BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RASIM NUHANOVIC, Claimant, vs. TYSON FRESH MEATS, INC., Employer, Self-Insured, Defendant.	:	File No. 5059062 ARBITRATION DECISION Head Notes: 1803, 2700

STATEMENT OF THE CASE

Rasim Nuhanovic, claimant, filed a petition in arbitration seeking workers' compensation benefits from Tyson Fresh Meats, Inc. (Tyson) as a result of an injury he sustained on January 4, 2017 that arose out of and in the course of his employment. This case was heard in Des Moines, Iowa and fully submitted on February 5, 2019. The evidence in this case consists of the testimony of claimant, Joint Exhibits 1 - 8, Defendant's Exhibits A - J and Claimant's Exhibits 1 - 8. Both parties submitted briefs. The hearing was interpreted.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

1. Whether claimant has work injuries in addition to the admitted bilateral shoulder injury.

2. The extent of claimant's industrial disability.

3. Whether claimant is entitled to alternate medical care.

4. Assessment of costs.

FINDINGS OF FACT

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

Rasim Nuhanovic, claimant, was 52 years old at the hearing. Claimant was born in Bosnia. His primary language is Bosnian and he does not speak or read any other language. (Transcript page 10) Claimant went through 8th grade in Bosnia. (Exhibit B, p. 4) Claimant has no additional formal education.

Claimant began his work at Tyson in May of 2000. (Tr. p. 11) Claimant had a pre-employment physical and had no restrictions. (Tr. p. 12; JE. 1, p. 3)

Claimant was working the first mark job at Tyson when he injured his shoulders on January 4, 2017. (Tr. p. 13) Claimant had severe pain in his neck, shoulders and arms on January 4, 2017. Claimant had previously experienced pain while working; however, on January 4, 2017 claimant was unable to turn his neck. (Tr. p. 13)

Claimant received treatment and was put on light duty by Robert Gordon, M.D. and returned to full duty March 14, 2017. (Tr. p. 14)

Claimant testified that he had right shoulder surgery on February 1, 2018, requalified for the first mark job in June 2018 and worked that job without restrictions when he requalified. (Tr. p.23)

At the time of the hearing claimant was performing the first mark job on a restricted basis since November 2018. (Tr. p. 23) Claimant reported an increase of pain in his arms, hands and wrists on November 27, 2018 based upon his January 4, 2017 injury. (JE. 1, p. 26) Claimant testified that he was having pain in his hands, arms and elbows as well as his shoulders. (Tr. p. 27) Claimant said that his general supervisor asked the nurse if he could work for ten minutes and rest for 50 minutes. That was agreed to, and as of the end of November 2018 up until the hearing date claimant works for ten minutes and then takes a fifty-minute break. (Tr. p. 22) Claimant does not throw hams onto a belt, which he did before his injury. (Tr. p. 23) Claimant testified that the throwing hams is mostly performed in the wintertime. (Ex. H, p. 27) Claimant's job description notes that the average weight of hams is eight pounds and is produced depending on demand. (Ex. 4, p. 20) Claimant testified that after he returned to work and was placed on the east side of the work area he had pain in his left hand and his elbow was swollen. (Tr. p. 25)

Claimant testified he has pain in his shoulders and pain in his neck. Claimant cannot turn his head and tilt it as much. (Tr. p. 24) Claimant said that he received an injection in his neck by Dr. Hawkins in March 2018. Claimant said he was told that he should have surgery for his neck and would like treatment to ease his pain. (Tr. p. 26)

On cross-examination claimant was asked if the restrictions he was currently under were for the hand and arm. Claimant testified,

> A. I went to see a nurse about pain that I was having, and they were asking - - I told them that I was having pain in my hands and arms and elbows. They asked if I was having pain in my shoulders, and I said yes. They wanted to send me to a different position.
>
> And then the general supervisor came and asked the nurse if I can go back to my own line and work 10 minutes and rest for 50.
>
> Q. And so you're still working first mark with those restrictions?
>
> A. Yes.

(Tr. p. 27) Claimant was working 40 hours a week at the time of his hearing. (Tr. p. 28)

Claimant has requested reimbursement of $1,207.82 in total costs. (Ex. 7, p. 28) The claimant is requesting the filing fee and service costs of $113.12, the $31.50 cost of claimant's deposition and $1,063.20 for a report prepared by Stanley Mathew, M.D.

I find claimant's gross earnings at the time of the injury were $762.63 and that he was married and entitled to two exemptions. Claimant's weekly workers' compensation rate is $499.10.

