BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MARY WOOTEN,	FILED	
Claimant,	JAN 31 2017	File Nos. 5033585, 5046429
vs.	WORKERS COMPENSATION	REVIEW-REOPENING
TYSON FOODS, INC.,	:	AND ARBITRATION DECISION
Employer, Self-Insured, Defendant.	:	Head Note Nos.: 1800, 1802, 1803, 1803.1, 1808, 2403

STATEMENT OF THE CASE

The claimant, Mary Wooten, filed two petitions seeking workers' compensation benefits from Tyson Foods, Inc., a self-insured employer. The claimant was represented by David Newell. The defendant was represented by Jean Z. Dickson.

The matter came on for hearing on January 5, 2016, before deputy workers' compensation commissioner, Joe Walsh, in Des Moines, Iowa. The record in the case consists of Joint Exhibits A through P. The claimant provided sworn testimony at hearing. Amy Pederson was appointed the official reporter and custodian of the notes of the proceeding. The matter was fully submitted on February 5, 2016, after helpful briefing by the parties.

ISSUES

The parties submitted the following issues and stipulations:

For File No. 5033585 (Review-Reopening; DOI August 13, 2009), the parties have stipulated the following. These stipulations are accepted by the agency and are deemed binding upon the parties.

1. The parties stipulate claimant sustained an injury which arose out of and in the course of employment on August 13, 2009.

2. The work injury caused permanent industrial disability which resulted in an Agreement for Settlement approved by this agency on September 22, 2011.

3. The elements which comprise the rate of compensation are stipulated and the claimant's rate is $368.07.

4. The claimant makes no claim for medical payments or temporary disability.

5. The defendant has paid 100 weeks of benefits on this claim and additional benefits on File No. 5048183, for which they are entitled a credit.

The parties have asked the agency to decide the following issues:

1. Whether the claimant has demonstrated that his condition warrants an end to, diminishment of, or increase of compensation previously awarded.
2. If so, what is the extent of claimant's disability? The claimant alleges she is permanently and totally disabled. Defendant denies that claimant is entitled to any additional benefits.
3. Whether claimant's claim is timely under Iowa Code section 85.26.
4. Whether the defendant is entitled to apportionment for a subsequent injury.

For File No. 5046429 (DOI May 15, 2013), the parties have stipulated to the following. These stipulations are accepted and deemed binding upon the parties:

1. The claimant sustained an injury which arose out of and in the course of employment on May 13, 2015.
2. This work injury resulted in both temporary and permanent disability.
3. The parties stipulate to the elements which comprise the rate of compensation and the appropriate rate is $365.96.
4. Affirmative defenses have been waived.
5. There is no claim for medical expenses or temporary disability benefits.
6. Defendant is entitled to a credit as set forth in the hearing report and order.

The parties have submitted the following issues for determination:

1. Whether claimant is entitled to healing period benefits.
2. While the parties have stipulated that the claimant suffered scheduled injuries to her bilateral arms, the nature and extent of the disability is disputed.
3. What is the correct commencement date for benefits?
4. Whether the defendant is entitled to apportionment for the prior claim.
5. Whether the claimant is entitled to a penalty for late payments.

FINDINGS OF FACT

At the time of hearing, Mary Wooten was 62 years old. She is married to Delbert Wooten. They reside together in Muscatine, Iowa. Mary worked at Tyson Foods, Inc. starting in February 2008. I find that Mary testified truthfully. Her presentation was consistent with the medical reports in the record and her other sworn testimony. There was nothing about her demeanor which caused me concern about her truthfulness.

The parties have stipulated that Mary suffered an injury to her left shoulder which arose out of and in the course of her employment on August 13, 2009. At the time of her injury she was doing repetitive reaching. She underwent a course of treatment for this injury which included a course of treatment, however, no surgery. (Joint Exhibit K, page 7) She was treated by Tina Stec, M.D., and Tuvi Mendel, M.D. In April 2010, Dr. Stec declined to assign any permanent impairment from the injury, stating that Mary could "still get improvement with time." (Jt. Ex. K, p. 5) She did, however, assign permanent restrictions of no reaching above the shoulder and only occasionally pushing and pulling with the left arm. (Jt. Ex. K, p. 5) In June 2010, Mary was placed in a fairly light job known as "welfare janitor." (Jt. Ex. O, p. 1) This was light work that she could perform. She cleaned and maintained the women's locker room.

