is [*sic*] 5 out of 5 muscle strength in dorsiflexion and plantarflexion however he continues to have weakness with active resisted eversion. The patient also notes that he does still have some pain or tenderness with active inversion and eversion of his ankle. There is mild tenderness to palpation along the course of the distal peroneal tendons posterior to the peroneal groove. He also has very mild tenderness with palpation of the dorsal aspect of the metatarsal bases[.]

(Ex. JE-1, p. 59) Dr. Anzmann advised him to continue weightbearing as tolerated in his cam boot so he could progress to weightbearing without crutches and then walking in tennis shoes without the boot. (Ex. JE-1, p. 59) She continued physical therapy, kept him off work, and set his next follow-up 4 weeks out. (Ex. JE-1, pp. 59–61)

Ramirez Ruiz resumed physical therapy and continued to progress. (Ex. JE-1, pp. 63–67) His physical therapy regimen grew to include aquatic therapy. (Ex. JE-1, p. 69) Even with the progress, Ramirez Ruiz was hesitant pushing off during gait and was ambulating with bilateral out-toeing on February 1, 2021. (Ex. JE-1, p. 69)

On February 1, 2021, Dr. Anzmann released Ramirez Ruiz to return to work with sit-down duties only. (Ex. JE-1, p. 70) Hy-Vee assigned him work within the restrictions. Ramirez Ruiz's earned less in some weeks after returning to work, so the defendants paid him temporary partial disability (TPD) benefits. (Ex. F, pp. 46–49; Ex. 5, pp. 39–42)

Ramirez Ruiz's first day back to work at Hy-Vee was the same day as a physical therapy session on February 3, 2021, at which Jakob Hummel, P.T., noted he "returned to work today and worked 6 hours prior to therapy. He notes he feels his foot is a little swollen and sore." (Ex. JE-1, p. 71) Hummel further noted:

> Patient progressed to two shoes for the first time this session. He ambulates with a hesitant and antalgic gait but reports improvement in pain. Good tolerance to standing tasks, gait, and shuttle press today. Patient has mild increase in discomfort with more activity though pain subsides with rest and manual techniques.

(Ex. JE-1, p. 72)

Ramirez Ruiz continued to split time between aquatic therapy and land therapy. (Ex. JE-1, pp. 73–74) Connor noted that he fared better during the aquatic sessions than on land. (Ex. JE-1, p. 74) Ramirez Ruiz described increased pain with exercises and showed he was still challenged with balance. (Ex. JE-1, p. 74) Connor further noted Ramirez Ruiz continued to be hesitant to push off his injured left foot during gait and practice bilateral out-toeing while walking. (Ex. JE-1, p. 74)

Ramirez Ruiz had a follow-up exam on February 19, 2021, with Dr. Anzmann, who noted in pertinent part:

> The patient has been going to physical therapy several times a week. The patient states that PT is going very well and he has had some decrease in his pain with physical therapy. He has been transitioning out of his boot while at home however he does still wear his cam boot at work at all times. Patient states that he can walk at home [in] sneakers with only moderate pain. He states that now it is only 6 out of 10 in his sneakers which is better than it was previously however he is unable to put on his work boots as this causes too much pain on the dorsum of his foot. Patient also has complaints and concerns about increased discoloration to his left lower extremity. He states that the skin is much darker on this side. He does report some tingling sensations throughout his left lower extremity. He otherwise has no new complaints.

(Ex. JE-1, p. 77)

On examination, Dr. Anzmann observed "notable hyperpigmentation to the patient's left lower extremity and mild calf atrophy." (Ex. JE-1, p. 78) She opined "it is likely just from his severe edema however I will ask physical therapy to add contrast and [de-]sensitization therapy to his regimen out of concern for [Complex Regional Pain Syndrome (CRPS)]." (Ex. JE-1, p. 79) Dr. Anzmann altered his work restrictions to "sit down duties as often as possible" with "no climbing stairs or lifting objects > 30 lbs." (Ex. JE-1, p. 80)

Ramirez cancelled 3 out of the next 4 scheduled physical therapy sessions. (Ex. JE-1, p. 81) He continued a regimen that mixed aquatic and land-based therapy and progressed to wearing his boot only at work and shoes at all times outside of work. (Ex. JE-1, pp. 81–86) He continued to experience varying degrees of pain. (Ex. JE-1, pp. 81)

On March 19, 2021, Ramirez Ruiz had a follow-up exam with Dr. Anzmann. (Ex. JE-1, p. 97) He told her that physical therapy was going "very well" and he continued to experience a decrease in pain with it. (Ex. JE-1, p. 97) Ramirez Ruiz requested that Dr. Anzmann release him to return to full-duty work because he no longer wanted to be limited to sit-down duties due to his restrictions. (Ex. JE-1, p. 97) On examination, Dr. Anzmann noted in pertinent part:

> Neurovascular status intact to the patient's left foot. Good capillary refill noted to the digits. Edema has completely resolved to the patient's left foot. Blistering has completely healed at this time to the lateral aspect of his foot. Patient has full range of motion at the ankle joint with minimal pain. Patient is 5 out of 5 muscle strength in all planes. He continues to have tenderness to palpation at the metatarsal bases and dorsal cuboid. Patient rates his pain a 6 out of 10 in this area [and] there is notable hyperpigmentation to the patient's left lower extremity and mild calf atrophy.

(Ex. JE-1, p. 98) Dr. Anzmann loosened Ramirez Ruiz's work restrictions to allow him to gradually ease back into full duty and continued physical therapy. (Ex. JE-1, pp. 99–100)

On April 7, 2021, Dr. Anzmann examined Ramirez Ruiz and noted in pertinent part:

> The patient's restrictions have recently been lifted as he is returning to his regular work schedule. We are gradually increasing the amount of time that he is doing his full duty job. The patient states that he started having increasing pain in his foot last Tuesday as []he has been progressing this time back to normal duty. Patient states that at his job he is required . . . to carry items that are greater than 50 pounds for 4 hours or more. He states that this [is] putting a lot of strain on his body and he is unable to perform his job at full capacity. Patient is concerned because [he] states that he has been told he is not allowed to decrease labor. [He] states that the pain was so bad this past Thursday that he had to take time off when he got "demerits". He is concerned that if he is unable to continue at his job 100% that he will continue to get demerits and potentially lose his job. He states that the pain runs across the outside of his foot and up into his leg. He is now having some tingling in his leg. He states that his leg feels weak all the way up to his head that he feels very unstable at his ankle. He also notes that he is starting to get some pain that radiates up into his thigh and his hip as well. He does present today ambulating in a pair of regular sneakers.
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> ****
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> At today's evaluation patient has both pain and difficulty with resisted eversion. He continues to have tenderness to palpation at the metatarsal bases and dorsal cuboid. Patient rates his pain a 6 out of 10 in this area [and] there is notable hyperpigmentation to the patient's left lower extremity and mild calf atrophy.

(Ex. JE-1, pp. 101–02)

Dr. Anzmann ordered new x-rays which showed no evidence of any new acute fractures; to the contrary, they showed signs of increased healing throughout Ramirez Ruiz's left foot. (Ex. JE-1, p. 104) She halted his return to full duty and reinstituted work restrictions. (Ex. JE-1, pp. 104–05) Dr. Anzmann gave Ramirez Ruiz an ankle brace to help with ankle instability and prescribed additional physical therapy. (Ex. JE-1, p. 104)

Ramirez Ruiz had his first return session of physical therapy (PT) on April 13, 2021, with John Lynch, P.T., who noted:

> He states that he does have some lifting at work however the walking all day is what really bothers him. He states that the end of the day his foot is

> very swollen. He rates the pain as 6/10 at the beginning of work that elevates to 8/10 within 1 hour. The pain is on his lateral foot and through his whole foot and up to his knee sometimes. He states that sometimes early in the morning [he] gets kind of a stabbing sensation in his foot. His main goal is to return to normal ambulation and work duties with as little pain as possible and eventually he would like to return to playing soccer but is unsure of this possibility.

(Ex. JE-1, p. 107)

On April 15, 2021, Ramirez Ruiz failed to show up for a PT appointment without notifying the clinic. (Ex. JE-1, p. 111) Ramirez Ruiz attended an appointment with Lynch on April 21, 2021, and reported that he could not go to work because of the pain in his foot and it hurt too much to come into therapy on April 15. (Ex. JE-1, p. 113) Lynch noted Ramirez Ruiz continued to walk with an antalgic gait. (Ex. JE-1, p. 113)

Later on April 21, 2021, Ramirez Ruiz saw Dr. Anzmann, who noted:

> The patient has recently returned to increasing his duties at work. New restrictions were put in place on 4/7/2021. Patient states that despite these changes he is still having increased pain in his left foot. Patient states that he is working 4-hour shifts. By the end of his shift he is having the same foot pain as before[.] 1 hour it is starting to radiate up into his back. The patient states that even though he does not do any heavy lifting walking for 4 hours without a break is causing him a lot of discomfort. Patient states that the pain in his foot was so bad that he had to take 3 days off last week due to the pain. He describes his pain as a deep bone pain on the outside of his foot and occasionally has sharp shooting or stabbing pains in this area. When he is at rest he does have a continuous throbbing sensation through his foot. He has been wearing the ASO brace which he feels helps a little bit with his instability. He has returned to physical therapy and thinks that this makes him more sore after these appointments.

(Ex. JE-1, p. 114)

Dr. Anzmann noted that Ramirez Ruiz experienced pain and difficulty with eversion. (Ex. JE-1, p. 115) She further noted a tenderness to palpation at the metatarsal bases and dorsal cuboid with Ramirez Ruiz rating his pain a 6 out of 10 in this area. (Ex. JE-1, p. 115) Dr. Anzmann observed notable hyperpigmentation in Ramirez Ruiz's lower left extremity and mild calf atrophy. (Ex. JE-1, p. 115)

Dr. Anzmann changed Ramirez Ruiz's work restrictions to include working shifts of 5 hours with a 20-to-30-minute break in the middle while maintaining the limitations on lifting and climbing. (Ex. JE-1, pp. 116–17) She opined it was possible he was experiencing pain because of advanced arthritis after the trauma. (Ex. JE-1, p. 116) Dr. Anzmann recommended topical anti-inflammatory medication. (Ex. JE-1, p. 116)

On April 28, 2021, Ramirez Ruiz had a PT session with Hayes, who noted continued "tenderness to palpation of lateral ankle and dorsum of foot." (Ex. JE-1, p. 119) She further observed discomfort and fatigue with banded exercises. (Ex. JE-1, p. 119) According to the notes, Ramirez Ruiz's biggest complaint was toe pain. (Ex. JE-1, p. 119) Ramirez Ruiz missed the PT appointment he had scheduled for April 30, 2021. (Ex. JE-1, p. 120)

Ramirez Ruiz underwent an MRI on his injured foot on May 5, 2021. (Ex. JE-1, pp. 121–26) Catherine Roberts, M.D., interpreted the MRI, finding:

1. Sprain of the Lisfranc ligament.

2. Healed third metatarsal fracture with predominantly healed cuboid and navicular fractures that have minimal residual edema.

3. Extensive multifocal patchy bone marrow edema raising the possibility of complex regional pain syndrome. Recommend correlation with clinical symptoms.

4. Nonspecific focal moderate muscle edema surrounding the second metatarsal.

5. Mild tenosynovitis of the tibialis posterior tendon.

(Ex. JE-1, p. 126)

On May 27, 2021, Ramirez Ruiz followed up with Dr. Anzmann to review the results of the MRI. (Ex. JE-1, p. 127) He was working 5-hour shifts that required a lot of standing and walking. (Ex. JE-1, p. 127) Ramirez Ruiz complained of ongoing daily severe pain. (Ex. JE-1, p. 127) Moreover, he stopped attending PT sessions because he experienced increased pain after them. (Ex. JE-1, p. 127) Dr. Anzmann prescribed more PT, with new established protocols and goals, with the understanding that if it fails, they will attempt a nerve block to see if it helps alleviate Ramirez Ruiz's symptoms. (Ex. JE-1, p. 131) She assigned work restrictions that included working one five-hour shift per day that consisted of only seated duties with no walking for more than one hour. (Ex. JE-1, p. 132)

Ramirez Ruiz saw Dr. Anzmann again on June 17, 2021, informing her that he had not gone to PT for four weeks because they told him there was not an order for PT when he called to schedule an appointment (Ex. JE-1, pp. 133–34) He complained of "constant pain, mostly in the lateral aspect of his foot" and of "sharp 'twinges' to his foot" that increased when bearing weight. (Ex. JE-1, p. 134) Ramirez Ruiz reported that he was performing only seated work in accordance with the work restriction Dr. Anzmann had assigned. (Ex. JE-1, p. 134) On examination, Dr. Anzmann noted tenderness to palpation at the metatarsal bases and dorsal cuboid, hyperpigmentation and dry skin changes to the left lower extremity, and continued calf atrophy. (Ex. JE-1, p. 135) Dr.

Anzmann diagnosed Ramirez Ruiz with CRPS, type 1, of the left lower extremity, continued his work restrictions, and prescribed PT. (Ex. JE-1, pp. 136–37)

On June 23, 2021, Ramirez Ruiz resumed PT, seeing Jakob Hummel, D.P.T., for a session. (Ex. JE-1, pp. 138–41) Hummel noted Ramirez Ruiz's CRPS diagnosis and his complaints of worsening pain. (Ex. JE-1, p. 139) Hummel offered the following assessment:

> Patient presents with increased L foot and ankle pain with increased hypersensitivity and allodynia consistent with CRPS following traumatic L foot fracture with surgical repair. Impaired L ankle strength, LLE stability, and gait appreciated. Patient tolerates manual techniques well with mild decrease in sensitivity reported following. Educated [patient] on [plan of care]. He will benefit from skilled therapy to work [on] desensitization and progressive mobility and strength work to decrease pain and improve his function.

(Ex. JE-1, p. 140)

Ramirez Ruiz had a PT session with Hayes on June 29, 2021, complaining of continuing pain. (Ex. JE-1, pp. 141–42) On July 1, 2021, he attended an appointment with Hummel, who noted "left foot pain, impaired gait and mobility." (Ex. JE-1, p. 146) Hummel observed "increased sensitivity through the L lateral aspect of foot" and "discomfort in his toes with resisted exercises," but also that he tolerated manual techniques and reported feeling more relaxed. (Ex. JE-1, p. 146) Ramirez Ruiz had an appointment with Hayes on July 9, 2021, during which Hayes noted "increased sensitivity through L lateral aspect of foot as well as the lateral lower leg." (Ex. JE-1, p. 148)

Dr. Anzmann next saw Ramirez Ruiz on July 15, 2021. (Ex. JE-1, p. 149) He reported that his pain had remained the same despite PT and he rated it at 8 out of 10. (Ex. JE-1, p. 149) Dr. Anzmann noted:

> At today's evaluation patient has both pain and difficulty with resisted eversion. He continues to have tenderness to palpation at the metatarsal bases and dorsal cuboid. Skin changes appear to be mostly resolved at this time however there is continued calf atrophy.

(Ex. JE-1, p. 150)

On September 20, 2021, Ramirez Ruiz saw Hummel for a PT session. (Ex. JE-1, p. 143) He complained of dizziness from the new medication he was taking after an appointment with the pain clinic. (Ex. JE-1, pp. 143–44) Hummel noted:

> Patient has made minimal improvements in his pain with physical therapy. He is an excellent participant in therapy and is motivated to return to pain free function. He demonstrated improvement in his walking pattern and

> function but is still limited mostly by his pain. He has begun following up with the pain clinic to better manage his pain. Patient has not returned to therapy since his last f/u visit. He will be discharged at this time.