Dr. Gordon saw claimant on March 14, 2017 for complaints of, "... pain in his cervical region, pain/numbness/tingling of the entirety of his left upper extremity, right shoulder pain, right lateral elbow region pain." (JE. 4, p. 30) Claimant reported to Dr. Gordon that he had symptoms for about two years and the symptoms became worse with his current job of first mark. (JE. 4, p. 30) Dr. Gordon's diagnostic impression was,

1. Cervical pain with radiation of pain of his cervical region down into his left upper extremity. Question element of radiculopathy.

2. Left shoulder glenohumeral region pain – question tendinopathy/subacromial bursitis.

3. Right shoulder pain – question subacromial bursitis/rotator cuff tendinitis.

4. Right lateral epicondylar pain.

(JE. 4, p. 30) On March 31, 2017 Dr. Gordon saw claimant. Dr. Gordon placed claimant at maximum medical improvement (MMI) for his right shoulder at that visit. (JE. 4, p. 32)

Claimant was examined by Chad Abernathey, M.D. on April 26, 2017 for neck pain with intermittent radiation into the left upper extremity since February 2017. (JE. 3, p. 28) Dr. Abernathey reviewed an MRI of the C-spine which showed diffuse degenerative changes at multiple levels with osteophyte formation and minimal stenosis. The most pronounced findings were at C5-6 and C6-7. (JE. 3, p. 28) Dr. Abernathey's impression was cervical strain consistent with osteoarthritis of the C-spine. Dr. Abernathey recommended conservative treatment and that claimant may benefit from an ESI. (JE. 3, p. 28) Dr. Abernathey wrote, "I advised the patient that I do not believe that his current presentation is work related since his findings are consistent with degenerative change and he does not have any specific event that would have caused any acute changes on his imaging studies." (JE. 3, p. 28) On May 10, 2017 Tyson informed claimant that Tyson did not consider his cervical condition to be caused by his work at Tyson based upon Dr. Abernathey's report. (Ex. A, p. 1)

On April 27, 2018 Thomas Gorsche, M.D. examined claimant for his shoulder condition. Dr. Gorsche noted that he was to evaluate the left shoulder, but claimant said his right shoulder was bothering him. (JE. 5, p. 54) Dr. Gorsche's impression was,

> #1 possible bursitis RIGHT shoulder.
>
> #2 cervical disc with a [sic] left-sided complaints related to the disc.
>
> #3 MRI findings of the LEFT shoulder are not the cause of his pain. In my opinion the LEFT upper extremity complaints are related to the C-spine.

(JE. 5, p. 55) Dr. Gorsche provided an injection in the right shoulder. On June 1, 2017 Dr. Gorsche said he believed claimant's left upper extremity symptoms were related to his neck and that claimant had about five days of relief from the injection. (JE. 5, p. 56) Another injection was provided for the right shoulder. (JE. 5, p. 56)

Dr. Gordon saw claimant on April 28, 2017 after claimant had an MRI of the cervical spine and left shoulder. Dr. Gordon's diagnostic impression was,

1. Cervical pain with radiation of pain down into his left upper extremity. I do believe likely this is radiculopathy. MRI did reveal multi-level degenerative changes with associated multi-level neuroforaminal stenosis.

2. Left shoulder glenohumeral region pain – question whether he does have element of tendinopathy that is causing this, but it is also quite possible his symptoms of his shoulder are emanating from his cervical spine.

3. Right shoulder pain. This is at MMI.

4. Right lateral epicondylar pain. This is at MMI.

(JE. 4, p. 35) On June 13, 2017 Dr. Gordon noted that an electrodiagnostic study of May 18, 2017 of the left upper extremity was negative. (JE. 4, p. 37) Based upon the reports of Dr. Abernathey and Dr. Gorsche and his own evaluation, Dr. Gordon discharged claimant from care without any permanent restrictions or permanent impairment. He advised claimant to, "... work progress back to full duty." (JE. 4, p. 38) On December 19, 2017 claimant reported neck and bilateral shoulder pain to Dr. Gordon. Claimant told Dr. Gordon he had no new injuries. (JE. 4, p. 41) Dr. Gordon recommended a right shoulder MRI. (JE.4, p. 42) On January 3, 2018 Dr. Gordon noted that the MRI of the right shoulder showed a partial width and full-thickness tear involving the supraspinatus tendon and referred claimant back to Dr. Gorsche. (JE. 4, pp. 44, 45) On January 17, 2018 Dr. Gorsche recommended right shoulder surgery. (JE. 5, p. 58) On February 1, 2018 claimant had right shoulder surgery. The postoperative diagnosis was, "Rotator cuff tear supraspinatus right shoulder." (JE. 5, p. 60) On September 12, 2018 Dr. Gorsche found claimant to be at MMI and was given permanent restrictions of no overhead work with the right and no lifting more than 20 pounds. (JE. 5, p. 71)