Richard Neiman, M.D., performed an independent medical evaluation (IME) in June 2011, wherein he opined Mary suffered a 19 percent whole person impairment as a result of her shoulder injury. He further opined that her current position (welfare janitor) "is excellent." (Jt. Ex. K, p. 10) The parties entered into an agreement for settlement (AFS) in September 2011, which was approved by the agency on September 22, 2011. (Jt. Ex. K) At the time of the settlement, Mary was working as a welfare janitor, with a significant shoulder impairment and permanent restrictions.

On May 31, 2012, Mary was notified that the welfare janitor job was being discontinued. (Jt. Ex. I, p. 1) The defendant asserted that the position was eliminated due to "outsourcing." (Defendant's Brief, p. 2) For a period of time after the welfare janitor position was discontinued, Mary was placed in a light-duty position in the equipment room handing out equipment. (Jt. Ex. J, Wooten Deposition, pp. 8-9) In November 2012, Robert Gordon, M.D., approved two real positions in the plant: "Whiz Belly" and "Anyl-Ray Trim." (Jt. Ex. A, p. 1) Thereafter, Mary attempted the position anyl-ray trim. She testified the job was too painful and she disqualified herself from the position on January 24, 2013. (Jt. Ex. I, p. 2) On April 25, 2013, Gregory Clem, M.D., opined that the position "Cryovac Wrapper Butts" was within her medical restrictions. (Jt. Ex. A, p. 14) Just a few weeks later, Mary reported to the medical department with pain in her fingers and shoulder. (Jt. Ex. O, p. 7) Her supervisor reported she was not actually doing the full job and she could not keep up. She was disqualified from the position on May 15, 2013. (Jt. Ex. I, p. 5) The employer then placed Mary on a medical leave of absence, although the paperwork suggested it was personal. (Jt. Ex. I, p. 6)

Robert Gordon, M.D., evaluated Mary for the employer on May 30, 2013. (Jt. Ex. A, p. 21) He correctly reported her work history and noted that she had developed

numbness and tingling in her hands, in addition to an increase of left shoulder pain. He suspected carpal tunnel and ordered an EMG. (Jt. Ex. A, pp. 22-23) Tyson processed this as a new injury and provided treatment.

Dr. Clem diagnosed her with bilateral carpal tunnel in July 2013. (Jt. Ex. A, p. 25; Jt. Ex. E, p. 1) She followed up with Brian Wills, M.D., in September 2013. Mary proceeded with surgery thereafter, and healing period payments were commenced effective November 19, 2013. (Jt. Ex. L, p. 5) This was the date of her surgery on the left. (Jt. Ex. F, p. 7) She continued to follow up with Dr. Wills and ultimately had a good outcome on the left. (Jt. Ex. F, p. 18) Surgery on the right was performed on June 4, 2014. (Jt. Ex. F, p. 22) She again underwent care following the surgery. In December 2014, Dr. Wills again noted that she had made good progress. He refused to place Mary at maximum medical improvement. (Jt. Ex. F, p. 16) In March 2015, he opined that had reached maximum medical improvement and provided a four percent rating on the right side and zero on the left. (Jt. Ex. F, p. 30) He revised his ratings at counsel's request in December 2015. My reading of his report is that he provided ratings for both arms, combined them and came up with a five percent whole body rating. (Jt. Ex. F, pp. 31-32)

Dr. Neiman re-evaluated Mary and provided an updated report on June 24, 2015. (Jt. Ex. G) He opined there was no change in her permanent impairment on the left and that she has a 23 percent whole person impairment for her bilateral arm injury. (Jt. Ex. G, p. 4)

Mary applied for and was awarded Social Security Disability benefits. (Jt. Ex. H, p. 13) The Social Security Administration based the award on the following impairments: asthma, obesity, sleep apnea, osteoarthritis and carpal tunnel syndrome. (Jt. Ex. H, p. 10)

CONCLUSIONS OF LAW

File No. 5033585:

The first question submitted is whether the claimant timely filed her claim. I find that she has.

Claimant filed the review-reopening petition on December 12, 2013. According to the defendant, the last payment on the 2009 injury was made on January 2, 2012. Claimant's counsel listed the date of injury as May 15, 2013, however, clearly indicated that it was a review-reopening case. In June 2015, claimant's counsel amended the petition injury date alleging May 15, 2013, was essentially a typographical error. Claimant's counsel alleged that his discovery requests referenced the August 2009 injury and that defendant was aware of the nature of the claim. Defendant moved to strike the amendment on June 11, 2015. On August 11, 2015, Deputy Commissioner William H. Grell allowed the amendment.