(Ex. JE-1, p. 144) Dr. Anzmann continued PT, work restrictions, and discussed pain management as an option to help alleviate his ongoing pain. (Ex. JE-1, pp. 151–52)

Ramirez Ruiz had a PT session on July 16, 2021, with Hummel, who noted continued sensitivity through the left lateral foot and mild tenderness in the posterior compartment of the left lower extremity. (Ex. JE-1, p. 153) He had another PT appointment with Hummel a week later and described his pain as typically worse in the morning unless he has to work, which exacerbated it. (Ex. JE-1, p. 155) Hummel again observed hypersensitivity through the left lateral foot. (Ex. JE-1, p. 155)

Ramirez Ruiz had a PT appointment with Hayes on July 27, 2021, and described his pain as sometimes bad but "so-so" at the time of the session. (Ex. JE-1, p. 157) Hayes noted:

> Patient is able to tolerate pillow case and rough towel for desensitization very well today with no c/o pain. However, he does initially jump at beginning of session when PTA touches his lateral foot with her pointer finger. Pain noted with most exercises, but they are all tolerable except for heel raises this date.

(Ex. JE-1, p. 157)

On July 30, 2021, Ramirez Ruiz attended PT with Hummel, who noted no new complaints and ongoing left foot pain. (Ex. JE-1, p. 158) Hummel observed Ramirez Ruiz did well with treatment, continuing to progress with active mobility and strengthening exercises. (Ex. JE-1, p. 159) Ramirez Ruiz saw Hayes for PT on August 3, 2021, reporting "so-so" pain. (Ex. JE-1, p. 160) Hayes noted he was sensitive to fingertip touch, but had no complaints of discomfort with cloth surfaces for desensitization. (Ex. JE-1, p. 160) She further observed progress with activity mobility despite him still being limited by pain. (Ex. JE-1, p. 160)

Ramirez Ruiz saw Dr. Anzmann for a follow-up exam on August 12, 2021, telling her he felt PT was helping him even if it caused him to experience higher pain levels the day after an appointment. Ramirez Ruiz further stated he was no longer experiencing shooting pain in his foot or ankle while at rest, only a "pulsating sensation." (Ex. JE-1, p. 161) He complained of severe pain to the outside of his foot with weightbearing and pains along his peroneal and posterior tibial tendons. (Ex. JE-1, p. 161) On examination, Dr. Anzmann noted:

> Patient has full range of motion at the ankle joint with minimal pain. At today's evaluation patient has both pain and difficulty with resisted eversion. He continues to have tenderness to palpation at the metatarsal bases and dorsal cuboid. Patient expresses tenderness with palpation

> along the posterior tibial tendon and the peroneal tendon within the posterior fibular groove. Skin changes appear to be mostly resolved at this time however there is continued calf atrophy.

(Ex. JE-1, p. 163) Dr. Anzmann continued Ramirez Ruiz's medication, work restrictions, and PT. They decided to wait to try different medication until after a forthcoming appointment with pain management. (Ex. JE-1, pp. 164–65)

Ramirez Ruiz had a PT session on August 13, 2021, with Hummel, who observed he ambulated into the clinic with an improved gait pattern. (Ex. JE-1, pp. 166–67) Hummel further noted Ramirez Ruiz continued to have increased pain through the dorsolateral ankle. (Ex. JE-1, p. 167) On August 18, 2021, Ramirez Ruiz had another appointment with Hummel, who noted Ramirez Ruiz had no new complaints and described his pain as "so-so." (Ex. JE-1, p. 168) Hummel observed Ramirez Ruiz had "increased tenderness through lateral compartment in his left lower leg," "tolerated manual techniques well," and gave "good effort with strengthening exercises and demonstrates good tolerance to lateral walking" with an improved gait pattern. (Ex. JE-1, p. 168) He identified Ramirez Ruiz's primary complaint was his pain and that it may have been slowly improving. (Ex. JE-1, p. 168)

On August 20, 2021, Ramirez Ruiz saw Dustin Delaney, C.R.N.A., at the Cherokee Regional Medical Center Pain Clinic. (Ex. JE-1, pp. 169–75) Ramirez Ruiz participated in a thorough intake process at the pain clinic. (Ex. JE-1, pp. 169–75) On examination, Delaney observed:

> Ambulates with mild antalgic gait favoring left lower extremity. Upon examination of his left lower extremity scarring noted on the lateral aspect. +1 edema noted to left foot and ankle. Comparatively to his right was negative for any edema. A red-purple discoloration noted on left lower extremity from proximal calf down to foot. Again this was asymmetric to the right side. Dorsalis pedis pulses are easily palpable bilateral. No open abrasions lacerations or wounds. Negative Tinel signs along tibial peroneal saphenous and sural nerves. Allodynia present along light touch to entire dorsum of foot including lateral aspect of foot, negative on medial aspect of foot. Atrophy noted to left gastrocnemius. Guarded range of motion of left foot and appears slightly less than right.

(Ex JE-1, p. 171)

Based on the examination and review of the MRI, Delaney confirmed the diagnosis of CRPS. (Ex. JE-1, p. 173) Delaney recommended the aggressive use of neuropathic agents and began by reinitiating gabapentin and titrating the dosage. (Ex. JE-1, p. 173) Delaney wanted to try this combination for a week and see how effective it was at alleviating Ramirez Ruiz's symptoms. (Ex. JE-1, p. 173)

Ramirez Ruiz had PT on August 24, 2021, with Hummel, who noted he was experiencing dizziness from his new prescription medication. (Ex. JE-1, p. 176) Ramirez

Ruiz said he continued to be most impaired by increased pain that was affecting his function and activity tolerance. (Ex. JE-1, p. 176) Hummel noted Ramirez Ruiz "participate[d] very well in therapy and is motivated to improve his pain and function" and had made "[g]ood improvements in strength and mobility" but only "minimal improvements in pain reported." (Ex. JE-1, p. 176)

Ramirez Ruiz saw Delaney at the pain clinic on August 27, 2021, for a follow-up regarding his change in medication and endorsed a 20 percent benefit. (Ex. JE-1, p. 177) On examination, Delaney noted:

> Again he describes his pain as moderate to severe in nature. When comparing his left lower extremity to his right lower extremity his left lower extremity is more red in color and slightly more edematous. Upon palpation allodynia is present upon entire foot and along peroneal nerve pathway up to posterior knee capsule. Lower extremities also feel asymmetrically warmer on the left than on the right. Slightly decreased range of motion with dorsiflexion plantarflexion in his left foot as well.

(Ex. JE-1, p. 178) Delaney started Ramirez Ruiz on nortriptyline, with the plan to see how it worked over the following four weeks. (Ex. JE-1, p. 178)

On August 30, 2021, Dr. Anzmann examined Ramirez Ruiz. (JE-1, p. 179) She noted that Ramirez Ruiz stated he did not feel he had gained benefit from PT and wanted to stop going. (JE-1, p. 179) Dr. Anzmann turned over management of his prescriptions to the pain clinic, continued his work restrictions, and offered him the option of continuing PT. (Ex. JE-1, pp. 182–83)

Ramirez Ruiz followed up with Delaney on October 1, 2021, complaining of pain he rated at 7 out of 10. (Ex. JE-1, p. 184) Delaney noted Ramirez Ruiz "continue[d] to have significant discoloration of his left lower extremity below his knee compared to his right" and "temperature asymmetry compared to his left lower extremity to his right." (Ex. JE-1, p. 184) Delaney noted on examination:

> When comparing his left lower extremity to his right lower extremity his left lower extremity is more red in color and slightly more edematous. Upon palpation, allodynia is present upon entire foot and along peroneal nerve pathway up to posterior knee capsule. Lower extremities also feel asymmetrically warmer on the left than on the right. Slightly decreased range of motion with dorsiflexion plantarflexion in his left foot as well. Dorsalis pedis pulses easily palpable bilateral. Left lower extremity atrophied compared to right.

(Ex. JE-1, p. 184) Delaney identified the diagnosis as CRPS type 2 of the left lower extremity and prescribed topical creams to help address his pain. (Ex. JE-1, p. 185)

Dr. Anzmann saw Ramirez Ruiz on November 3, 2021, when he reported that the pain management had not been successful. (Ex. JE-1, p. 186) He felt his pain was

much worse than before. (Ex. JE-1, p. 186) Ramirez Ruiz complained of a lot of pain in his left foot when weightbearing and pain that radiated up the back of his left leg. (Ex. JE-1, p. 186) Dr. Anzmann noted pain with eversion of the left foot, tenderness to palpation at the metatarsal bases and dorsal cuboid, and continued calf atrophy. (Ex. JE-1, p. 187) She opined there was little more she could offer him in terms of care and deferred the rest of his treatment to the pain clinic. (Ex. JE-1, p. 188)

The defendants arranged for Ramirez Ruiz to undergo an examination by Douglas Martin, M.D., on January 12, 2022. (Ex. A, p. 1) At the time of the examination, Dr. Martin was the medical director at UnityPoint Health – Occupational Medicine in Sioux City, Iowa. (Ex. B, p. 17) At the time of hearing, he was the medical director of occupational medicine at the Center for Neurosciences, Orthopaedics, & Spine (CNOS), based in Dakota Dunes, South Dakota. (Ex. B, p. 17) Dr. Martin's specialties include family and occupational medicine. (Ex. B)

Dr. Martin's examination consisted of a review of medical records and in-person examination, which he used to form a report, dated January 12, 2022. (Ex. A) However, it is more likely than not based on the record that Dr. Martin did not review all of Ramirez Ruiz's medical records. As detailed above, the medical records relating to Ramirez Ruiz's PT expressly document aquatic therapy. In Dr. Martin's report, he notes:

> He was eventually sent to physical therapy department for treatments. In following the physical therapy notes, it appears that they put him through range of motion and strengthening-type exercises as well as proprioception-type exercises. The gentleman tells me that he had some aquatic therapy, but I do not necessarily see that in the records that I have, so I am not sure to what extent any of that was really pushed.

(Ex. A, p. 2) Thus, it is more likely than not Dr. Martin did not review all of Ramirez Ruiz's medical records and consequently had an inaccurate understanding of Ramirez Ruiz's PT treatment.

Moreover, Dr. Martin generalizes the course of Ramirez Ruiz's treatment and symptoms progression as follows:

> As of January 7, 2021, entry from Mackenzie Connor, Physical Therapy Assistant, it states "Vladimir states he is doing well today and is not having much pain" and the theme kind of starts to go in the other direction, so I did ask the examinee today if something had happened in January that seemingly made things worse, but he tells me that he cannot recall anything.

(Ex. A, p. 2)

As discussed above, the medical records document that Ramirez Ruiz was in a boot and using crutches in January 2021. Beginning in January, Ramirez Ruiz increased his physical activity as part of a treatment plan aimed at increasing his

functionality so he could ultimately walk without the use of crutches or wearing a boot. The records further reflect that his symptoms worsened with increased activity. Based on these facts and Dr. Martin's report, it is more likely than not he had an inaccurate understanding of Ramirez Ruiz's care, work restrictions, job duties, and the progression of his symptoms.

Dr. Martin's summary of the medical records addresses CRPS by stating, "At some point, [Ramirez Ruiz] was referred on to a CRNA at a pain clinic and the possibility of the construct of complex regional pain syndrome entered into the record." (Ex. A, p. 2) This further demonstrates Dr. Martin had an inaccurate understanding of the course of Ramirez Ruiz's care. As discussed in greater detail above, Dr. Anzmann first identified CRPS as a possible diagnosis in June of 2021 and the findings in Ramirez Ruiz's MRI the next month, which showed indications of CRPS and led Dr. Anzmann to formalize her diagnosis of CRPS. Delaney confirmed the diagnosis of CRPS. Thus, the evidence establishes Dr. Martin did not have an accurate understanding of when providers made diagnoses or why.

On the question of CRPS, Dr. Martin opined:

> [CRPS] is a construct and not a legitimate diagnosis. This has been quite a controversial subject and has been most recently looked at by Veritas Medicus, which is the Foundation of the American Academy of Disability Evaluating Physicians, which produced a book, entitled, "Complex Regional Pain Syndrome – What is the Evidence?" Also studies by Borchers and Gershwin, which have been published in the Autoimmunity Journal have suggested that this is not a legitimate diagnosis. They point out many pitfalls with regard to the process including the fact that there are well over 70 different iterations of diagnostic criteria and how there is no gold standard for the condition. The Veritas Medicus publication goes on to further investigate the science and there is very little scientific support that can be lodged for the legitimacy of this particular issue.
>
> One of the points that both Borchers and Gershwin make as well as the AADEP publication is that CRPS often times is mislabeled and misdiagnosed when other conditions are instead the better explanation for what is going on. The American Medical Association Guides to the Evaluation of Permanent Impairment, Sixth Edition, actually codifies this within their book when it talks about CRPS and there is a quote in there that states "when the diagnosis of CRPS is made, it is most often incorrect."

(Ex. A, p. 5)

Dr. Martin's report makes clear that his opinion is premised on his belief that Ramirez Ruiz cannot have CRPS because it is a construct and not a viable diagnosis. Under the header "Assessment" in Dr. Martin's report, he diagnoses Ramirez Ruiz with a history of left foot impact trauma with fractures of the cuboid and base of the 3rd and

4th metatarsals, disuse atrophy, posttraumatic arthritis of the metatarsal/tarsal joint, and a history of Lisfranc sprain strain. (Ex. A, p. 5)

Dr. Martin offers little explanation for his diagnoses other than conclusory assertions, but the evidence shows one of the factors in his reasoning was the fact that Ramirez Ruiz's left calf measured one centimeter less in circumference than his right calf. (Ex. A, pp. 4–7) Dr. Martin did not address Ramirez Ruiz's consistent complaint that his job duties at Hy-Vee made his symptoms worse. Nor did he address how the disuse atrophy diagnosis related to Ramirez Ruiz's significant pain complaints.

On examination, Dr. Martin noted the skin of the left lower extremity was darker in color than that of his right. (Ex. A, p. 4) He observed no changes in skin turgor or skin appearance and no temperature changes between the two lower extremities. (Ex. A, p. 4) Dr. Martin also found Ramirez Ruiz's areas of discomfort were over the lateral aspect of his left foot. (Ex. A, p. 4) He found abnormality in the dorsiflexion of Ramirez Ruiz's left foot. (Ex. A, p. 4)

In addition, Dr. Martin opined that Ramirez Ruiz should have a good prognosis because "the major problem that he has run into is that he has been immobilized for quite some time and I think disuse atrophy here is what is causing the muscle atrophy, continued complaints of pain, and your osteopenic issues that you see on the various different radiological studies." (Ex. A, p. 5) Dr. Martin concluded that if Ramirez Ruiz stopped focusing on CRPS and was encouraged to be normal, he would have a better long-term outcome. (Ex. A, p. 5)

Under the heading, "Causation," Dr. Martin opined Ramirez Ruiz's injuries were related to the incident at work on the stipulated injury date. (Ex. A, p. 6) Dr. Martin found that Ramirez Ruiz had reached MMI, but he did not identify the date on which he did so. (Ex. A, p. 6) On the question of permanent impairment, Dr. Martin used Chapter 17 of the Fifth Edition of the *Guides* and opined:

> The evaluator is afforded multiple different ways to look at providing impairments under the lower extremity chapter, which are delineated within the Table 17-2 at the front of the chapter. Taking into consideration all the various different possibilities, it is clear that looking at the range of motion methodology here provides the best reflective methodology to perform the impairment rating. Other possibilities could have included the muscle atrophy situation. However, Table 17-11 on page 537 discusses the impairment rating values for a mild degree of extension loss, which is what this gentleman has and this is reflected as a 10% foot, 7% lower extremity, or 3% whole person impairment.

(Ex. A, p. 6) Based on the examination and review of records, Dr. Martin found "no scientific basis" for assigning any permanent work restrictions. (Ex. A, p. 6)

From February 8, 2021, through January 20, 2022, the defendants paid Ramirez Ruiz a total of $12,994.13 in TPD benefits. The amounts varied by week, based on the

reduction in Ramirez Ruiz's earnings because of reduced hours worked caused by the work injury. The following table shows the gross income and TPD benefits paid by week.