On September 15, 2018 Dr. Gorsche wrote that claimant had reached MMI and provided a permanent impairment rating of 13 percent for the left shoulder and 22 percent for the right shoulder. (Ex. D, p. 170) Dr. Gorsche found that claimant could return to his position of first mark at Tyson on that date. (Ex. E, p. 18)

Claimant went to a pain clinic on January 16, 2018 and was treated by Frank Hawkins, M.D. Dr. Hawkins' impression was,

1. Cervicalgia.

2. Cervical spondylosis without radiculopathy.

3. Mild cervical stenosis at C5-6.

4. Moderate bilateral C5-6 neural foraminal stenosis.

5. Multilevel degenerative cervical disk disease worst at C4-5 and C5-6.

(JE. 7, p. 83) Dr. Hawkins wrote he could not determine if his cervical conditions were a result of his work and noted that there was no acute change in his condition. (JE. 7, p. 83) On March 7, 2017 and April 12, 2017 Dr. Hawkins provided a cervical steroid injection in the claimant's neck. (JE. 7, pp. 87, 91)

On May 3, 2018 Dr. Mathew performed an independent medical examination (IME) of the claimant. Dr. Mathew's impression was,

Chronic neck pain

Cervical radiculopathy

Enthesopathy of the cervical spine

Chronic bilateral shoulder pain

Status post right shoulder rotator cuff repair

Bilateral rotator cuff tendonitis

Bilateral upper extremity weakness

Chronic low back pain

Lumbosacral radiculopathy

Gait and balance deficits

Chronic pain related depression

(Ex. 2, p. 9) Dr. Mathew attributed all of claimant's conditions he identified to claimant's 18 years of work for Tyson. Dr. Mathew noted claimant had no complaints of pain or discomfort prior to the injury of January 4, 2017. (Ex. 2, p. 9) Dr. Mathew provided a 10 percent whole person impairment for the left shoulder, a 15 percent whole person impairment for the right shoulder and a 5 percent whole person impairment rating for the cervical spine. (Ex. 2, p. 10) Dr. Mathew stated claimant will need chronic pain management and was at risk for surgical intervention in his shoulder and cervical spine. (Ex. 2, p. 10)

On August 29, 2018 claimant had a functional capacity evaluation (FCE) performed. The claimant was tested for the ability to perform lifting. (Ex. C, p. 7) The FCE concluded claimant could perform medium work below shoulder height. The specific recommendations were

- Waist to floor lifting – 15 lbs., occasionally
- 12" to waist lifting – 25 lbs., occasionally
- Waist to shoulder lifting – 20 lbs., occasionally
- Waist to overhead lifting – Avoid
- Bilateral carrying – 25 lbs., occasionally
- Horizontal pushing/pulling – 20 lbs. of force, occasionally
- Right unilateral forward reaching – Frequently

- Right unilateral overhead reaching – Avoid

(Ex. C, p. 8)

On October 12, 2018 Dr. Mathew reevaluated the claimant. Dr. Mathew noted that claimant recently had a right shoulder injection that provided minimal relief and claimant has had two injections in his cervical spine. Concerning the impairment rating, he said he would maintain the same ratings and have claimant avoid lifting more than 15 pounds. Dr. Mathew diagnosed claimant with, "Chronic Elbow Pain, chronic elbow weakness, and medial/lateral epicondylitis." (Ex. 1, p. 3)

I find that the 15 pound lifting restriction is claimant's lifting restriction.

On October 28, 2018 Dr. Gorsche reviewed a report of Dr. Mathew. Dr. Gorsche noted that the impairment rating and restrictions Dr. Mathew provided were similar to his ratings and restrictions. Dr. Gorsche noted that he attributed some of claimant's left shoulder to a work injury and that he has no comment on any impairment rating for claimant's spine. (Ex. G. p. 23)

CONCLUSIONS OF LAW

The parties stipulated claimant has a bilateral shoulder injury that arose out of and in the course of his employment at Tyson. The parties dispute whether claimant's neck condition and bilateral arm, elbow and hand conditions are related to the January 4, 2017 work injury.[1]

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

[1] The parties submitted a number of documents concerning a lumbar spine injury. Any lumbar/lower back injury is not part of this decision and I have not considered the lumbar injury in either my findings of fact or conclusions of law.

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

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

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

The parties stipulated to a bilateral shoulder injury. The parties dispute that claimant's cervical spine, arms, elbow and hands are causally related to the January 4, 2017 work injury.