> Although defendant is correct that permitting the amendment may eliminate the statute of limitations defense it could otherwise assert, I find that it is proper to permit the proposed amendment and proceed to resolution of this review-reopening claim on the merits rather than based on a procedural defect. Therefore, exercising the agency's discretion of such matters, I conclude that the proposed amendment should be permitted and that the motion to strike should be overruled.

(Ruling on Defendant's Motion to Strike Amendment, Aug. 11, 2015).

Defendant raised the statute of limitations defense at hearing. The law regarding statute of limitations is well-established and not in controversy.

Iowa Code section 85.26(2) permits either the employee or the employer to timely bring a review–reopening proceeding after either an award of weekly benefits or an agreement for settlement under section 85.13, provided that the proceeding is commenced within three years from the date of the last payment of weekly benefits under the award or agreement.

That the employee failed to bring a proceeding within the required time period is an affirmative defense which the employer must plead and prove by a preponderance of the evidence. See Dart v. Sheller-Globe Corp., II Iowa Industrial Comm'r Rep. 99 (App. 1982).

I agree with the ruling of Deputy Commissioner William H. Grell. Claimant filed her review-reopening petition within three years of the last payment on the AFS. Claimant's counsel initially listed an incorrect date on that petition. Since the amendment was allowed and defendant has defended the claim on the merits, there is no statute of limitations defense.

The next question is whether claimant demonstrated that her condition warrants an increase of compensation under the applicable review-reopening standards.

In a proceeding to reopen an award for payments or agreement for settlement as provided by Iowa Code section 86.14, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon. Iowa Code section 86.14(2) (2013). In order to demonstrate eligibility for an increase of compensation under section 86.14(2), the claimant must demonstrate what her physical or economic condition was at the time of the original award or settlement. At a subsequent review-reopening hearing, claimant has the burden to prove that there is a substantial difference in such condition which warrants an increase in compensation. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009).

The difference can be economic or physical. Blacksmith v. All-American Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959).

> One basis for increasing compensation is an increase in industrial disability proximately caused by the injury subsequent to the date of the original award. Deaver v. Armstrong Rubber Co., 170 N.W.2d 455, 457 (Iowa 1969). See also Meyers v. Holiday Inn of Cedar Falls, 272 N.W.2d 24 (Iowa Ct. App. 1978) (same rule applies when increased disability results from failure of a diagnosed condition to improve to the extent anticipated). An increase in industrial disability may occur without a change in physical condition. A change in earning capacity subsequent to the original award which is proximately caused by the original injury also constitutes a change in condition under section 85.26(2) and 86.14(2). See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181, 192 (Iowa 1980); 3 A. Larson, The Law of Workmen's Compensation, § 81.31, at 15-502 (1976).

Blacksmith, 290 N.W.2d at 350.

Essentially, two snapshots of the claimant's condition are taken; one in each hearing. The claimant must prove that there is something substantially different between the two snapshots such that it warrants an increase in benefits. Gosek v. Garmer & Stiles Co., 158 N.W.2d 731, 735 (Iowa 1968).

The principles of res judicata apply and the agency should not reevaluate facts and circumstances that were known or knowable at the time of the original action. Kohlhaas at 392. Review-reopening is not intended to provide either party with an opportunity to relitigate issues already decided or to give a party a "second bite at the apple." The agency, however, is forbidden from speculating as to what was contemplated at the time of the original snapshot. Id.

In this case, I find that Mary's physical condition in her left shoulder did not change following the injury. Her left shoulder diagnosis and impairment was unchanged. In fact, her own IME physician acknowledged this. She had no new course of treatment, including medications, surgery or even palliative care. She was provided no new restrictions. She did have a temporary increase in her symptoms of pain when she attempted a new position in approximately May 2013. There is no evidence in this file that her added pain became permanent or even continued significantly beyond the immediate May 2013 timeframe. Simply stated, no significant change in her physical condition has been proven.

When comparing the two snapshots, however, I find there is a dramatic change in the claimant's economic condition which is directly related to her 2009 left shoulder injury. As of the date of the first snapshot (AFS), September 22, 2011, the claimant was gainfully employed as a welfare janitor. Based upon the record before me, it appears the "welfare janitor" position was a real job within the plant with real custodial duties. The position appeared secure. Mary's earnings were good, she had good benefits and she was performing productive work for the employer within her permanent medical restrictions, which were no reaching above the shoulder and only occasionally pushing and pulling with the left arm.