Start Date	End Date	Gross Income	TPD Paid
2/8/21	2/14/21	$673.33	$220.00
2/15/21	2/21/21	$576.27	$210.30
2/22/21	2/28/21	$689.50	$316.39
3/1/21	3/7/21	$801.39	$133.82
3/8/21	3/14/21	$589.75	$131.79
3/15/21	3/21/21	$717.14	$190.39
3/22/21	3/28/21	$699.61	$202.48
3/29/21	4/4/21	$599.28	$309.02
4/5/21	4/11/21	$190.07	$398.89
4/12/21	4/18/21	$808.80	$129.55
4/19/21	4/25/21	$402.38	$398.89
4/26/21	5/2/21	$563.46	$293.11
5/3/21	5/9/21	$493.37	$331.49
5/10/21	5/16/21	$504.83	$224.36
5/17/21	5/23/21	$465.66	$331.49
5/24/21	5/30/21	$497.41	$331.49
5/31/21	6/6/21	$609.97	$261.84
6/7/21	6/13/21	$603.90	$266.56
6/14/21	6/20/21	$500.78	$331.49
6/21/21	6/27/21	$598.51	$261.57
6/28/21	7/4/21	$495.39	$338.90
7/5/21	7/11/21	$490.67	$331.49
7/12/21	7/18/21	$724.55	$178.71
7/19/21	7/25/21	$485.28	$331.49
7/26/21	8/1/21	$357.89	$331.49
8/2/21	8/8/21	$599.86	$268.17
8/9/21	8/15/21	$605.93	$265.21
8/16/21	8/22/21	$720.51	$188.14
8/23/21	8/29/21	$485.28	$331.49
8/30/21	9/5/21	$398.33	$331.49
9/6/21	9/12/21	$497.41	$331.49
9/13/21	9/19/21	$499.43	$331.49
9/20/21	9/26/21	$398.33	$331.49
9/27/21	10/3/21	$817.04	$331.49
10/25/21	10/31/21	$726.57	$184.10
11/1/21	11/7/21	$1,056.83	$252.18
11/8/21	11/14/21	$396.31	$331.49
11/15/21	11/21/21	$497.41	$331.49
11/22/21	11/28/21	$616.04	$257.66
11/29/21	12/5/21	$501.46	$331.49
12/6/21	12/12/21	$499.43	$331.49
12/13/21	12/19/21	$497.41	$331.49
12/20/21	12/26/21	$481.24	$331.49
12/27/21	1/2/22	$930.10	$331.49
1/3/22	1/9/22	$495.39	$331.69
1/10/22	1/16/22	$481.99	$319.66
1/17/22	1/20/22	$436.69	$162.44

(Ex. F, pp. 46–49; Ex. 5, pp. 39–42)

The evidence shows the check the defendants issued on August 2, 2021, was voided. (Ex. F, p. 51) However, the documents showing this check was voided also show no change in the total amount of benefits paid after accounting for the check being voided. (Ex. F, pp. 50–51) Therefore, the undersigned is including the amount of the August 2, 2021 check ($331.49) in the total amount of TPD benefits paid to Ramirez Ruiz before the hearing.

Effective February 1, 2022, Ramirez Ruiz began working without any work restrictions. (Ex. JE-3, p. 195) Doing so caused him to experience pain in the left lower lumbar region of his back and his hip that radiated down to his left foot. (Ex. JE-3, pp. 194–95) Ramirez Ruiz tried Tylenol with no benefit, so he sought care at United Community Health Center in Storm Lake, Iowa, where Robert Whitmore, M.D., examined him. (Ex. JE-3, pp. 194–95) Dr. Whitmore advised Ramirez Ruiz to rest initially and then slowly increase his activity level. (Ex. JE-3, p. 195) He also referred Ramirez Ruiz to PT. (Ex. JE-3, p. 195) Between Dr. Whitmore's recommendation and the date of hearing, Ramirez Ruiz did not participate in PT. (Ex. JE-3, p. 195) Dr. Whitmore assigned no work restrictions and released Ramirez Ruiz to return to full-duty work effective February 3, 2022. (Ex. JE-3, p. 196)

Hy-Vee had a progressive disciplinary policy that used a point system for absences at the facility in Cherokee where Ramirez Ruiz worked. (Ex. E, pp. 39–40; Hr'g Tr. p. 45) Ramirez Ruiz's symptoms worsened when he performed his job duties for Hy-Vee, and he missed work because of his symptoms. (Hr'g Tr. p. 45) Hy-Vee began to issue him reprimands for absenteeism, including but not limited to absences caused by the symptoms relating to his work injury. (Ex. E, pp. 38, 43–45; Hr'g Tr. p. 45) On February 16, 2023, Hy-Vee discharged Ramirez Ruiz for absenteeism.

Ramirez Ruiz applied to the Iowa Workforce Development (IWD) for unemployment insurance benefits after his discharge. (Hr'g Tr. p. 43) Hy-Vee did not participate in the fact-finding interview IWD held with respect to his claim. (Hr'g Tr. p. 43) IWD concluded Hy-Vee did not discharge Ramirez Ruiz for misconduct and he was therefore eligible for benefits provided he met other eligibility criteria, such as those relating to searching for a new job, under the Iowa Employment Security Law, Iowa Code chapter 96. (Hr'g Tr. p. 43)

Claimant's counsel arranged for Ramirez Ruiz to undergo an IME with Sunil Bansal, M.D., on February 1, 2023. (Ex. 1) As part of the evaluation of permanent impairment, Dr. Bansal reviewed medical records relating to Ramirez Ruiz's care stemming from the stipulated work injury, discussed with Ramirez Ruiz his injury, care, and symptoms, and performed an in-person physical examination. (Ex. 1, pp. 1–14) Dr. Bansal then provided his opinions by answering a series of questions posed by claimant's counsel. (Ex. 1, pp. 14–17) His report is signed and dated March 6, 2023. (Ex. 1, p. 17)

Dr. Bansal's report includes a detailed summary of the medical records relating to care Ramirez Ruiz received for the stipulated work injury. (Ex. 1, pp. 1–11) The report shows Dr. Bansal reviewed and had an accurate understanding of the course of

treatment for Ramirez Ruiz's work injury. In addition, Dr. Bansal discussed Ramirez Ruiz's then-current condition with him and related it as follows in the report:

> Mr. Ramirez Ruiz continues to have pain in his left foot. His podiatrist diagnosed [him] with complex regional pain syndrome. His left foot is now a different color that it was before, darker and reddish to purple. He has pain and tingling of his foot. He has not noticed any changes in temperature of his foot. The tingling is located on the bottom of his foot, and it is very sensitive to touch. His entire foot will swell especially by the end of the day. His socks and shoes are bothersome. He reported his continued symptoms to the occupational physician, but despite this was released back to his normal job.

(Ex. 1, p. 12)

Dr. Bansal noted that Ramirez Ruiz could walk comfortably for an hour or two and his symptoms make performing his job duties in accordance with Hy-Vee's standards difficult. (Ex. 1, p. 12) Dr. Bansal accurately detailed Ramirez Ruiz's job duties at Hy-Vee. (Ex. 1, p. 13) He also noted on the days Ramirez Ruiz is required to pick orders for five or more hours, he is in a great deal of pain at the end of his shift. (Ex. 1, p. 13)

Dr. Bansal affirmed Dr. Anzmann's diagnoses. (Ex. 1, p. 14) He found Ramirez Ruiz reached MMI on November 3, 2021, the date of his final visit to Dr. Anzmann. (Ex. 1, p. 15) Dr. Bansal utilized the so-called "Budapest Criteria" (the criteria the AMA adopts for use in the Sixth Edition of the *Guides* as reflecting "international consensus") to consider whether Dr. Anzmann's diagnosis of CRPS was correct. (Ex. 1, pp. 15–16) Dr. Bansal concluded Ramirez Ruiz's symptoms meet the Budapest Criteria and diagnosed Ramirez Ruiz as having CRPS. (Ex. 1, pp. 15–16)

On the question of permanent impairment, Dr. Bansal opined:

> Utilizing the [*Guides*], Fifth Edition, we find that CRPS of the lower extremity is rated per Table 13-15. His functional limitations are best defined by the criteria set forth for Class 2 impairments, as well as some from Class 3. He has difficulty walking on inclined surfaces and uneven ground[.] Therefore, he is assigned a **10% whole person impairment.** This is a stand-alone impairment, and accounts for any other impairment to the foot.

(Ex. 1, p. 17 (emphasis in original)) Dr. Bansal also assigned permanent work restrictions of no prolonged standing or walking greater than one hour at a time and avoiding walking on uneven ground or inclines. (Ex. 1, p. 17)

Dr. Bansal also addressed the past injury to Ramirez Ruiz's left arm. (Ex. 1, pp. 11–17) There is no indication that Dr. Bansal reviewed medical records relating to the left arm injury, apparently because they were in Spanish, and he could not read and

understand them. (Ex. 1, pp. 1–11) The contents of the report establish by a preponderance of the evidence that the discussion of Ramirez Ruiz's current condition focused largely on the work injury at Hy-Vee and its effects. (Ex. 1, p. 12) The physical examination was about half and half. (Ex. 1, pp. 13–14) The majority of Dr. Bansal's opinions in this case address the work injury as opposed to the previous left arm injury. (Ex. 1, pp. 14–17) Overall, it appears more likely than not that 85 percent of Dr. Bansal's evaluation addressed the work injury to Ramirez Ruiz's foot and 15 percent dealt with the non-work-related left arm injury.

The *Guides* provide a sample report template for use by evaluating physicians. *Guides*, § 2.3, p. 18. They also direct an evaluating physician to record pertinent information about their opinions in the report. In the Iowa workers' compensation context, the purpose of the report is to ensure all parties (e.g., injured worker, insurance carrier claims representatives, attorneys, the presiding deputy workers' compensation commissioner, Commissioner, and reviewing courts) have access to the physician's written opinions and the basis for them when considering the claim. Id., § 2.6, p. 21. The evidence shows Dr. Bansal substantially complied with this directive.

The *Guides* direct an evaluating physician to gain understanding of the medical history relating to the injury or condition for which the physician is evaluating permanent impairment by reviewing pertinent medical records and discussing the injury or condition and course of care with the injured worker. See *Guides*, § 1.12, p. 15; id., § 2.6a.3, p. 21. This includes, but is not limited to, reviewing relevant medical imaging. Id., §§ 2.6a.4–2.6a.6, pp. 21–22. They direct the physician to record in the physician's report the information about medical history. Id., §§ 2.6a.8, 2.6b, 2.6c. p. 22. The weight of the evidence establishes Dr. Bansal substantially complied with this directive. (Ex. 1, pp. 1–13)

The *Guides* also direct an evaluating physician to perform an in-person examination of the injured employee. Id., § 2.6a.3, p. 21. Dr. Bansal performed such an examination. (Ex. 1, pp. 1, 13–14) He recorded his observations during the examination in his report. (Ex. 1, pp. 1, 13–14)

Defense counsel arranged for Ramirez Ruiz to undergo a second examination by Dr. Martin on March 24, 2023. (Ex. A, pp. 8–15) Ramirez Ruiz informed Dr. Martin that Hy-Vee discharged him on February 16, 2023. (Ex. A, p. 10) There is no discussion in Dr. Martin's report of how performing job duties at Hy-Vee impacted Ramirez Ruiz's symptoms. (Ex. A, pp. 8–15)

Dr. Martin concluded Ramirez Ruiz was an example in support of his opinion that CRPS is a construct and not a legitimate diagnosis. (Ex. A, p. 12) Dr. Martin did not discuss Ramirez Ruiz's ongoing symptoms. (Ex. A, pp. 8–15) He opined Ramirez Ruiz reached MMI on the last day he saw Dr. Anzmann. (Ex. A, p. 13) Dr. Martin opined Ramirez Ruiz's impairment rating was the same as it was at the time of his first evaluation. (Ex. A, pp. 12–14) He reiterated his conclusion that there is no basis for assigning Ramirez Ruiz permanent work restrictions. (Ex. A, p. 14)

To remain eligible for unemployment insurance benefits under the Iowa Employment Security Law, Ramirez Ruiz was required to contact at least four employers per week in search of a job. (Hr'g Tr. p. 43) He applied for jobs and received multiple interviews with different employers, including meat processors such as Farmland Foods and JBS. (Hr'g Tr. pp. 43–44) However, at the time of hearing, no employer had hired Ramirez Ruiz, and he was receiving unemployment insurance benefits. (Hr'g Tr. pp. 43–44)

On February 2, 2022, Ramirez Ruiz saw his personal physician, Robert Whitmore, M.D., with complaints of left hip pain radiating to his ankle. (Ex. JE-3, p. 194) Dr. Whitmore categorized Ramirez Ruiz's condition as "back pain" and advised him to follow up with "work comp" if he felt the pain started at work. (Ex. JE-3, p. 195) Dr. Whitmore did not assign Ramirez Ruiz work restrictions. (Ex. JE-3, p. 196) He advised Ramirez Ruiz to take medication to alleviate his symptoms and monitor them. (Ex. JE-3, p. 195) There is an insufficient basis in the record from which to find a causal connection between the stipulated work injury and Ramirez Ruiz's complaints to Dr. Whitmore.

Ramirez Ruiz's testimony regarding his symptoms is credible. He had and continues to have good days and bad days. The evidence shows it is more likely than not his symptoms worsened when he was working at the Hy-Vee warehouse—in particular, when he had to stand and walk for extended periods of time during his shifts. Ramirez Ruiz's symptoms were not as bad when he was performing job duties at Hy-Vee in accordance with work restrictions that limited the amount of standing and walking he had to do. Similarly, Ramirez Ruiz experienced a lessening of his symptoms after Hy-Vee terminated his employment, which caused him to no longer perform work that included standing and walking for extended periods of time.

At the time of hearing, Ramirez Ruiz continued to experience symptoms relating to the stipulated work injury. (Hr'g Tr. p. 46) He had difficulty walking for a prolonged period of time because his foot will feel hot, it will turn purple in color, and he will experience pain from the place of injury in his foot and radiating up his leg. (Hr'g Tr. p. 46) Ramirez Ruiz observed that his left foot and lower leg continued to get darker in color the more he stands and walks. (Hr'g Tr. p. 59)

With respect to whether Ramirez Ruiz's work injury to his left foot caused disuse atrophy or CRPS, the experts are in disagreement. Dr. Anzmann, the authorized treating podiatrist, provided extensive care for Ramirez Ruiz until he reached MMI. Dr. Anzmann ultimately diagnosed Ramirez Ruiz with CRPS and referred him to the pain clinic, where he was treated by Delaney, a CRNA, who reached the same conclusion. Dr. Bansal then applied the "Budapest Criteria" for diagnosing CRPS, which represent the current international consensus and are adopted by the AMA in the Sixth Edition of the *Guides*, and reached the same conclusion.

Dr. Martin reached a different conclusion. Dr. Martin opined CRPS is a construct and not a legitimate condition. Consequently, as an initial matter on the question of what

diagnosis is accurate, the undersigned must determine whether CRPS is a legitimate diagnosis at the current time.

In support of his opinion that CRPS is but a construct, Dr. Martin cites to studies by Borchers and Gershwin, "which have been published in the Autoimmunity Journal" and "have suggested that this is not a legitimate diagnosis." Words have meaning, which makes word choice important. And the use of "suggest" is telling here. The word "suggest" means, "to mention or introduce (an idea, proposition, plan, etc.) for consideration or possible action." *The Random House Dictionary of the English Language* 1902 (2d ed. 1987). A suggestion is not a finding or conclusion. The undersigned therefore concludes the Borchers and Gershwin studies more likely than not suggest more study is needed on the question of whether CRPS is a construct and do not conclude that CRPS is not a legitimate diagnosis. The articles therefore do not support such a conclusion in the current case.