Claimant has presented scant evidence that his arm, hand and elbow injuries are related to his January 4, 2017 injury. There is no causation opinion that links claimant's arm, hand and elbow conditions to the January 4, 2017 permanent work injury. Dr. Mathew implies that those conditions were causally related; however, that is not

sufficient to meet claimant's burden of proof. No physician has stated the arm, hand and elbow conditions are a sequela to the January 4, 2017 injury. Claimant has not met his burden of proof that his arms, hands and elbows injuries were related to his January 4, 2017 work injury and arose out of and in the course of his employment at Tyson.

Claimant had a degenerative condition in his cervical spine as of January 4, 2017. I find claimant has met his burden of proof to show that the cervical condition was permanently aggravated and lighted-up by his work with Tyson. The claimant's cervical neck symptoms occurred at the same time as his bilateral shoulder conditions. I find Dr. Mathew's opinion convincing. Dr. Mathew found the claimant's shoulder and neck pain to be related to his work with Tyson.

Dr. Abernathey and Dr. Hawkins noted that claimant had no acute injury. That does not address the issue as to whether claimant's work permanently aggravated his degenerative cervical spine condition. Dr. Gordon and Dr. Gorsche relied upon the opinion of Dr. Abernathey. I do not find Dr. Abernathey's opinion persuasive, as he did not address in a convincing manner as to whether claimant's work at Tyson permanently aggravated his condition.

When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Comm'r. Report 281 (App. 1982), a torn rotator cuff was found to cause disability to the body as a whole. For injuries occurring after June 30, 2017 the shoulder has become a scheduled member injury. See Iowa Code section 85.34(2) On (2018). Claimant's shoulder injuries occurred on January 4, 2017 and are considered a whole body impairment based upon the law in effect at the time of these injuries. Claimant's cervical spine condition is an injury to the whole body.

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.

In assessing an unscheduled, whole body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

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

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

At the time of the hearing claimant was working under a very severe restriction of working 10 minutes and resting 50 minutes. This is not competitive work. However, the restrictions have not been adopted by a medical provider. The work for 10 and rest for 50 minutes appears to be related to shoulder, arm, back, elbow and hand complaints. The current restrictions claimant is working under are more than what are required due to the bilateral shoulder and cervical neck injury. As such, I am not using those restrictions in my industrial disability assessment.

I previously found claimant has a 15-pound lifting restriction due to his bilateral shoulder and cervical injury. The 15-pound limitation is consistent with Dr. Mathew's restrictions and claimant's medical history.

The FCE stated claimant could perform medium work below shoulder level. The FCE's description of medium work is out of step with the Social Security Administration of medium work which is found in the Code of Federal Regulations.

20 CFR § 404.1567(c). Physical exertion requirements provide,

> c) Medium work. Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work.

While this agency has not adopted any standardized definition of medium work it does not appear claimant can perform all aspects of light work, let alone medium work. Almost all lifting was limited to the 20 to 25-pound range occasionally, according to the FCE. Claimant's work on the first mark line requires thousands of repetitive motions in a day. Claimant is not able to lift the hams to a separate line. Under the FCE or Dr. Mathew's restrictions claimant cannot perform all functions of his first mark job.

Claimant has a very limited education. He does not speak English. Claimant has shown strong motivation to work. Until his supervisors imposed restrictions in November 2018 claimant was preforming work on the first mark job. Claimant's only work in the United States has been for Tyson.

I find claimant has a 70 percent loss of earning capacity. I find claimant has a 70 percent industrial loss entitling claimant to 350 weeks of permanent partial benefits. At the time of the hearing claimant was still employed at Tyson.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

As I have found claimant's cervical condition is related to his work at Tyson and is part of his January 4, 2017 injury defendant shall provide reasonable medical care for this condition.

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides:

> [c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The administrative rule expressly allows for the recovery of the costs. I award claimant costs of $1,207.82.

ORDER

Defendant shall pay claimant three hundred fifty (350) weeks of permanent partial disability benefits at the weekly rate of four hundred ninety-ninety 10/100 dollars ($499.10) commencing September 13, 2018.

Defendant shall have a credit for permanent partial disability benefits previously paid to the claimant.

Defendant shall provide medical care as set forth in this decision.

Defendant shall pay claimant costs in the amount of one thousand two hundred seven and 82/100 dollars ($1,207.82).

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

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

Signed and filed this 18th day of June, 2019.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

J. Richard Johnson
Attorney at Law
1636 - 42nd St. N.E.
Cedar Rapids, IA 52402
rjohnson@jllawplc.com

James L. Drury II
Attorney at Law
800 Stevens Port Dr., Ste. 713
Dakota Dunes, SD 57049-5005
Jamey.drury@tyson.com

JFE/sam

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.