BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NOAH J. KRELL,

Claimant,

vs.

LARSON CONTRACTING CENTRAL, LLC,

Employer,

and

AUTO-OWNERS INSURANCE,

Insurance Carrier,
Defendants.

File No. 5055555

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Noah Krell, claimant, filed a petition for arbitration against Larson Contracting Central, L.L.C., as the employer and Auto-Owners Insurance as the insurance carrier. An in-person hearing occurred on March 24, 2017 in Des Moines.

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.

The evidentiary record includes claimant's exhibits 1 through 18 and defendants' exhibits A through D. All exhibits were admitted without objection. Claimant testified on his own behalf. Defendants called Levi Bachtle and Jeffrey Myer to testify. The evidentiary record closed at the end of the March 24, 2017 hearing.

However, the parties requested the opportunity to file post-hearing briefs. The parties' request was granted. The case was considered fully submitted to the undersigned once the attorneys served the parties' well-drafted, yet concise, post-hearing briefs on April 7, 2017.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury on July 21, 2015 that arose out of and in the course of his employment, including an assertion that the injury was the result of horseplay.

2. Whether claimant is barred from recovery pursuant to Iowa Code section 85.16(3) because the injury was the result of a willful act of a third party directed against the employee for reasons personal to the employee.

3. Whether claimant is entitled to an award of healing period benefits from July 22, 2015 through September 28, 2015.

4. Whether claimant sustained permanent disability as a result of the alleged July 21, 2015 injury and, if so, the extent of claimant's entitlement to permanent disability benefits.

5. Claimant's applicable average gross earnings and applicable weekly rate on July 21, 2015.

6. Whether claimant is entitled to payment or reimbursement of past medical expenses.

7. Whether costs should be assessed against either party.

FINDINGS OF FACTS

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

Noah Krell is a 21 year-old man that suffered a right ankle injury on July 21, 2015. Mr. Krell was working for Larson Contracting Central, L.L.C. on the date of injury. He was on an afternoon break at the time of his injury.

The construction crew was sitting under a shade tree during their break. It was customary and anticipated for construction crews working for this employer to engage in joking and verbal banter with each other, particularly during a break. As was the anticipated, common, and permitted custom, Mr. Krell engaged in verbal banter and teased a co-worker about his personal life.

The co-worker apparently took exception with the comments and tackled claimant. In the process, Mr. Krell's right ankle was fractured. Mr. Krell's assailant was subsequently terminated for his actions. No disciplinary action was taken against Mr. Krell following this incident.

Co-workers testified that such banter was common and expected. Claimant testified similarly. It is found that verbal banter and joking commonly occurred among workers for Larson Contracting and that such verbal banter and joking was anticipated and permitted by the employer.

Defendants contend that the claimant's engagement in this verbal banter or personal joking occurred outside of the scope of employment because it occurred during a break at a location that was off the jobsite. Indeed, the banter and injury did occur during a break. I find that the incident occurred during a paid afternoon break and not while specific work activities were being performed.

The injury also occurred on property of a neighbor to the job site. The construction crew members apparently took their break on neighboring property under the shade of a tree. This would be a reasonable option given that the weather in July in Iowa can be quite hot at times.

Many of the members of this construction crew were sitting under the shade tree during the scheduled break. It was clearly known by the employer that employees were doing this and appears to be a reasonable and permissible place for employees to enjoy their break. The location of the injury was approximately 25 feet from the job site where claimant worked. I find that the location and timing of this injury were near the actual work site and that claimant did not substantially deviate from his job duties during this paid break.

Defendants also contend that claimant was actively engaged in horseplay at the time of his injury. Claimant denies being actively engaged in horseplay and testified that he tried to stop the assailant before the injury occurred. I find that this was a spontaneous event. Claimant was attacked by his assailant without warning after his verbal banter. Claimant was certainly engaged in the verbal banter that lead to the assault, but was not actively engaged in the physical contact or physical horseplay aspects of this incident.

Mr. Krell admits that he made a comment to his assailant about his personal life. Mr. Krell asserts that the comment was made in jest and was joking in manner. Defendants' witness, Levi Bachtle, confirmed that the comment made by Mr. Krell was made in a joking manner. Mr. Bachtle also testified that he believes claimant was attempting to get away when he was attacked. He also confirmed that the verbal banter was commonplace at this workplace. Mr. Bachtle was a foreman or supervisor at the worksite where this injury occurred.

Defendants also called Jeffrey Myers to testify. Mr. Myers is a lead man for the employer. He confirmed that claimant's comments were joking in nature and that such banter was common. He also confirmed that it appeared claimant was attempting to flee when he was attacked.

Although the record establishes that verbal banter and joking were common, anticipated and permitted on this job site, the record is also clear that the employees knew that physical assaults and altercations were not permissible under any circumstances on this employer's jobsites. Therefore, I find that the employees knew that physical altercations were not permissible and were a deviation from acceptable work standards.