Dr. Martin also references a book that is apparently published by the Foundation of the American Academy of Disability Evaluating Physicians. Based on Dr. Martin's report, it is unclear if the book has authors or if the entity alone is credited. Dr. Martin does not identify the year of its publication. Dr. Martin describes the content of the book as "investigat[ing] the science" and concluding "there is very little scientific support that can be lodged for the legitimacy of" CRPS as a diagnosis. Dr. Martin does not state in his report that the conclusion in the book is that CRPS is a construct and not a legitimate diagnosis. Thus, the evidence does not show that this book reached the conclusion CRPS is a construct and not a valid diagnosis.

Dr. Martin also cites to the Sixth Edition of the *Guides* to support his opinion that CRPS is a construct and not a legitimate diagnosis. In 2017, the legislature amended the Iowa Workers' Compensation Act to mandate use of the fifth edition of the *Guides* adopted by the Commissioner when determining the permanent impairment caused by a work injury and the Commissioner has adopted the Fifth Edition for determining impairment. See Iowa Code § 85.34(2)(*x*); see also Iowa Admin. Code r. 876—2.4. However, there is no requirement under the Iowa Code, agency rules, or caselaw that a specific authority must be used when diagnosing an injured employee's condition. Therefore, use of the Sixth Edition of the *Guides* is not fatal to the credibility of an expert's opinion on the question of diagnosis like it might be on the question of permanent impairment.

Nonetheless, Dr. Martin's reliance on the Sixth Edition of the *Guides* to support his conclusion that CRPS is a construct and not a legitimate diagnosis is misplaced. The Sixth Edition of the *Guides* does not adopt the conclusion that CRPS is a construct and not a legitimate diagnosis. See *Guides* (6th ed.), § 15.5, pp. 450–52. To the contrary, the Sixth Edition of the *Guides* recognizes CRPS as a legitimate diagnosis while cautioning that it is difficult to make accurately. See id. The Sixth Edition provides:

> The taxonomy criteria, which were adopted by the IASP Committee for Classification of Chronic Pain of the International Association for the Study

> of Pain (IASP), have contributed to progress in understanding the syndrome. These substantial efforts finally provided standardized diagnostic criteria, improved clinical communication and homogeneity of research, and provided the promise of results that could be combined both in terms of external and internal validation. The IASP criteria, while sensitive, lack specificity, that is, they would identify patients as having CRPS when they do not. As a result of validation studies, proposed modified research diagnostic criteria were developed. A formal international consensus resulted in the criteria shown in Table 15-24.

Id.

Thus, an international consensus has emerged around using the criteria in Table 15-24 of the Sixth Edition to diagnose CRPS and the Sixth Edition has adopted such criteria for diagnosing CRPS. This undermines Dr. Martin's reliance on the Sixth Edition in support of his opinion that CRPS is a construct and not a legitimate diagnosis. While the AMA cautions evaluators about potential pratfalls when diagnosing CRPS in the Sixth Edition of the *Guides*, the AMA did not go so far as to adopt in the Sixth Edition Dr. Martin's opinion that CRPS is not a legitimate diagnosis. Under the Sixth Edition, CRPS remains a legitimate diagnosis.

The undersigned recognizes that CRPS has been a somewhat controversial diagnosis. However, there is an insufficient basis in the record from which to conclude it is more likely than not that Dr. Martin's opinion that CRPS is a construct and not a legitimate diagnosis represents the current consensus of the medical field. His report does not tie such a conclusion to any of the sources cited. Of those sources, the studies merely "suggest" CRPS may not be a valid diagnosis and Dr. Martin's report does not tie such a conclusion to the book he cites. He also relies on the Sixth Edition of the *Guides*, in which the AMA does not adopt the conclusion that CRPS is illegitimate and instead contains clear criteria for diagnosing CRPS. For these reasons, the undersigned rejects Dr. Martin's opinion that CRPS is a construct and not a valid diagnosis.

Further undermining the credibility of Dr. Martin's opinion is the evidence establishing that he had an inaccurate understanding of Ramirez Ruiz's course of treatment. Dr. Martin opined that Delaney, the CRNA in the pain clinic, first introduced CRPS into the medical records, but that is incorrect. Dr. Anzmann first discussed it as a possibility and made the diagnosis after an MRI interpreted by Dr. Roberts showed indications of CRPS. Delaney agreed with Dr. Anzmann's diagnosis after it was made. The undersigned gives more weight to Dr. Anzmann's opinion in this case because of the extensive treatment she provided Ramirez Ruiz for his work injury. Dr. Bansal's opinion bolsters Dr. Anzmann's diagnosis by applying the Budapest Criteria and concluding it supports the diagnosis of CRPS. Further reinforcing the diagnosis is Ramirez Ruiz's credible testimony regarding his symptoms, of which Dr. Martin provided little discussion in his reports. For these reasons, the evidence shows it is more likely than not the stipulated work injury to Ramirez Ruiz's left foot was a significant factor in causing CRPS.

Dr. Bansal is the only expert to evaluate Ramirez Ruiz's permanent impairment because of CRPS. Dr. Martin rated permanent impairment but did so based on range of motion impairment. Because the weight of the evidence establishes Ramirez Ruiz has CRPS and Dr. Bansal opined on permanent impairment caused by CRPS, his impairment rating is most persuasive and is adopted. Moreover, the diagnosis and Ramirez Ruiz's ongoing symptoms support adoption of the permanent work restrictions assigned by Dr. Bansal.

V. CONCLUSIONS OF LAW.

Iowa Code chapter 86 has long governed parts of our state's workers' compensation system. The General Assembly enacted legislation that took effect July 1, 2023, transferring chapter 86 to sections 10A.303 through 10A.333 in the Iowa Code. See 2023 Iowa Acts ch. 19, § 1477. Nonetheless, the edition of the Iowa Code containing these changes had not been published before the parties submitted their post-hearing briefs. Therefore, even though the new version has since been published on the legislature's website, in the interest of clarity, this decision will cite to the statutory provisions in Iowa Code chapter 86 so that it is in harmony with the parties' briefs as well as the other filings on the agency's docket.

A. Rate.

Under section 85.36, "The basis of compensation shall be the weekly earnings of the injured employee at the time of injury." The statute further provides, "Weekly earnings means gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured, as regularly required by the employee's employer for the work or employment for which the employee was employed." Iowa Code § 85.36. It is determined based on the method by which the employer pays the employee and then rounded to the nearest dollar. Id.

The parties here agree Hy-Vee employed Ramirez Ruiz at the time of the stipulated work injury on a full-time basis and paid him an hourly wage for his work. Therefore, Iowa Code section 85.36(6) governs. It provides:

> In the case of an employee who is paid on a daily or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, including shift differential pay but not including overtime or premium pay, of the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous

> week with earnings that fairly represent the employee's customary earnings.

Iowa Code section 85.36(6) must be read together with the definition of "gross earnings" in section 85.61(4) of "recurring payments by the employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer," with exclusions not applicable to the parties' dispute in the current case.

The parties have two disputes with respect to rate. The first is whether Hy-Vee used 13 representative weeks of wages when calculating Ramirez Ruiz's gross earnings. The second is whether Hy-Vee properly incorporated quarterly bonuses it paid to Ramirez Ruiz when calculating his gross earnings.

1. Representative Weeks.

Ramirez Ruiz contends the defendants erred when calculating his weekly earnings under Iowa Code section 85.36(6), which provides, "A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings." Specifically, he argues that the defendants incorrectly used his weekly earnings from August 16, 2020, of $867.54; September 27, 2020, of $351.64; and October 4, 2020, of $446.20. He contends they do not fairly reflect his customary earnings and should be replaced with his earnings from June 28, 2020, of $1,296.72; July 5, 2020, of $1,312.95; and July 12, 2020, of $1,054.65.

For more context, Ramirez Ruiz earned the following gross amounts in the 10 other weeks pre-dating the work injury:

- October 11, 2020: $1,121.39;
- September 20, 2020: $1,080.83;
- September 13, 2020: $1,063.84
- September 6, 2020: $1,209.06;
- August 30, 2020: $1,109.61;
- August 23, 2020: $1,023.25;
- August 9, 2020: $1,046.80;
- August 2, 2020: $1,031.10;
- July 26, 2020: 1,033.71; and
- July 19, 2020: $1,023.25.

The undersigned concludes Ramirez Ruiz's position has merit. The evidence shows that he typically had weekly gross earnings, excluding bonuses and overtime, between $1,000.00 and $1,300.00. The weeks of August 16, September 27, and October 4, 2020, are all comfortably below this range. The proposed substituted weeks are within it. Therefore, Ramirez Ruiz has met his burden and shown the defendants incorrectly used three weeks of gross earnings that do not fairly represent his customary

earnings and they should be replaced with his earnings from June 28, July 5, and July 12, 2020.

2. Quarterly Bonuses.

The parties do not dispute whether the quarterly bonuses in question were regular; rather, they disagree on how the bonuses are properly incorporated in the calculation of Ramirez Ruiz's gross earnings for purposes of determining his weekly workers' compensation rate. The defendants used the 13 weeks of earnings and, instead of using the entirety of the September 2020 quarterly bonuses Hy-Vee paid to Ramirez Ruiz, the defendants took all of the quarterly bonuses paid to him during the previous calendar year, added them together, averaged them out over 52 weeks, and added the weekly pro-rated share to his weekly earnings. Ramirez Ruiz contends this approach is incorrect and the entirety of the quarterly bonuses Hy-Vee paid to him in September 2020 should have been used in the calculation of his gross earnings.

The defendants support their position by citing to the agency remand decision in Draayer v. Pella Corp., No. 5018137, 2011 WL 6967535 (Iowa Workers' Comp. Comm'r, Dec. 30, 2011). The portion of that decision addressing how an annual bonus is incorporated into the calculation of an injured employee's gross earnings is a quote from another agency remand decision, Mayfield v. Pella Corp., which provides in pertinent part, "The division of workers' compensation has determined that when a bonus is clearly an annual expectation and there is in fact a plan governing the bonus, the best policy consistent with the Supreme Court's guidance is to include the annual bonus and include a pro rata weekly amount to claimant's gross earning calculation." No. 5019317, 2009 WL 2143563 at *3 (Iowa Workers' Comp. Comm'r, June 30, 2009). The Commissioner does not discuss quarterly bonuses in either remand decision.

Thus, the remand decisions in Draayer and Mayfield constitute agency precedent on how to incorporate an *annual* bonus into the calculation of gross earnings for purposes of determining an injured employee's weekly rate of workers' compensation. However, they do not apply to *quarterly* bonuses like those at issue here. Agency precedent holds that if payment of quarterly bonuses occurs during the 13-week period—a quarterly period—prior to the date of injury, the quarterly bonuses constitute "recurring payments by the employer to the employee for employment," under section 85.61(4), and must be included in their entirety when calculating gross earnings for purposes of workers' compensation rate. See Schmit v. Hy-Vee, Inc., No. 5031909, 2011 WL 1462390, *12 (Iowa Workers' Comp. Comm'r, Apr. 15, 2011) (Arb. Decision), aff'd, 2012 WL 1895969, *2 (Iowa Workers' Comp. Comm'r, May 22, 2012) (App. Decision).

Based on the facts regarding the bonus and agency precedent, an annual bonus is considered part of an employee's earnings for workers' compensation rate purposes by including the pro rata amount of an annual bonus over 52 weeks in addition to the employee's earnings over the 13 weeks before the injury. However, a quarterly bonus is included in its entirety in the 13-week period because that time period is a quarter in length. Therefore, the defendants erroneously calculated Ramirez Ruiz's earnings by

adding all of his quarterly bonuses together for the year before the work injury, dividing by 52, and using the pro rata share over the year in his earnings calculation. Under Schmit, they should have just used the quarterly bonus total because the 13-week period used to determine an employee's earnings for workers' compensation purposes is a quarterly period.

The undersigned concludes that the defendants' approach to Ramirez Ruiz's bonus was incorrect. The calculation of his wages for rate purposes should have included quarterly bonuses in their entirety along with Ramirez Ruiz's hourly wages. Therefore, the defendants' calculation of Ramirez Ruiz's average weekly earnings is rejected. The calculation should include the $1,228.47 in quarterly bonuses paid during the 13-week period before the work injury.

3. Rate Calculation.

Substituting Ramirez Ruiz's weekly earnings from June 28, July 5, and July 12, 2020, for those of August 16, September 27, and October 4, 2020, adding the total quarterly bonus amount, dividing by 13, and rounding to the nearest dollar makes his average weekly wage $1,203. The parties stipulated Ramirez Ruiz was married and entitled to 3 exemptions. Therefore, using the ratebook spreadsheet in effect from July 1, 2020, through June 30, 2021, Ramirez Ruiz's weekly rate is $781.67.

B. Disability Benefits.

Workers' compensation is "a creature of statute." Darrow v. Quaker Oats Co., 570 N.W.2d 649, 652 (Iowa 1997). This means an injured employee's "right to workers' compensation is purely statutory." Downs v. A & H Const., Ltd., 481 N.W.2d 520, 527 (Iowa 1992). And "it is the legislature's prerogative to fix the conditions under which the act's benefits may be obtained." Darrow, 570 N.W.2d at 652.

The Iowa Supreme Court has held:

> The legislature enacted the workers' compensation statute primarily for the benefit of the worker and the worker's dependents. Therefore, we apply the statute broadly and liberally in keeping with the humanitarian objective of the statute. We will not defeat the statute's beneficent purpose by reading something into it that is not there, or by a narrow and strained construction.

Gregory v. Second Inj. Fund of Iowa, 777 N.W.2d 395, 399 (Iowa 2010) (quoting Holstein Elec. v. Breyfogle, 756 N.W.2d 812, 815–16 (Iowa 2008) (citations omitted)).

"Although the workers' compensation statute is to be liberally construed in favor of the worker, the statute is not to be expanded by reading something into it that is not there." Downs v. A & H Const., Ltd., 481 N.W.2d 520, 527 (Iowa 1992) (citing Cedar Rapids Cmty. Sch. v. Cady, 278 N.W.2d 298 (Iowa 1979)). "To determine legislative intent, we look to the language chosen by the legislature and not what the legislature

might have said." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, (Iowa 2016) (citing Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 337 (Iowa 2008)). The "broad purpose of workers' compensation" is "to award compensation (apart from medical benefits), not for the injury itself, but the disability produced by a physical injury." Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, (Iowa 2010) (citing 4 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* § 80.03, at 80–4 (2009)).

An employer covered by the Iowa Workers' Compensation Act must "provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury." Iowa Code § 85.3(1). Iowa Code section 85.33 governs temporary disability benefits. Section 85.34(2) governs permanent disability.

1. TPD & HP Benefits.

"Permanent benefits and temporary benefits are very different. Temporary benefits compensate the employee for lost wages until he or she is able to return to work, whereas permanent benefits compensate either a disability to a scheduled member or a loss in earning capacity (industrial disability)." Mannes v. Fleetguard, Inc., 770 N.W.2d 826, 830 (Iowa 2009) (citing Iowa Code §§ 85.33, 85.34) An injured employee may receive such temporary benefits as follows:

- Temporary total disability (TTD) benefits for time lost from work for an injury that does not result in a permanent disability. Iowa Code § 85.33(1).
- Temporary partial disability (TPD) benefits when the employee is able to perform light-duty work within restrictions but cannot return to work substantially similar to the job performed at the time of the work injury. Id. at § 85.33(2).
- Healing period benefits for time lost from work for an injury that results in permanent partial disability (PPD). Id. at § 85.34(1).

Because the defendants incorrectly calculated Ramirez Ruiz's earnings for rate purposes, they underpaid him TPD and HP benefits. The parties appear to agree the defendants paid to Ramirez Ruiz 16 weeks of HP benefits (which were initially classified as TTD benefits at the time but have become HP benefits because the work injury caused a permanent disability, as discussed below). They also agree the defendants paid to Ramirez Ruiz 28.37 weeks of TPD benefits.

a. HP Benefits.