At the time of the second snapshot, January 5, 2016, Mary's economic condition had been turned upside down. The position of "welfare janitor" had been eliminated. The elimination of the position was allegedly due to "outsourcing." Mary was temporarily placed in a light-duty position in the equipment room while she was allowed to bid on other jobs. Prior to her forced leave of absence, Mary briefly attempted two other gainful jobs for the employer. She attempted to work the position anyl-ray trim in January 2013. She testified she disqualified herself from this job because it was too difficult with her shoulder condition. I believe her. In May 2013, she attempted the position cryovac wrapper butts. Her employer disqualified her from this job because she was too slow. Mary testified she could not keep up because of her left shoulder pain which is documented in medical reports. Again, I believe her. She also developed a new bilateral arm injury from that job. At that point, Mary was compelled by the employer to take a leave of absence. The employer determined there was no work for her within the plant. But for her work injury, she would not have had a significant increase in her industrial disability.

Under the applicable law, the difference in these snapshots constitutes a significant change in her economic condition warranting review-reopening.

The next question is the extent of the claimant's industrial disability.

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

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

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

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

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 29, 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. 1982).

Although claimant is close to a normal retirement age, proximity to retirement cannot be considered in assessing the extent of industrial disability. Second Injury Fund v. Nelson, 544 N.W. 2d 258 (Iowa 1995). However, this agency does consider voluntary retirement or withdrawal from the work force unrelated to the injury. Copeland v. Boones Book and Bible Store, File No. 1059319, Appeal Decision (November 6, 1997). Loss of earning capacity due to voluntary choice or lack of motivation is not compensable. Id.

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

Claimant has failed to prove permanent and total disability. At the time of hearing, she had been awarded Social Security Disability, however, her left shoulder condition was not even listed as one of her significant impairments necessitating such award. After leaving Tyson, she did not attempt to look for other work. Her shoulder impairment has resulted in fairly significant permanent restrictions as outlined in this decision. It does interfere with her activities of daily living and her ability to engage in strenuous activities with her left arm and shoulder. Her condition, however, was nonoperative and did not result in a lengthy course of treatment, either before or after the AFS.

Mary, however, was 62 years old at the time of hearing. The only gainful position at the plant she could perform was a position called welfare janitor. That position was eliminated due to apparent outsourcing. After working accommodated jobs for a period of time and attempting two bid positions, she eventually was placed on a medical leave of absence from Tyson due to her inability to perform hard work without pain and her medical restrictions. Mary clearly did not wish to retire when she was removed from the plant. She was also undergoing active medical treatment for another work injury at that time.

Considering all of the factors of industrial disability, I find that the claimant has suffered a 60 percent industrial disability as a proximate result of her August 9, 2011, work injury. This entitles claimant to 300 weeks of compensation at the stipulated rate. Benefits shall commence as of the date claimant filed her petition for review-reopening. Verizon Business Network Services, Inc. v. McKenzie, 823 N.W.2d 418 (Iowa Ct. App. 2012) (Table).

File No. 5046429:

The first issue is whether the claimant is entitled to any healing period benefits for her stipulated May 15, 2013, work injury.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

The claimant was compelled to accept a leave of absence on May 15, 2013, after she was unable to perform a bid job. (Jt. Ex. I, p. 6) On the date she was placed on leave of absence, she received treatment on her bilateral hands and fingers in the medical department. (Jt. Ex. O, p. 7) She followed up a few weeks later with the company physician. The treatment focused heavily upon the bilateral arm injury. (Jt. Ex. A, pp. 21-22) It took several months for the treatment Mary needed to really get started. I find, however, that Mary's healing period for her May 15, 2013, work injury began immediately. The employer did not allow her to work or offer her suitable light-duty work immediately after the injury was reported. Mary is entitled to healing period commencing the day after she was removed from the plant through the date she attained maximum medical improvement, March 6, 2015.

The next issue is the nature and extent of claimant's permanent disability.

Under the Iowa Workers' Compensation Act permanent partial disability is categorized as either to a scheduled member or to the body as a whole. See section 85.34(2). Section 85.34(2)(a)-(t) sets forth specific scheduled injuries and compensation payable for those injuries. The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). Compensation for scheduled

injuries is not related to earning capacity. The fact-finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

In this case, the parties have stipulated that the injury and disability are to Mary's bilateral arms and hands. As such, her disability is evaluated under Iowa Code section 85.34(2)(s). The disability is evaluated based upon the loss of function and is capped at 500 weeks. Under subsection 85.34(2)(s),permanent total disability benefits may be awarded if warranted.