Mr. Krell did not know his assailant other than through work. He had only worked with the assailant for a couple of days before this injury. Although the assailant clearly intended to tackle claimant, I find that the attack was not due to anything personal in nature to the claimant, other than the anticipated and common banter and joking that occurred during the crew's afternoon break.

After he was injured, Mr. Krell attempted to return to work. After about an hour, claimant could not continue to work and went to the emergency room. He was diagnosed with a fractured distal fibula. His leg was initially splinted due to swelling and later casted. Unfortunately, Mr. Krell also developed blood clots in the right leg.

Mr. Krell was taken off work and was medically restricted from performing substantially similar work from the date of his injury through September 28, 2015. He was released without restrictions and declared to have achieved maximum medical improvement as of September 28, 2015.

The treating physician indicated that claimant would not have a permanent disability rating as a result of this injury. However, claimant's independent medical evaluator, Sunil Bansal, M.D., evaluated claimant on September 2, 2016, and identified permanent impairment. Specifically, Dr. Bansal identified permanent impairment related to claimant's loss of range of motion in the right ankle and permanent impairment related to his development of blood clots. In total, Dr. Bansal identified nine percent permanent impairment of the right leg as a result of this injury.

Dr. Bansal evaluated claimant long after the treating physician had released claimant. The finding of residual loss of range of motion months after claimant's release by the treating physician suggests that claimant has had some permanent functional loss in his right ankle. Similarly, his development of blood clots is obvious. Although claimant testified that he is able to do most activities and is actually symptomatically better if he stays active, I find that he has sustained permanent disability. I accept Dr. Bansal's impairment rating as accurate and convincing and find that claimant has proven he sustained a nine percent permanent impairment of the right leg as a result of the July 21, 2015 injury.

Mr. Krell also seeks reimbursement or payment of medical expenses itemized in claimant's exhibit 17. Pursuant to the parties' stipulations, those medical expenses are related to the treatment of Mr. Krell's right ankle after the July 21, 2015 injury. (Hearing Report) I specifically find that the medical expenses itemized in claimant's exhibit 17 are causally related to the July 21, 2015 right ankle injury.

The final factual dispute between the parties is whether the claimant's earnings for the week of May 31, 2015 are customary and representative of claimant's typical gross weekly earnings before this injury. The parties' briefs acknowledge that all other weeks are agreed upon and the undersigned only need determine if the week of May 31, 2015 is customary and should be included in the calculation or claimant's weekly rate or excluded as non-representative.

Claimant urges that the wages for the week of May 31, 2015 are not representative and should be excluded. Claimant argues that claimant worked 24.53 hours during the week of May 31, 2015 and the next lowest number of hours worked in a given week were 33.9 hours. Claimant contends that the significant variance demonstrates that the week of May 31, 2015 is not representative.

Defendants contend that claimant was working in a construction job. The number of hours available to work each week varied with the weather and available work, both of which are accurate facts under this record. Defendants contend that there is no evidence in this record demonstrating that a work week of 24.53 hours was not representative of a typical week.

Both parties assert accurate factual information in support of their position. Ultimately, I find that there was a fairly significant deviation between the week of May 31, 2015 and other included weeks of wages. However, there is no evidence in this record to explain why there was a deviation the week of May 31, 2015. There are clearly variances and the only explanation offered in this record is related to weather, which was common and typical according to those testifying at hearing. Therefore, I find that based upon the record presented, the week of May 31, 2015 is representative of claimant's typical or customary earnings. I find that the claimant's gross average weekly earnings at the time of this injury were $512.72.

CONCLUSIONS OF LAW

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.

Defendants' initial challenge is that claimant's injury did not occur on the work premises and occurred during a break. Defendants contend that claimant's injury, therefore, did not occur in the course of his employment.

Claimant's injury occurred in close proximity to the work site. It would not be unreasonable for workers to seek shade during a summer day during a break period. Many of the employees were in the location where the injury occurred and it was obviously during a scheduled work break. Having found that claimant was at an anticipated location that was permissible by the employer during a scheduled work break, I conclude that claimant remained within the course of his employment at the time of his injury.

Defendants next challenge the compensability of claimant's injury under a "horseplay defense." The "horseplay defense" is not an affirmative defense but a challenge to whether the alleged injury arose out of and in the course of employment. Claimant bears the burden to overcome the "horseplay defense" by establishing that his injury arose out of and in the course of employment. Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 254-255 (Iowa 2010).

Horseplay in which an injured employee instigates the activity or actively participates does not arise out of and in the course of employment. Id. at 255; Ford v. Barcus, 261 Iowa 616, 623, 155 N.W.2d 507, 511 (1968); Wittmer v. Dexter Mfg. Co., 204 Iowa 180, 185, 214 N.W.2d 700, 702 (1927). On the other hand, not all acts of horseplay bar recovery. Vegors, 786 N.W.2d at 255. Instead, the relevant factual and legal question is whether the injured employee's actions substantially deviated from the employment activities so as to remove claimant from the course of his employment. Id.