The parties do not dispute the number of weeks for which Ramirez Ruiz is entitled to HP benefits; they only dispute the rate at which the defendants paid those

benefits. The defendants paid Ramirez Ruiz 16 weeks of HP benefits at the rate of $663.00 per week for a total of $10,608.00. Multiplying the correct rate of $781.67 by 16 weeks equals $12,506.72. Ramirez Ruiz is entitled to the difference of $1,898.72 in HP benefits.

b. TPD Benefits.

Under Iowa Code section 85.33(4), "The temporary partial benefit shall be sixty-six and two-thirds percent of the difference between the employee's weekly earnings at the time of injury, computed in compliance with section 85.36, and the employee's actual gross weekly income from employment during the period of temporary partial disability."

There is no indication in the hearing report or post-hearing briefing that Ramirez Ruiz believes he is entitled to TPD benefits for weeks in addition to those already paid by the defendants. Likewise, with respect to the gross weekly income for the weeks during which the defendants paid Ramirez Ruiz TPD benefits, there is no indication the parties dispute the amounts reflected in the Employee Wage Verification documents included in evidence. (See Ex. 6, pp. 49–51) Rather, the parties' dispute with respect to TPD benefits stems from the calculation of Ramirez Ruiz's weekly earnings under section 85.36(6). As found above, the proper amount is $1,203.00.

Ramirez Ruiz advocates simply adding two-thirds of the difference between the weekly earnings, computed in compliance with section 85.36, and multiplying that by the number of weeks for which he was entitled to TPD benefits. This position is legally erroneous. Under the statute, there is no weekly rate that is applied to every week for which an injured employee is entitled to TPD benefits. Rather, the statute requires an injured employee's TPD benefit amount be calculated each week, using the prescribed formula under section 85.33(4). The formula here is subtracting Ramirez Ruiz's gross income for each week from his weekly earnings at the time of injury, computed in compliance with section 85.36, of $1,203 and then multiplying that amount by two-thirds.

The following table contains the gross income determined using the Employee Wage Verification documentation in Exhibit 6, pages 49 through 51, under the column "Gross Income." The undersigned subtracted that amount from $1,203. Two-thirds of that remainder is the dollar figure listed in the "TPD Amount" column of the table. The final row is the total amount of TPD benefits to which Ramirez Ruiz is entitled.

TPD Benefits: February 8, 2021–January 20, 2022

Start Date	End Date	Gross Income	TPD Amount
2/8/21	2/14/21	$673.33	$353.11
2/15/21	2/21/21	$576.27	$417.82
2/22/21	2/28/21	$689.50	$342.33
3/1/21	3/7/21	$801.39	$267.74
3/8/21	3/14/21	$589.75	$408.83
3/15/21	3/21/21	$717.14	$323.91

Start Date	End Date	Gross Income	TPD Amount
3/22/21	3/28/21	$699.61	$335.59
3/29/21	4/4/21	$599.28	$402.48
4/5/21	4/11/21	$190.07	$675.29
4/12/21	4/18/21	$808.80	$262.80
4/19/21	4/25/21	$402.38	$533.75
4/26/21	5/2/21	$563.46	$426.36
5/3/21	5/9/21	$493.37	$473.09
5/10/21	5/16/21	$504.83	$465.45
5/17/21	5/23/21	$465.66	$491.56
5/24/21	5/30/21	$497.41	$470.39
5/31/21	6/6/21	$609.97	$395.35
6/7/21	6/13/21	$603.90	$399.40
6/14/21	6/20/21	$500.78	$468.15
6/21/21	627/21	$598.51	$402.99
6/28/21	7/4/21	$495.39	$471.74
7/5/21	7/11/21	$490.67	$474.89
7/12/21	7/18/21	$724.55	$318.97
7/19/21	7/25/21	$485.28	$478.48
7/26/21	8/1/21	$357.89	$563.41
8/2/21	8/8/21	$599.86	$402.09
8/9/21	8/15/21	$605.93	$398.05
8/16/21	8/22/21	$720.51	$321.66
8/23/21	8/29/21	$485.28	$478.48
8/30/21	9/5/21	$398.33	$536.45
9/6/21	9/12/21	$497.41	$470.39
9/13/21	9/19/21	$499.43	$469.05
9/20/21	9/26/21	$398.33	$536.45
9/27/21	10/3/21	$817.04	$257.31
10/25/21	10/31/21	$726.57	$317.62
11/1/21	11/7/21	$1,056.83	$97.45
11/8/21	11/14/21	$396.31	$537.79
11/15/21	11/21/21	$497.41	$470.39
11/22/21	11/28/21	$616.04	$391.31
11/29/21	12/5/21	$501.46	$467.69
12/6/21	12/12/21	$499.43	$469.05
12/13/21	12/19/21	$497.41	$470.39
12/20/21	12/26/21	$481.24	$481.17
12/27/21	1/2/22	$930.10	$191.93
1/3/22	1/9/22	$495.39	$471.74
1/10/22	1/16/22	$481.99	$480.67
1/17/22	1/20/22	$436.69	$510.87
		Total	$19,657.25

The evidence establishes that under Iowa Code section 85.33(4), Ramirez Ruiz is entitled to $19,657.25 in TPD benefits because of the stipulated work injury's negative impact on his earnings between February 8, 2021, and January 20, 2022. The parties agree that the defendants paid him $12,994.13 in TPD benefits before the hearing. $19,657.25 minus $12,994.13 equals $6,663.12. Ramirez Ruiz is entitled to $6,663.12 in additional TPD benefits.

2. Permanent Disability Benefits.

Iowa Code section 85.34(2) governs permanent partial disabilities. The statute lists certain body parts in a schedule, including the foot and leg, and a catch-all that governs injury to any body part not listed. See Iowa Code § 85.34(2). Disabilities to the scheduled members are compensated based only on the injured employee's functional loss and without consideration of the impact on the injured employee's earning capacity. Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983) (citing Graves v. Eagle Iron Works, 331 N.W.2d 116, 117–18 (Iowa 1983)). However, under Barton v. Nevada Poultry Co. and its progeny, an injury to a scheduled member that causes CRPS is considered an injury to the nervous system, which is not included in the statutory schedule, and is therefore an unscheduled injury, making any resulting disability industrial in nature. 110 N.W.2d 660 (Iowa 1961); see also Collins v. Dep't of Human Serv., 529 N.W.2d 627, 628–30 (Iowa App. 1995) (discussing, but ultimately not addressing, reflex sympathetic dystrophy—or CRPS, a name by which the condition is also known—as an unscheduled injury triggering industrial disability analysis). Thus, the question of the nature and extent of permanent partial disability hinges on whether the crush injury caused CRPS.

The claimant has the burden to prove by a preponderance of the evidence that the alleged injuries arose out of and in the course of employment with the employer. Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 253 (Iowa 2010) (citing Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996)); see also Douglas v. Vermeer Mfg., File No. 5062611 (App., October 23, 2019) (citing Ciha, 552 N.W.2d at 150 and Miedema, 551 N.W.2d at 311). "Employers may raise any number of arguments to contest an employee's assertion that an injury arose out of and in the course of employment." Vegors, 786 N.W.2d at 254. Such contestations do not shift the burden of proof on causation, which the claimant retains. Id.

"Medical causation 'is essentially within the domain of expert testimony.'" Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 845 (Iowa 2011) (quoting Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)).

> With regard to expert testimony[,] [t]he commissioner must consider [such] testimony together with all other evidence introduced bearing on the causal connection between the injury and the disability. 'The commissioner, as the fact finder, determines the weight to be given to any expert testimony. Such weight depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances. The commissioner may accept or reject the expert opinion in whole or in part.'

Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002)).

The undersigned considered which expert opinions were most credible above. After weighing all of the evidence, the undersigned concluded Dr. Martin's opinion that CRPS is a construct and not a legitimate diagnosis unpersuasive and rejected it.

Moreover, the undersigned found Dr. Anzmann's diagnosis of CRPS and Dr. Bansal's confirmation of it using the Budapest Criteria to be most credible because the evidence shows they had a more accurate and complete understanding of Ramirez Ruiz's symptoms through time and his course of care, and they are more reflective of his credible complaints at the time of hearing. Therefore, the weight of the evidence establishes the work injury Ramirez Ruiz sustained working at Hy-Vee caused CRPS.

Before 2017, permanent partial disability to an unscheduled body part caused by a work injury was "compensated by the industrial disability method which takes into account the loss of earning capacity." Id. (citing Mortimer, 502 N.W.2d at 14–15). An industrial disability analysis was used regardless of whether the injured employee returned to work with the defendant-employer or the level of earnings at the time of hearing relative to the date of injury. Mannes v. Fleetguard, Inc., 770 N.W.2d 826, 830 (Iowa 2009) (quoting Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824, 831 (Iowa 1992)); see also Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Arrow-Acme Corp. v. Bellamy, 500 N.W.2d 92, 95 (Iowa App. 1993). With the 2017 amendments, the legislature carved out an exception to this general rule and created a mandatory bifurcated litigation process on the issue of permanent disability under certain circumstances. See 2017 Iowa Acts ch. 23, § 8 (now codified at Iowa Code § 85.34(2)(*v*)). The statute now articulates an exception and the circumstances triggering the bifurcated litigation process as follows:

> If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

Iowa Code § 85.34(2)(*v*).

Thus, the 2017 amendments changed the statute so that its text expressly incorporates the agency's review-reopening process to create a mandatory bifurcated litigation process when certain criteria are met. See, e.g., Garcia v. Smithfield Foods, File No. 1657969.01 (Arb. February 16, 2022). Under Iowa Code section 86.14(2), review-reopening is a process by which a determination of compensation is revisited due to a change in the claimant's condition. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 391–95 (Iowa 2009) The bifurcated litigation process created in section 85.34(2)(*v*)

allows a claimant to seek a new agency determination of permanent disability using an industrial disability analysis when the defendant-employer terminates the claimant's employment after the initial agency award or approval of the parties' agreement for settlement. Presumably, this is because the defendant-employer's discharge of the claimant after the award or agreement for settlement creates a potential change in the claimant's condition that could trigger reopening the determination of permanent disability. See id.

The legislature has not empowered the agency to interpret the Iowa Workers' Compensation Act, but the agency necessarily must do so when performing its quasi-judicial function as tribunal for workers' compensation contested case proceedings. See Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 518–19 (Iowa 2012); see also Iowa Ins. Inst. v. Core Group of Iowa Ass'n for Justice, 867 N.W.2d 58, 68 (Iowa 2015). To determine Ramirez Ruiz's entitlement to workers' compensation benefits in this case, it is necessary to first determine whether Ramirez Ruiz must use the bifurcated litigation process under the statute given the timing of Hy-Vee's termination of his employment. Therefore, this decision must interpret section 85.34(2)(*v*).

Iowa statutes are interpreted as a whole, not in part. See, e.g., Doe v. State, 943 N.W.2d 608, 610 (Iowa 2020). When interpreting the text of a provision in the Iowa Code, courts and the agency must "take into consideration the language's relationship to other provisions of the same statute and other provisions of related statutes." Id. Therefore, the entirety of section 85.34(2)(*v*) and its interplay with the rest of the Iowa Workers' Compensation Act must be considered; not just one sentence. The next sentence of section 85.34(2)(*v*) states an injured employee who "returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer" may seek reopening of the agency award or an agreement for settlement on the question of permanent disability.

The Commissioner considered the interplay of these two new sentences in Martinez v. Pavlich, Inc., File No. 5063900 (App. July 30, 2020). In Martinez, the claimant voluntarily quit employment with the defendant-employer and accepted a position with a different employer at higher pay. Id. While the nature of the employment separation differs from the one in this case, Martinez is nonetheless guiding. Id. The Commissioner considered how the two sentences cited by the parties in this case should be construed and found:

> [W]hen the two new provisions . . . are read together, as they are set forth in the statute, it appears the legislature intended to address *only the scenario* in which a claimant initially returns to work with the defendant-employer or is offered work by the defendant-employer at the same or greater earnings but is later terminated by the defendant-employer.

Id. (emphasis added). Put otherwise, the statute requires a bifurcated litigation process on permanent disability only under the circumstances its text expressly details.

Reinforcing the Commissioner's reading is the traditional statutory construction principle of *expressio unius est exclusio alterius*, which holds that legislative intent is expressed by exclusion and inclusion alike with the express mention of one thing implying the exclusion of another. Kucera v. Baldazo, 745 N.W.2d 481, 487 (Iowa 2008). In section 85.34(2)(*v*), the text expressly requires a bifurcated litigation process only when the claimant returns to employment with the defendant-employer or is offered work by the defendant-employer at the requisite earnings level and is then discharged after an agency award of permanent disability or an agreement for settlement with respect to permanent disability. The statute contains no mention of any other circumstances that mandate a bifurcated litigation process to determine the extent of permanent disability. The legislature could have included such language in the statute but did not. This choice implies that the requirement for a bifurcated ligation process only applies when the defendant-employer discharges the claimant after the agency issues an award or approves the parties' agreement for settlement on the question of permanent disability based on functional impairment.

Relatedly, the Iowa Workers' Compensation Act "is not to be expanded by reading something into it that is not there." Downs, 481 N.W.2d at 527 (citing Cedar Rapids Cmty. Sch. v. Cady, 278 N.W.2d 298 (Iowa 1979)). Because the statutory text does not include an express requirement for a bifurcated litigation process when the defendant-employer terminates the claimant's employment before hearing, it would be legal error to expand the circumstances under which section 85.34(2)(*v*) requires such a process by reading something into its text that is not there. Compounding the legal error that such an interpretation would constitute is the fact it would undermine an important purpose of the Iowa Workers' Compensation Act.

In Zomer v. West River Farms, Inc., 666 N.W.2d 130 (Iowa 2003), the Iowa Supreme Court considered the Commissioner's authority to reform a workers' compensation insurance policy. Even though this opinion construed the scope of the Commissioner's authority under section 85.21, its reasoning applies here. Id. at 132–33. The court drew on longstanding precedent as the foundation of its holding:

> The fundamental reason for the enactment of this legislation is to avoid litigation, lessen the expense incident thereto, minimize appeals, and afford an efficient and speedy tribunal to determine and award compensation under the terms of this act.
>
> "It was the purpose of the legislature to create a tribunal to do rough justice—speedy, summary, informal, untechnical. With this scheme of the legislature we must not interfere; for, if we trench in the slightest degree upon the prerogatives of the commission, one encroachment will breed another, until finally simplicity will give way to complexity, and informality to technicality."

Id. at 133 (quoting Flint v. City of Eldon, 183 N.W. 344, 345 (1921) (citation omitted)).

The court concluded a "bifurcated litigation process" that is drawn out "is a far cry from the efficient and speedy remedy envisioned by the general assembly when it adopted the workers' compensation act." Id. at 133–34. The court held it would be erroneous "to read into the statute a limitation on the [C]ommissioner's authority to decide claims for compensation, particularly when to do so would defeat one of the primary purposes of the statute—the provision of a prompt and adequate remedy." Id. Applying Zomer here, expanding the circumstances in which a bifurcated litigation process is required under section 85.34(2)(*v*) requires reading something into the statute that is not there and would result in a longer, drawn-out process that would hinder the agency's ability to provide a prompt and adequate remedy, which would defeat one of the primary purposes of the Act.

Lastly, reading the requirement for a bifurcated litigation process to apply only under the circumstances expressly stated in section 85.34(2)(*v*) is consistent with Iowa Supreme Court precedent requiring the agency and courts to "apply the workers' compensation statute broadly and liberally in keeping with its humanitarian objective: the benefit of the worker and the worker's dependents." Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 257 (Iowa 2010). Applying the statute as written allows a claimant to receive a final determination on permanent disability when the issue is ripe for determination. Getting such a determination via a single contested case proceeding before the agency means the claimant will receive payment of all PPD benefits to which the claimant is legally entitled sooner in time and without having to go through litigation of a second contested case proceeding. Therefore, the result of adhering to the statutory text is beneficial to the injured worker and the worker's dependents.