The AMA Guides to the Evaluation of Permanent Impairment, Fifth edition, has been adopted as a guide for determining an injured worker's extent of functional disability. 876 IAC section 2.4. In making an assessment of the loss of use of a scheduled member, however, the evaluation is not limited to the use of the AMA Guides. Lay testimony and demonstrated difficulties from claimant must be considered in determining the actual loss of use so long as loss of earning capacity is not considered. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420, 421 (Iowa 1994); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936). Notwithstanding suggestions to the contrary in the AMA Guides, this agency has a long history of recognizing that the actual loss of use which is to be compensated is the loss of use of the body member in the activities of daily living, including activities of employment. Pain which limits use, loss of grip strength, fatigability, activity restrictions, and other pertinent factors may all be considered when determining scheduled disability. Bergmann v. Mercy Medical Center, File Nos. 5018613 & 5018614, (App. March 14, 2008); Moss v. United Parcel Service, File No. 881576 (App. September 26, 1994); Greenlee v. Cedar Falls Community Schools, File No. 934910 (App. December 27, 1993); Westcott-Riepma v. K-Products, Inc., File No. 1011173 (Arb. July 19, 1994); Bieghler v. Seneca Corporation, File No. 979887 (Arb. February 8, 1994); Ryland v. Rose's Wood Products, File No. 937842 (Arb. January 13, 1994); Smith v. Winnebago Industries, File No. 824666 (Arb. April 2, 1991).

Based upon the evidence in the record, I find that Mary is not permanently totally disabled as a result of her bilateral arm injury. I find that the best evidence of her functional loss of use of her bilateral hands and arms is the final medical opinion of Dr. Wills. The claimant has sustained a 5 percent whole body loss of function as a

result of her work injury. (Def. Ex. F, pp. 31-32) This entitles her to 25 weeks of benefits commencing the date she reached maximum medical improvement.

The employer is not entitled to any apportionment or credit. See Iowa Code section 85.34(7) (2015). The employer is, however, entitled to a credit for benefits previously paid on this claim.

The claimant is not entitled to any penalty under Iowa Code section 86.13 (2015). The claimant alleges the employer had no reasonable excuse for delaying the commencement of healing period payments. I find that the defendant had a reasonable excuse for delaying the payment of healing period payments. I find that claimant's medical situation was fairly complicated at the time she was taken off work. Because she was not placed on formal medical restrictions for her bilateral arms and hands until surgery was recommended, the defendant had a reasonable excuse for not paying benefits. While I have rejected that defense herein, it was fairly debatable.

ORDER

THEREFORE IT IS ORDERED

With regard to File No. 5033585:

Defendant shall pay the claimant three hundred (300) weeks of benefits at the stipulated rate of three hundred sixty-eight and 07/100 dollars ($368.07) per week commencing December 12, 2013.

Defendant shall pay accrued weekly benefits in a lump sum.

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

Defendant is entitled to a credit for all benefits previously paid on this file.

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

Costs are assessed to defendant.

With regard to File No. 5046429:

Defendant shall pay claimant healing period benefits commencing May 16, 2013, through March 6, 2015, at the stipulated rate of three hundred sixty-five and 96/100 dollars ($365.96) per week.

Defendant shall pay twenty-five (25) weeks of permanent partial disability commencing March 7, 2015, at the stipulated rate of three hundred sixty-five and 96/100 dollars ($365.96) per week.

Defendant shall pay accrued weekly benefits in a lump sum.

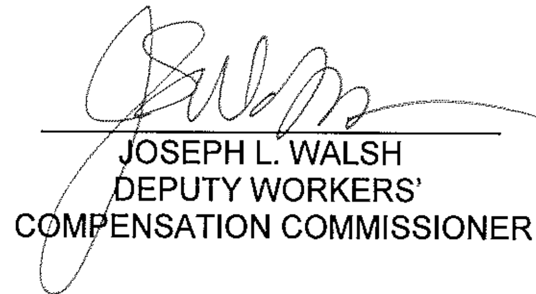
Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendant is entitled to a credit for all benefits previously paid on this file.

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

Costs are assessed to defendant.

Signed and filed this 31st day of January, 2017.



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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.