For these reasons, the text of section 85.34(2)(*v*) does not limit the determination of permanent disability to that based only on functional impairment when the defendant-employer terminates the claimant's employment before the hearing. In such circumstances, the statute does not require a bifurcated litigation process. Because Hy-Vee discharged Ramirez Ruiz before the hearing in this case, this decision will determine what, if any, industrial disability he sustained because of the stipulated work injury.

The extent of an injured employee's industrial disability is based on consideration of the following factors: functional disability, age, education, qualifications, work experience, inability to engage in similar employment, earnings before and after the injury, motivation to work, personal characteristics, and the employer's inability to accommodate the injured employee's functional limitations. See Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 526 (Iowa 2012); IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 632–33 (Iowa 2000); E.N.T. Assoc. v. Collentine, 525 N.W.2d 827, 830 (Iowa 1994); Ehlinger v. State, 237 N.W.2d 784, 792 (Iowa 1976). And after the 2017 amendments, section 85.34(2)(*v*) mandates, "A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury."

Ramirez Ruiz was 37 years old at the time of hearing. The weight of the evidence shows it was reasonably anticipated at the time of the injury that he would work 25 or more years into the future. Therefore, the permanent limitations he has because of the work injury will limit the types of jobs he can obtain for decades.

One factor to consider is the worker's functional impairment. Under the *Guides*, "**Impairment percentages** or **ratings** developed by medical specialists are consensus-derived estimates that reflect the severity of the medical condition and the degree to which the impairment decreases an individual's ability to perform common **activities of daily living (ADL)**, *excluding* work." *Guides*, p. 4 (emphasis in original). As found above, the evidence establishes it is more likely than not the work injury Ramirez Ruiz sustained at Hy-Vee caused a 10 percent impairment to the whole body. Under the framework in the *Guides*, this impairment rating excludes work.

This decision has adopted the permanent work restrictions Dr. Bansal assigned Ramirez Ruiz, which consist of no prolonged standing or walking greater than one hour at a time and avoiding walking on uneven ground or inclines. Ramirez Ruiz's ability to perform his job duties at Hy-Vee was negatively impacted by the work injury. His job at the warehouse often required standing and walking in excess of the work restriction Dr. Bansal ultimately assigned him. This caused Ramirez Ruiz to experience worsening symptoms that on multiple occasions caused him to call in sick. Thus, the evidence shows that Ramirez Ruiz is unlikely to be able to perform jobs with duties similar to those he had at Hy-Vee.

Since his move to the United States, Ramirez Ruiz has largely performed physical labor. Hy-Vee is an example of that. Because of the work injury, Ramirez Ruiz will no longer be able to perform jobs with duties that include more than one hour at a time of standing or walking. This significantly limits the types of jobs he will be able to perform during the rest of his working life.

Ramirez Ruiz attempted to return to full-duty work at Hy-Vee despite the fact that performing the duties of his job at the warehouse worsened his symptoms, including the pain he felt. After Hy-Vee discharged him and up to the time of hearing, Ramirez Ruiz contacted at least four employers per week to inquire about jobs and secured multiple interviews but had not received a job offer. The weight of the evidence shows Ramirez Ruiz is motivated to work.

A personal characteristic of Ramirez Ruiz that must be considered is his limited English proficiency. See Lovic v. Constr. Prod., Inc., No. 5015390, 2007 WL 4620425 (Iowa Workers' Comp. Comm'r, Dec. 27, 2007) (App. Decision); see also Merivic, Inc. v. Gutierrez, 825 N.W.2d 327 (Iowa App.2012) (table) (rejecting a collateral attack on Lovic, recognizing it as controlling agency precedent, and affirming a final agency decision that relied on it). The test for English language learning is the same as other retraining or education. Does the record show the claimant would likely be successful and the knowledge gained would more likely than not lead to gainful employment? Id. "Without such proof, use of any retraining effort, or lack thereof, in assessing a loss of earning capacity would be speculative, at best." Id.

Here, Ramirez Ruiz understands some written and spoken English. At the time of hearing, his English proficiency was not such that he was able to fully participate in the proceeding without the assistance of an English-Spanish interpreter. Nonetheless, Ramirez Ruiz pursued postsecondary education in business and accounting before coming to the United States. While these courses were in Spanish and have apparently not translated to credits in those areas in the United States, they show that he has the skills to pursue additional educational opportunities, including those to help his English proficiency. Further, Ramirez Ruiz is still a relatively young man, and it is more likely than not his English skills will improve as he spends more time living in the United States, where English is the primary language of communication. Overall, Ramirez Ruiz's limited English proficiency will have a negative impact on his earning capacity that will likely be reduced as time passes and his ability to understand written and spoken English increases.

Ramirez Ruiz has met his burden of proof on the question of permanent disability. He is entitled to PPD benefits based on an industrial disability assessment of his lost earning capacity. For the reasons discussed above, the evidence establishes that Ramirez Ruiz has sustained industrial disability of 45 percent. Multiplying 45 percent by 500 weeks, Ramirez Ruiz is entitled to 225 weeks of PPD benefits.

C. Penalty.

"Because penalty benefits are a creature of statute, our discussion begins with an examination of the statutory parameters for such benefits." Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299, 307 (Iowa 2005). Under Iowa Code section 86.13(4)(a)

> If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.

This provision "codifies, in the workers' compensation insurance context, the common law rule that insurers with good faith disputes over the legal or factual validity of claims can challenge them, if their arguments for doing so present fairly debatable issues." Covia v. Robinson, 507 N.W.2d 411, 412 (Iowa 1993) (citing Dirks v. Farm Bureau Mut. Ins. Co., 465 N.W.2d 857, 861 (Iowa 1991) and Dolan v. Aid Ins. Co., 431 N.W.2d 790, 794 (Iowa 1988)). "The purpose or goal of the statute is both punishment and deterrence." Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 237 (Iowa 1996).

The legislature established in Iowa Code section 86.13(4)(b) a burden-shifting framework for determining whether penalty benefits must be awarded in a workers' compensation case. See 2009 Iowa Acts ch. 179, § 110 (codified at Iowa Code § 86.13(4)(b)); see also Pettengill v. Am. Blue Ribbon Holdings, LLC, 875 N.W.2d 740,

746–47 (Iowa App. 2015) as amended (Feb. 16, 2016) (discussing the burden-shifting required by the two-factor statutory test). The employee bears the burden to establish a prima facie case for penalty benefits. See Iowa Code § 86.13(4)(b). To do so, the employee must demonstrate a denial, delay in payment, or termination of workers' compensation benefits. Iowa Code § 86.13(4)(b)(1). If the employee fails to prove a denial, delay, or termination, there can be no award of penalty benefits and the analysis stops. See id. at § 86.13(4)(b); see also Pettengill, 875 N.W.2d at 747. However, if the employee makes the requisite showing, the burden of proof shifts to the employer. See id. at § 86.13(4)(b); see also Pettengill, 875 N.W.2d at 747.

Here, Ramirez Ruiz alleges the defendants must pay a penalty because they paid him benefits at too low a rate. "Included among the circumstances under which the statute was enacted was the recognition that too often employees were not receiving the full amount of the compensation payable to them under the statute. If we were to construe the statute to permit the avoidance of a penalty if *any* amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude section 86.13 is applicable when payment of compensation is not timely made or when the full amount of compensation is not paid." Id. (emphasis in original). As found above, the defendants incorrectly calculated Ramirez Ruiz's weekly earnings, which led to them paying him less than the full amount to which he was entitled. Thus, it is appropriate to determine whether the defendants' failure to pay the full amount of compensation to Ramirez Ruiz when it was due merits a penalty under the statute.

There are two decisions that combine to inform the total underpayment amount. The first is the choice of fairly representative weeks. As found above, the defendants incorrectly included weeks of gross earnings that were too low to be representative when they calculated Ramirez Ruiz's weekly rate. The second is the manner in which the defendants incorporated Ramirez Ruiz's quarterly bonuses into their earning calculation.

To avoid an award of penalty benefits, the employer must "prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits." Iowa Code§ 86.13(4)(b)(2). An excuse must meet all of the following criteria to be "a reasonable or probable cause or excuse" under the statute:

> (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
>
> (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.

> (3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

Id. § 86.13(4)(c).

A reasonable basis exists "if the claim is 'fairly debatable.'" Keystone Nursing Care Ctr., 705 N.W.2d at 307 (quoting Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996)). A claim may be fairly debatable because of a good faith legal or factual dispute. See Covia, 507 N.W.2d at 416 (finding a jurisdictional issue fairly debatable because there were "viable arguments in favor of either party"). "[T]he reasonableness of the employer's denial or termination of benefits does not turn on whether the employer was right. The issue is whether there was a reasonable basis for the employer's position that no benefits were owing." Keystone Nursing Care Ctr., 705 N.W.2d at 307–08. If the employee establishes a "reasonable or probable cause or excuse," no penalty benefits are awarded.

The defendants argue that Ramirez Ruiz's hours and wages fluctuated, which rendered earnings even below $1,000.00 fairly representative of his weekly earnings. The problem with this argument is just how far below the typical range of his earnings from the weeks of August 16, 2020 ($867.54); September 27, 2020 ($351.64); and October 4, 2020 ($446.20). Ramirez Ruiz's gross earnings show that, as a worker employed full-time, he typically earned between $1,000.00 and $1,300.00 when working full-time hours.

The fact that Hy-Vee paid Ramirez Ruiz hourly and this occasionally meant he earned less than the typical range does not render those lower weeks of earnings representative, as the defendants contend. The statutory scheme expressly directs substitution of such lower weeks. A week of $867.54 may be fairly debatable; however, it is not fairly debatable that weekly earnings as low as $351.64 and $446.20 are not representative under the statute. Setting aside the week of $867.54 for purposes of penalty, the defendants still underpaid Ramirez Ruiz in HP, TPD, and PPD benefits by thousands of dollars.

The defendants also contend that the agency's Draayer decision makes their method of incorporating quarterly bonuses fairly debatable. The agency issued the remand decision in Draayer on December 30, 2011. 2011 WL 6967535 at *1. The problem is that on May 1, 2012, the Commissioner issued the appeal decision in Schmit, a case in which Hy-Vee was the defendant-appellant, affirming the deputy commissioner's conclusion that for purposes of rate, quarterly bonuses paid during the 13-week period pre-dating the work injury are included in their entirety as part of the injured employee's gross earnings. This makes the approach used by Hy-Vee and Union to calculate Ramirez Ruiz's rate incorrect under agency caselaw involving Hy-Vee and significantly undermines the defendants' fairly debatable argument.

Additionally, the defendants argue that Ramirez Ruiz did not notify them of a rate dispute until April 14, 2023. The defendants contend that they cannot appropriately

investigate a rate dispute until the issue is brought to their attention. But this misapprehends the underlying premise of Iowa's workers' compensation scheme. It is designed so that injured employees receive the benefits for which they are entitled when the benefits are due. That is why the text of section 86.13(4)(*a*) provides, "If a denial, a delay in payment, or a termination of benefits occurs *without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits*, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse." (emphasis added). The statutory text thus requires the agency to determine whether a defendant's action was fairly debatable "at the time of" the underpayment, not "after the injured employee questioned the rate calculation."

A penalty under section 86.13 is designed to help effectuate Iowa's workers' compensation system, which the legislature created with the intent that it be self-effectuating so that injured employees receive the benefits to which they are entitled by law when those benefits are due. As the Iowa Supreme Court held in Boylan and affirmed in Christensen, "section 86.13 'recognizes . . . an affirmative obligation on the part of the employer and insurance carrier to act *reasonably* in regard to benefit payments in the absence of specific direction by the commissioner." Christensen, 554 N.W.2d at 260 (quoting Boylan, 489 N.W.2d at 742) (emphasis in Christensen). At the time the defendants calculated Ramirez Ruiz's rate, they had all the information they needed to act in compliance with the Iowa Workers' Compensation Act without specific direction by the agency.

Because the defendants have failed to meet their burden of proof, penalty benefits must be awarded. The following factors are used in determining the amount of penalty benefits:

- The length of the delay;
- The number of the delays;
- The information available to the employer regarding the employee's injuries and wages; and
- The prior penalties imposed against the employer under section 86.13.

Robbennolt, 555 N.W.2d at 238.

Here, the defendants had access to all information relating to Ramirez Ruiz's injuries and wages. The delay was lengthy for TPD benefits and HP benefits. And while the underpayment in PPD benefits due to the use of an incorrect rate caused a delay in paying Ramirez Ruiz such benefits that was not as long, it nonetheless lasted over a year. Each weekly benefit payment of the full amount to which Ramirez Ruiz was owed is an individual delay, creating dozens of underpayments. Further, Hy-Vee knew of the

agency arbitration and appeal decisions in Schmit for years before the defendants calculated Ramirez Ruiz's rate. Ramirez Ruiz has not presented evidence of prior penalties imposed on the defendants. Therefore, Ramirez Ruiz is entitled to a penalty in the amount of $1,000.00.

D. Medical Benefits.

Under Iowa Code section 85.27(1)(*a*), for compensable work injuries, the defendants "shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies therefor and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members, and appliances." An injured employee dissatisfied with the care furnished by the employer may seek alternate care under section 85.27(4).

The evidence also shows that Ramirez Ruiz stopped attending physical therapy sessions. He also stopped going to pain management. His last authorized treatment was September 7, 2021. Ramirez Ruiz testified he requested care from two individuals at the Hy-Vee warehouse. He testified that they refused his request because Dr. Martin had released him from care. They told Ramirez Ruiz if he wanted a second opinion, he would have to get it on his own.

In February 2022, he saw Dr. Whitmore on his own, with complaints of left hip pain radiating to his ankle. Dr. Whitmore advised him to take medication and monitor his symptoms. As found above, there is an insufficient basis in the record from which to tie his February 2022 complaints to the stipulated work injury.

Dr. Bansal recommended additional care. The defendants are responsible for reasonable care for the work injury. If Ramirez Ruiz feels that he needs care for symptoms relating to the work injury, he should communicate that to the defendants and allow them to arrange such care.

E. IME.

The parties dispute what costs relating to Dr. Bansal's examination of Ramirez Ruiz and the resultant IME report the defendants are responsible for under Iowa Code section 85.39(2). The defendants contend that Dr. Bansal's fees, as itemized in his invoice, relate primarily to the report and not the exam. They further argue that they should not be liable for those portions of the evaluation and report relating to the earlier injury that was evaluated for purposes of the Fund claim Ramirez Ruiz dismissed at the start of hearing.

The Iowa Court of Appeals considered the scope of an employer's responsibility to pay for an examination by a doctor of the injured employee's choice in Kern v. Fenchel, Doster & Buck, P.L.C., 966 N.W.2d 326, 2021 WL 3890603, *2 (Iowa App. 2021) (Table). The work injury at issue in Kern occurred on May 20, 2016, so the

opinion construed Iowa Code section 85.39 (2016). Id. at *2–3. The statutory text, as amended in 2017, was not at issue in the case. See id.

At the agency level, the claimant sought reimbursement of the costs relating to an IME by Dr. Bansal. Id. at *2; see also Kern v. Fenchel, Doster & Buck, P.L.C., No. 5062419, 2017 WL 6764066, *1, *13–*14 (Iowa Workers' Comp. Comm'r, Dec. 18, 2017) (Arb. Decision). Relying on the Iowa Supreme Court's holding in Young, the presiding deputy concluded that the claimant was not entitled to reimbursement because she had failed to establish the prerequisites to qualify for an evaluation at the defendants' expense under section 85.39. Id. at *2–*3; see also Kern, 2017 WL 6764066 at *14. The commissioner affirmed on intra-agency appeal. See id.; see also Kern v. Fenchel, Doster & Buck, P.L.C., No. 5062419, 2019 WL 4135356 *2 (Iowa Workers' Comp. Comm'r, Jul. 2, 2019) (App. Decision). On judicial review, the district court also affirmed. Id. at *2.

On judicial review, a court of appeals panel reversed, concluding:

> In this case, Kern presented herself for an examination by Dr. Paulson, a provider of the employer's choosing. *See* Iowa Code § 85.39. Although Dr. Paulson did not use the words "zero" or "no" disability, the clear effect of his no-causation determination was a finding of no compensable permanent disability. Kern disagreed and thought such a determination was "too low." If we read section 85.39 liberally to benefit the worker, the next logical step was for Kern to have an IME, seeking evidence of permanent disability, which can only be made if there is also a causation determination, typically done in the same examination. In fact, there can be no disability determination arising out of a disability evaluation without a determination there was causation. Kern's request that the employer pay for that evaluation is consistent with the statutory procedural requirements of section 85.39 and also promotes an appropriate balance of the interests of each party.
>
> We see no conflict applying our supreme court's interpretation of section 85.39 in *Young* to a finding that Dr. Paulson's opinion on lack of causation was tantamount to a zero percent impairment rating and, in fact, we find such interpretation compelling.

Id. at *4–*5 (italics used in original citations).

The agency has followed the court of appeals' Kern opinion. The case Hines v. Tyson Foods, Inc. centered on a March 2, 2020 injury governed by Iowa Code section 85.39, as amended in 2017. No. 20700462.01, 2022 WL 265341 *26 (Iowa Workers' Comp. Comm'r, Jan. 18, 2022) (Arb. Dec.; Palmer, Dep.). In Deputy Palmer's arbitration decision, she cited to Kern in concluding that a claimant was entitled to reimbursement for an IME that included a causation opinion with respect to the March 2, 2020, injury. No. 20700462.01, 2022 WL 265341 *26 (Iowa Workers' Comp. Comm'r, Jan. 18, 2022) (Arb. Dec.). The commissioner affirmed the conclusion on appeal. See Hines v. Tyson

Foods, Inc., No. 20700462.01, 2022 WL 1788263 (Iowa Workers' Comp. Comm'r, May 13, 2022) (App. Decision; Cortese, Comm'r). The commissioner's application of Kern to a post-2017 amendments case makes sense because nothing in the legislation undermines the conclusion that an opinion of no causation is the functional equivalent to a finding of no impairment that underpins the panel's holding in that case. Thus, under agency precedent, a claimant is entitled to reimbursement for an IME under section 85.39(2) after a doctor chosen by the employer finds no causation.

Another court of appeals panel considered the scope of Iowa Code section 85.39(2) in Sandlin v. MidAmerica Construction, 992 N.W.2d 237, 2023 WL 2148754 (Iowa App. Feb. 22, 2023) (Table). The date of injury in Sandlin was September 6, 2017, which means Iowa Code section 85.39, as amended in 2017, applies. Id. at *1, *3–*4. Deputy Walsh concluded that the defendants obtained a zero percent impairment rating from a doctor of their choice, which meant they were responsible for reimbursing the claimant for the entirety of the $2,020.00 in costs on the invoice for the IME performed by Mark Taylor, M.D., the claimant's chosen doctor. Sandlin v. MidAmerica Constr., LLC, No. 5806495, 2020 WL 3447641, *4 (Iowa Workers' Comp. Comm'r, Jun. 18, 2020) (Arb. Decision).

After the agency issued the arbitration decision, the defendants moved for rehearing, contending in pertinent part the presiding deputy erred in awarding IME expenses. Sandlin v. MidAmerica Constr., LLC, No. 5806495, 2020 WL 4067924, *1 (Iowa Workers' Comp. Comm'r, Jul. 13, 2020) (Ruling on Defs' Application for Reh'g). The defendants relied on IBP, Inc. v. Harker, 633 N.W.2d 322 (Iowa 2001), a case which centered on whether the defendants had "retained" treating physicians chosen by the claimant under Nebraska law in satisfaction of the requirement under section 85.39. Id. Deputy Walsh found the defendants' argument on retention unavailing in ruling:

> In this case, Mr. Sandlin was never told to direct his own medical treatment. The employer initially discouraged claimant from getting any treatment at all and then, begrudgingly authorized him to treat at Medical Associates Clinic the only clinic which was open at the time he sought treatment. The defendants seek to cast this as the claimant's decision. I find it was not. This case is distinguishable from Harker in that the claimant in Harker was specifically allowed to direct his own medical care from the beginning of the claim. Nothing of the sort occurred here. In fact, the opposite is true. The record reflects that Mr. Sandlin was directed to see Dr. Kennedy by the insurance carrier. (Defendants' Exhibit G, Sandlin Depo, pages 16-17) On July 12, 2019, in response to an inquiry from defense counsel, claimant's authorized treating physician referred Mr. Sandlin to Occupational Medicine Associates for the final impairment rating. (Jt. Ex. 3, p. 18) Based upon the facts presented, this can, in no way, be construed to be a physician retained by the claimant.

Id.

The defendants appealed to the commissioner, arguing, "the reimbursement provisions of this section were never triggered because they did not retain Dr. Kennedy, who ultimately opined claimant did not sustain any permanent impairment to his foot" and that, after the 2017 amendments to section 85.39, the "claimant should only be entitled to reimbursement for $174.25, or at the most, $500.00." Sandlin v. MidAmerica Constr., LLC, No. 5806495, *2, *4 (Iowa Workers' Comp. Comm'r, Jan. 27, 2021) (App. Decision). On whether the defendants retained Dr. Kennedy, Commissioner Cortese affirmed Deputy Walsh's arbitration decision with additional analysis documenting in detail the factual distinctions between the events surrounding the IME at issue in Harker and those in Sandlin. Id. at *3–*4. Commissioner Cortese also rejected the defendants' contention that Dr. Taylor's IME costs were unreasonable because Dr. Taylor asserted in his report they were reasonable and there was no contrary, persuasive evidence in the record to the contrary. Id. at *5.

On judicial review, the court of appeals panel in Sandlin concluded the agency erred:

> From the record, in the "local area," Dr. Taylor charges separately for preparing an IME and for preparing an impairment rating. But the statute as now written only allows for reimbursement of an examination based on the typical fee charged for an impairment rating, not the extent of information a full IME entails.[1] Thus, giving effect to the words of the statute, we award the "typical fee charged by the medical provider to perform an impairment rating." To do otherwise would authorize payment for an expanded examination, report, and intensive review of medical records, in contravention of what the legislature has determined. We reverse the reimbursement award of $2020.00 and remand for the entry of a reimbursement award based on the impairment rating fee, which on this record is $500.00.

MidAmerica Constr. LLC v. Sandlin, 992 N.W.2d 237, 2023 WL 2148754, *5 (Iowa App. Feb. 22, 2023) (Table). Sandlin applied for further review to the Iowa Supreme Court, which granted the application. MidAmerica Constr., LLC v. Sandlin, No. 22-0471. As of this decision, the Iowa Supreme Court had not issued an opinion in the case.

Rife v. P.M. Lattner Manufacturing Co. dealt with an alleged August 6, 2018 shoulder injury and the cost of an IME by Sunny Kim, M.D., who opined the cost he charged was reasonable and in line with what physicians in his area charged. No. 1652412.02, 2021 WL 3849591, *13 (Iowa Workers' Comp. Comm'r, Aug. 20, 2021) (Arb. Decision). Deputy Lunn found Dr. Kim's assertion credible. Id. He applied pre-Kern agency precedent and concluded the claimant was entitled to reimbursement for the full cost of the IME. See id. On appeal, the commissioner held:

> The final issue on appeal is whether claimant is entitled to reimbursement for the entirety of Dr. Kim's IME charge. Defendants' only argument on appeal is that they should not be assessed any portion of the costs

> associated with Dr. Kim's evaluation of claimant's non-work-related right ankle injury.
>
> Defendants are correct that Iowa Code section 85.39, as amended in 2017, provides that defendants are only responsible for reimbursement relating to examinations of compensable, work-related injuries. See Iowa Code § 85.39(2). And defendants are likewise correct that claimant's counsel asked Dr. Kim to address whether claimant had any permanent disability relating to his non-work-related right ankle injury. (Claimant's Ex. 1, p. 5)
>
> Dr. Kim, however, did not review any records relating to claimant's right ankle injury, he did not take any measurements of claimant's right ankle range of motion like he did with claimant's right shoulder, and he offered no opinions regarding claimant's right ankle. (See Cl. Ex. 1, p. 5 for medical records given to Dr. Kim to review; Cl. Ex. 1, pp. 2-3) Instead, Dr. Kim indicated he would defer to claimant's treating surgeon or a foot/ankle specialist. (Cl. Ex. 1, p. 3) As a result, I do not find any of the costs of Dr. Kim's exam to be associated with claimant's right ankle injury.
>
> On appeal, defendants do not take issue with the deputy commissioner's analysis or rationale in finding that the reimbursement provisions of Iowa Code section 85.39 were triggered in this case, so I will not address or disturb that portion of the arbitration decision in this appeal decision.

Rife v. P.M. Lattner Mfg. Co., No. 1652412.02, 2022 WL 265661, *3 (Iowa Workers' Comp. Comm'r, Jan. 21, 2022) (App. Decision).

The defendants sought judicial review and the district court reversed. 2023 WL 3862594, *1 (Iowa App. Jun. 7, 2023). Rife appealed and a court of appeals panel ruled, "Because Lattner did not contest whether Rife triggered the reimbursement provision found in section 85.39 to the deputy commissioner or the commissioner, error on whether section 85.39 was triggered was not preserved. We reverse the district court with respect to such determination." Id. at *3.

Despite that conclusion, the court of appeals panel considered whether the defendants' argument with respect to the reduction of the requested IME reimbursement was correct under the law and concluded the commissioner erred in holding the defendants were responsible for the entirety of the IME costs because "it is unclear from the record before us what portion of Dr. Kim's fee related to the impairment rating for his right shoulder rather than the examination as a whole." Id. at *3. It further concluded, "The amount of the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted is absent from this record." Id. Rife sought further review of the panel's opinion and the Iowa Supreme Court granted it.

Under Iowa Rule of Appellate Procedure (IRAP) 6.1208(2)(*b*), no procedendo of a court of appeals action shall issue for 27 days after an opinion is filed in a case under the IAPA, "nor thereafter while an application for further review by the supreme court is pending." IRAP 6.1103(6) further provides, "When an application for further review is denied by order of the supreme court, the clerk of the supreme court shall immediately issue procedendo." Thus, when the Iowa Supreme Court grants an application for further review of a court of appeals opinion, the court of appeals may not issue procedendo because it no longer has the authority to remand the case back to the district court.

In Iowa, an appellate court remands a case to the lower court by the issuance of procedendo. In re M.T., 714 N.W.2d 278, 281 (Iowa 2006). Procedendo is "[a] higher court's order directing a lower court to determine and enter a judgment in a previously removed case." Black's Law Dictionary (11th ed. 2019) (procedendo). Once the appellate court issues procedendo, its jurisdiction ends. Id. at 282. "Indeed, the entire purpose of procedendo is to notify the lower court that the case is transferred back to that court." Id.

Thus, neither the court of appeals panel opinion in Sandlin nor the one in Rife has become final. Both cases are currently pending before the Iowa Supreme Court. Because of the cases' current status, neither panel opinion currently has more precedential heft than the commissioner's appeal decisions they considered on judicial review.

It is unclear at present whether the Iowa Supreme Court will address the contours of IME reimbursement under section 85.39, as amended in 2017, because after granting an application for further review, under IRAP 6.1103(6)(*d*), the court "may review any or all of the issues raised in the original appeal or limit its review to just those issues brought to the court's attention by the application for further review." Nonetheless, it seems likely that the court will consider the issue and hopefully clear up the murky waters surrounding IME costs under section 85.39(2).

Despite the procedural status of Rife, the commissioner applied the court of appeals panel opinion in Fuller v. Bimbo Bakery USA, No. 20012896.01, 2023 WL 6140681, *3–*4 (Iowa Workers' Comp. Comm'r, Sept. 12, 2023) (App. Decision; Cortese, Comm'r). The commissioner concluded that it is the agency's responsibility "to parse out the cost and fee of non-reimbursable items under Iowa Code section 85.39(2)." Id. That is what the undersigned will attempt to do, with the understanding that the Iowa Supreme Court may render the analysis erroneous in the near future.

In doing so, the undersigned declines to apply the court of appeals panel decisions in Sandlin or Rife. Procedendo has not issued in either case because the Iowa Supreme Court granted further review. Moreover, to the extent they have any precedential value, they are unpersuasive given the facts in the current case.

As discussed above, the legislature has defined the contours of the rights and responsibilities workers and employers have under the Iowa Workers' Compensation

Act. See Darrow, 570 N.W.2d at 652; see also Downs, 481 N.W.2d at 527; Gregory, 777 N.W.2d at 399. "When an injury is sustained by a worker covered by our system of workers' compensation, a statutory process exists that not only directs the treatment and care for the worker, but also the future examination for any disability resulting from the injury following the healing period." Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 843 (Iowa 2015) (citing Iowa Code §§ 85.27, .39). Iowa Code section 85.39 "is devoted to the examination of an injured worker for the purpose of ascertaining 'the extent and character of the injury' for purposes of paying benefits in the event of a disability resulting from the injury." Id. (quoting Daugherty v. Scandia Coal Co., 206 Iowa 120, 124, 219 N.W. 65, 67 (1928)). "The statutory process balances the competing interests of the employer and employee and permits the employee to obtain an independent medical examination at the employer's expense." Id. at 844.

In 2017, the General Assembly amended section 85.39, dividing it into two subsections and adding language. See 2017 Iowa Acts ch. 23, § 15 (now codified at Iowa Code § 85.39). After the amendment, subsection (1) governs examinations arranged by the employer with a physician of its choosing and subsection (2) governs examinations by a physician of the employee's choosing if the employee disagrees with the opinion of the employer's chosen doctor on the question of permanent disability. The two subsections of section 85.39 must be read together because the process they set forth "balances the competing interests of the employer and employee," Young, 867 N.W.2d at 844, and as the Iowa Supreme Court recently reiterated in Chavez v. MS Technology LLC, 972 N.W.2d 662, 668 (Iowa 2022), Iowa courts and administrative agencies must consider the entirety of the Iowa Workers' Compensation Act—not just part of it, in isolation—when construing one of its provisions. See also Iowa Ins. Inst. v. Core Group of Iowa Ass'n for Justice, 867 N.W.2d 58, 72 (Iowa 2015).

Section 85.39(1) provides:

> After an injury, the employee, if requested by the employer, shall submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this state or another state, without cost to the employee; but if the employee requests, the employee, at the employee's own cost, is entitled to have a physician or physicians of the employee's own selection present to participate in the examination. If an employee is required to leave work for which the employee is being paid wages to attend the requested examination, the employee shall be compensated at the employee's regular rate for the time the employee is required to leave work, and the employee shall be furnished transportation to and from the place of examination, or the employer may elect to pay the employee the reasonable cost of the transportation. The refusal of the employee to submit to the examination shall forfeit the employee's right to any compensation for the period of the refusal. Compensation shall not be payable for the period of refusal.

There is no limitation on the scope of a section 85.39(1) examination. The examination could focus solely on causation, impairment, the extent of permanent disability, or all three. And an injured employee must submit to such an examination or lose workers' compensation benefits during the period of refusal. The result of an examination by a physician chosen by the employer triggers an employee's right to obtain an IME under section 85.39(2), which provides, "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, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination."

The statute thus creates a condition precedent to an employer shouldering the legal responsibility to pay for the reasonable costs associated with an examination by a physician chosen by the injured employer must be considered. Section 85.39(2) identifies the triggering event as "an evaluation of permanent *disability* by a physician retained by the employer and the employee believes this evaluation to be too low." (emphasis added); see also Young, 867 N.W.2d at 843–44. Without an evaluation of permanent disability, an injured employee has no right to obtain an IME with a physician of the employee's choice at the employer's expense. This has implications for an employee's entitlement to benefits and requires consideration of other changes the legislature made to the Iowa Workers' Compensation Act in 2017.

Section 85.39 examinations are intended to inform the determination of an injured employee's entitlement to workers' compensation benefits. Young, 867 N.W.2d at 843. Under sections 85.34 (2) and (3), an injured employee's entitlement to disability benefits is based on the nature and extent of permanent disability. The legislature altered this process a bit in 2017 by carving out an exception under section 85.34(2)(*v*) which creates a mandatory bifurcated litigation process on the question of industrial disability when the employer offers the injured employee work at the same or greater earnings level after the employee has reached MMI and the employee remains employed by the employer at the time of hearing. See Martinez v. Pavlich, Inc., No. 5063900, 2020 WL 5412838, *3–*6 (Iowa Workers' Comp. Comm'r, Jul. 30, 2020) (App. Decision). Under such circumstances, an injured employee is only entitled to benefits based on functional impairment until termination of the employment relationship. See Ocampo v. New Fashion Pork, LLP, No. 20012252.01, 2022 WL 1787362, * (Iowa Workers' Comp. Comm'r, Mar. 4, 2022) (Arb. Decision), aff'd 2022 WL 17171095 (Iowa Workers' Comp. Comm'r, Sep. 17, 2022) (App. Decision); see also Dungan v. Den Hartog Indus., No. 21700246.01, 2022 WL 17170554, *14–*21 (Iowa Workers' Comp. Comm'r, Sep. 30, 2022), aff'd 2023 WL 363118 (Iowa Workers' Comp. Comm'r, Jan. 13, 2023) (App. Decision). After the creation of this new exception and mandatory bifurcated litigation process, an injured employee's entitlement to workers' compensation benefits is based on either permanent disability or impairment.

Reading section 85.39(2) as a whole reveals the first part of chapter 85 that undermines the suggested interpretation by the defendants. Section 85.39(2) provides, "The physician chosen by the employee has the right to confer with and obtain from the employer-retained physician sufficient history of the injury to make a proper examination." Construing section 85.39(2) as the defendants advocate would effectively read this sentence out of the statutory text because it would mean the physician chosen by the employee has the right to confer with the employer-chosen physician for purposes of developing an accurate understanding of the employee's medical history, but the employer is not responsible for any costs relating to the physician doing so. This would tilt the balance of interests to the employer's favor by granting the employee's chosen physician the right to confer with the employer's chosen physician and sticking the injured employee, who generally has fewer resources than the employer or insurance carrier, with the bill. Such a reading would be strained in theory and nonsensical in practice.

Further undermining the construction for which the defendants advocate is the entirety of the 2017 legislation. The 2017 amendments included the addition of language mandating a larger role for the *Guides* in the statutory process for determining an injured employee's entitlement to benefits. 2017 Iowa Acts ch. 23, § 9 (codified at Iowa Code § 85.34(2)(*x*)). Before the 2017 amendments, the *Guides* were a tool the agency could use when determining the extent of permanent disability caused by an employee's work injury. Seaman v. City of Des Moines, Nos. 5053418, 5057973, 5057974, 2019 WL 6358911, *15 (Iowa Workers' Comp. Comm'r, Oct. 11, 2019) (App. Decision) (quoting Bisenius v. Mercy Med. Ctr., File No. 5036055, 2013 WL 1493035, *1 (Iowa Workers' Comp. Comm'r, Apr. 1, 2013) (App. Decision); see also Westling v. Hormel Foods Corp., 810 N.W.2d 247, 252 (Iowa 2012). The legislature amended the Iowa Workers' Compensation Act in 2017 to mandate use of the *Guides* when determining permanent impairment. Iowa Code § 85.34(2)(*x*). Now the *Guides* must be used to determine the injured employee's permanent impairment when the agency determines functional disability.

Against this backdrop, the defendants' proposed reading of section 85.39 makes little sense. The statute mandates the use of the *Guides* for the determination of permanent impairment, which means that a doctor who issues an opinion that adheres to the framework in the *Guides* is typically found more credible than one who does not. The *Guides* contain a process for physicians to use when evaluating permanent impairment with the impairment rating punctuating that process. Under the *Guides*, the evaluation of permanent impairment is inextricably intertwined with assigning an impairment rating. And for many body parts, the physical examination includes objective measurements without which there can be no impairment rating.

The introductory chapter of the *Guides* states the following with respect to the process it details for evaluating permanent impairment or disability:

> Generally, the physician evaluates all available information and provides as comprehensive a medical picture of the patient as possible, addressing the components listed in the Report of Medical Evaluation form discussed

> in Chapter 2. A complete impairment evaluation provides valuable information beyond an impairment percentage, and it includes a discussion about the person's abilities and limitations, including the ability to perform common activities listed in Table 1-2. Combining the medical and nonmedical information, and including detailed information about essential work activities, if requested, is a basis for improved understanding of the degree to which the impairment may affect the individual's work ability.

Guides, § 1.12, p. 15.

Chapter 2, "Practical Application of the *Guides*," provides the following with respect to the examiners' roles and responsibilities:

> Full and complete reporting provides the best opportunity for physicians to explain health status and consequences to patients, other medical professionals, and other interested parties such as claims examiners and attorneys. Thorough documentation of medical findings and their impact will also ensure that reporting is fair and consistent and that individuals have the information needed to pursue any benefits to which they are entitled.

Id., § 2.3, p. 18. Moreover, the *Guides* state, "A clear, accurate, and complete report is essential to support a rating of permanent impairment." Id., § 2.6, p. 21.

To that end, the *Guides* lay out a list of elements that "should be included in **all** impairment evaluation reports." Id. (emphasis in original). The fist is a narrative history of medical condition(s) consisting of

> the onset and course of the condition, symptoms, findings on previous examination(s), treatments, and responses to treatment, including adverse effects. Include information that may be relevant to onset, such as an occupational exposure or injury. Historical information should refer to any relevant investigations. Include detailed list of prior evaluations in the clinical data section.

Id., § 2.6a.1, p. 21.

In addition, the *Guides* direct a physician to "[a]ssess **current clinical status**, including current symptoms, review of symptoms, physical examination, and a list of contemplated treatment, rehabilitation, and any anticipated reevaluation." Id., § 2.6a.3, p. 21 (emphasis in original). They also direct inclusion of discussion of diagnostic study results and outstanding pertinent diagnostic studies, whether the injured employee is at MMI, and diagnoses and impairments. Id., §§ 2.6a.4–2.6a.6, pp. 21–22. Moreover, the *Guides* state a report should discuss impairment rating criteria, prognosis, residual function, and limitations; calculation of the impairment rating; and discussion of how the impairment rating was calculated. Id., §§ 2.6a.8, 2.6b, 2.6c. p. 22.

The *Guides* also state that other elements may be included in an impairment evaluation that include "a work history with detailed, chronological description of work activities, specific type and duration of work performed, materials used in the workplace, any temporal associations with the medical condition and work, frequency, intensity and duration of exposure and activities, and any protective measures" as well as "discussion of causation and apportionment." Id., §§ 2.6a.4, 2.6a.6, pp. 21–22. As discussed above, an Iowa Court of Appeals panel has opined that causation is effectively a zero percent impairment rating and therefore opinions on causation are reimbursable and the agency has followed this holding.

The *Guides* provide a "Sample Report for Permanent Medical Impairment" for physicians to follow to help ensure they adhere to the process in the *Guides*. Id., pp. 23–24. The sample includes a section entitled "Identifies" with information about the injured employee and examination. Id., p. 23. The next section is entitled, "Introduction," and consists of, "Purpose (impairment or IME evaluation, personal injury, workers' compensation) and procedures (who performed the exam, patient consent, location of examination)." Id. Following that is the "Narrative History," which includes, "Chief complaints, history of injury or illness, occupational history, past medical history, family history, social history, [and] review of symptoms." Id. After that is the section entitled, "Medical record review," which is described as, "Chronology of medical evaluation, diagnostic studies, and treatment for the injury or illness." Id.

Next is a section detailing the physician's physical examination. Id. After that, a section discussing diagnostic studies. Id., p. 24. Then the section, "Diagnoses and Impairments," with the note, "If requested, discuss work readiness, causation, apportionment, restrictions, accommodations, assistive devices." Id.

The report then has a section entitled, "Impairment Rating Criteria," which includes, "MMI residual function, limitations of activities of daily living, [and] prognosis." Id. This is followed by the "Impairment Rating and Rationale," which includes the body part or system being rated, the chapter number of the *Guides* used, the table number of the *Guides* used, the percentage impairment of the whole person, and "[d]iscussion of rationale of impairment rating and any possible inconsistencies in the examination." Id.

The report template concludes with a section entitled, "Recommendations," which is for, "Further diagnostic or therapeutic follow-up care." Id. Then there is a section labeled, "Work ability, work restrictions." Id. This final section includes the explanatory note, "If requested, review abilities and limitations in reference to essential job activities." Id.

Unsurprisingly, every section of the "Sample Report for Permanent Medical Impairment" in the *Guides* is relevant to the determination of permanent disability or impairment in workers' compensation cases before the agency. As discussed above, the rationale for directing a physician to write a report contained in the *Guides* is accurate:

> Full and complete reporting provides the best opportunity for physicians to explain health status and consequences to patients, other medical professionals, and other interested parties such as claims examiners and attorneys. Thorough documentation of medical findings and their impact will also ensure that reporting is fair and consistent and that individuals have the information needed to pursue any benefits to which they are entitled.

Id., § 2.3, p. 18. "A clear, accurate, and complete report is essential to support a rating of permanent impairment." Id., § 2.6, p. 21.

The *Guides* reflect what agency experience and expertise reinforces: The IME report is important in the determination of an employee's entitlement to workers' compensation benefits, especially in contested cases before the agency. The AMA has established criteria in the *Guides* so that doctors are providing the information injured workers, employers, insurance carriers, and tribunals such as the agency need to equitably determine an individual's entitlement to workers' compensation benefits based on the injury they sustained and the disability the injury has caused. Presumably, this is why the legislature mandated use of the *Guides* when determining permanent impairment. Consequently, this mandate cannot be ignored when determining what is reimbursable as a reasonable cost under section 85.39(2). The costs that stem from a physician following the *Guides* in accordance with the requirement in section 85.34(2)(*x*) when performing an IME under section 85.39(2) are therefore reasonable.

Further reinforcing this conclusion is binding precedent and the principle of *stare decisis*. The defendants' proposed interpretation is an invitation to reject the court of appeals panel in Kern and the commissioner's appeal decision in Hines because their suggestion necessarily requires rejecting the holding that the portion of an IME consisting of an opinion on causation is reimbursable under section 85.39. The undersigned respectfully declines this invitation.

In the current case, the record shows Dr. Bansal's report substantially complies with Chapter 2 of the *Guides* generally, the "Sample Report for Permanent Medical Impairment" in particular. Dr. Bansal's examination and report therefore comply with the mandate in section 85.34(2)(*x*) that, "when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the [*Guides*]." This makes the costs relating to the IME and report reasonable.

Furthermore, many IMEs come before the agency, which allows the undersigned to use agency experience and specialized knowledge to conclude that Dr. Bansal's charges are in line with those of an occupational medicine doctor with a practice in the Des Moines metro area performing an evaluation of permanent impairment of an injured employee under Iowa Code section 85.39(2) and in accordance with the *Guides*.

That being said, the parsing out of what is compensable and what is not does not stop there. As the defendants correctly point out, Dr. Bansal reviewed more than just

the injury and condition Ramirez Ruiz alleges to be work related. He also reviewed an earlier injury for Fund purposes. As found above, this was not the primary focus of Dr. Bansal's records review or examination. The evidence shows it made up approximately 15 percent of his efforts. Therefore, the defendants are not responsible for paying for this share of the invoice.

For the above reasons, Ramirez Ruiz has prevailed in part and the defendants have prevailed in part on the question of what costs relating to Dr. Bansal's IME and report for which the defendants are responsible under section 85.39(2). The evidence in the record, the Iowa Workers' Compensation Act as a whole, and the *Guides* render the 85 percent of the costs in Dr. Bansal's invoice reasonable and related to the work injury. The defendants shall reimburse Ramirez Ruiz for 85 percent of the costs of Dr. Bansal's examination and report under Iowa Code section 85.39(2) or $3,960.15 (85 percent multiplied by the total invoice amount of $4,659.00).

With respect to the cost of Dr. Bansal's supplemental report after reviewing Dr. Martin's rebuttal report, the undersigned concludes that this is not reimbursable under Iowa Code section 85.39(2) because it is not part of the evaluation process laid out in the *Guides*. The response to a rebuttal opinion from the employer's chosen doctor is not covered in the *Guides* as part of an evaluation or the report relating to it. This report is more akin to testimony and must therefore be considered a cost under Iowa Code section 85.40 and Iowa Administrative Code rule 876—4.33. See Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 844–46 (Iowa 2015).

F. Costs.

"All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commission." Iowa Code § 86.40. "Fee-shifting statutes using 'all costs' language have been construed 'to limit reimbursement for litigation expenses to those allowed as taxable court costs.'" Young, 867 N.W.2d at 846 (quoting City of Riverdale v. Diercks, 806 N.W.2d 643, 660 (Iowa 2011)). Statutes and administrative rules providing for recovery of costs are strictly construed. Id. (quoting Hughes v. Burlington N. R.R., 545 N.W.2d 318, 321 (Iowa 1996)).

The parties dispute whether the defendants must pay the costs of Dr. Bansal's supplemental report that responds to Dr. Martin's rebuttal report. Dr. Bansal's invoice for this report labeled it an "addendum" and is in the amount of $396.00. Dr. Bansal reviewed Dr. Martin's rebuttal report and then offered his written response. Thus, substantively speaking, this report is akin to testimony in response to the opinion of Dr. Martin. As the Iowa Supreme Court has held, "A medical report for purposes of a hearing is aligned with a prehearing medical deposition." Id. at 845–46. Therefore, Dr. Bansal's supplemental report aligned with a prehearing medical deposition and is a taxable cost under rule 876—4.33(6).

VI. ORDER.

Based on the above findings of fact and conclusions of law, it is ordered:

1) The defendants shall pay to Ramirez Ruiz two hundred twenty-five (225) weeks of permanent partial disability benefits at the rate of seven hundred eighty-one and 67/100 dollars ($781.67) per week from the commencement date of January 12, 2022, subject to the stipulated credit of fifteen (15) weeks of PPD benefits paid at the rate of six hundred sixty-three and 00/100 dollars ($663.00) per week.

2) The defendants shall pay to Ramirez Ruiz healing period (HP) benefits in the amount of one thousand eight hundred ninety-eight and 72/100 dollars ($1,898.72) in addition to those paid before hearing.

3) The defendants shall pay to Ramirez Ruiz temporary partial disability (TPD) benefits in the amount of six thousand six hundred sixty-three and 12/100 dollars ($6,663.12) in addition to those paid before hearing.

4) The defendants shall pay accrued weekly benefits in a lump sum.

5) The defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

6) The defendants shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).

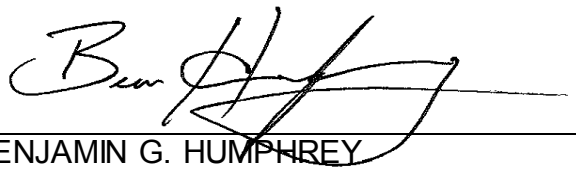
7) The defendants shall pay to Ramirez Ruiz a penalty of one thousand and 00/100 dollars ($1,000.00).

8) The defendants shall pay to Ramirez Ruiz three thousand nine hundred sixty and 15/100 dollars ($3,960.15) for the reasonable costs of Dr. Bansal's examination.

9) The defendants shall pay to Ramirez Ruiz three hundred ninety-six and 00/100 dollars ($396.00) as the taxed cost for Dr. Bansal's supplemental report.

10) The parties shall be responsible for paying their own hearing costs. Each party shall pay an equal share of the cost of the transcript.

Signed and filed this 21st day of December, 2023.



BENJAMIN G. HUMPHREY
Deputy Workers' Compensation Commissioner

Served via the Workers' Compensation Electronic System (WCES):

Mary C. Hamilton, Attorney for Claimant

Lindsey E. Mills, Attorney for Defendants

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.