Alternatively, if claimant can prove that he was not the instigator and not actively engaged in the horseplay that resulted in his injury, his claim is compensable. Id. at 254. Therefore, the initial factual question in this case is whether claimant actively participated in the horseplay that resulted in his injury. In this case, I found that claimant was not actively involved in the horseplay that resulted in his leg injury.

Although Mr. Krell was involved in verbal teasing of a co-worker, such conduct was common to this workplace. Verbal teasing among co-workers was permitted and anticipated at this employer's jobsites. However, it was understood by employees that no physical contact or violence was permitted on the jobsite.

An employee's actions, including horseplay, bar recovery of workers' compensation benefits if the claimant's actions substantially deviate from the employment. The Iowa Supreme Court has identified four factors that should be considered in making a determination of whether horseplay constitutes a substantial deviation. Those factors include:

> (1) the extent and seriousness of the deviation, (2) the completeness of the deviation (i.e., whether it was commingled with the performance of

> duty or involved an abandonment of duty), (3) the extent to which the practice of horseplay had become an accepted part of the employment, and (4) the extent to which the nature of the employment may be expected to include some such horseplay.

Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 256 (Iowa 2010) (citations omitted).

In this instance, having found that the banter which claimant was engaged in prior to his injury was common, anticipated, and permitted on this jobsite, I similarly conclude that claimant's comments during a work break were not a substantial deviation from his work. Similarly, I conclude that any alleged deviation was minor and was not an abandonment of claimant's work duty. Rather, claimant's verbal banter was part of the typical workplace setting for this employer. Therefore, the first two factors outlined by the Iowa Supreme Court suggest that claimant remained within the course of his employment when injured.

As noted above, the practice of horseplay was accepted in the form of verbal banter. It was common, permitted and anticipated practice. The violent actions of claimant's aggressor were specifically precluded and known by employees to be prohibited. In this sense, I find that claimant's verbal banter was an accepted part of the employment. The third factor also weighs in favor of claimant and a conclusion that he remained within the course of his employment when injured on July 21, 2015.

The fourth factor outlined by the Iowa Supreme Court requires findings pertaining to the nature of the employment and whether it may be expected to include some horseplay. The Vegors case involved a construction site and some anticipated horseplay. Evidence in this record indicates that verbal banter and teasing were common and anticipated on this construction site.

I will not make a finding or conclusion that horseplay is anticipated or accepted on all construction sites because employers may differ on the level of horseplay they permit. However, it appears that the verbal banter that claimant engaged in was expected on this jobsite. The fourth factor does not weigh heavily in my decision, but if considered, I would conclude that the nature of this specific jobsite would include some expectation of at least verbal horseplay and banter.

Having found that claimant did not actively participate in any physical altercation, or horseplay, and having determined that each of the four factors outlined by the Iowa Supreme Court to determine deviation from employment weigh in favor of claimant, I conclude that claimant was not actively participating in the alleged horseplay and that claimant has proven his injury occurred in the course of his employment. Vegors, 786 N.W.2d 255.

Nevertheless, the employer also asserts an affirmative defense pursuant to Iowa Code section 85.16(3). Section 85.16(3) provides, "No compensation under this chapter shall be allowed for an injury caused ... [b]y the willful act of a third party directed against the employee for reasons personal to such employee."

It is clear in this record that claimant and his assailant did not know each other outside of work. Generally, an injury is not barred under section 85.16(3) if the reason for the attack and injury are limited to issues generated at work. Vegors, 786 N.W.2d 255. In this instance, I found that defendants did not prove that the reason for the attack on claimant was for reasons personal to claimant.

Rather, the reasons for the attack arose out of workplace banter and teasing that was common and expected. Claimant was participating in an activity that was expected and nothing about the attack was personal to claimant. Cedar Rapids Community School v. Cady, 278 N.W.2d 298, 303 (Iowa 1979). Therefore, I conclude that defendants failed to establish their affirmative defense pursuant to Iowa Code section 85.16(3).

Having concluded that Mr. Krell has established a compensable work injury and having concluded that the defendants failed to establish their affirmative defense, I must consider claimant's request for an award of healing period and permanent disability benefits.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

In this instance, claimant did not return to work for the employer after his injury. He was in a splint or leg cast for much of the claimed healing period and under medical restrictions that precluded performance of substantially similar work. Therefore, claimant's healing period terminated upon achieving maximum medical improvement on September 28, 2015. I conclude that the first qualifying factor for termination of healing period benefits is claimant's achievement of maximum medical improvement on September 28, 2015. Therefore, I conclude that claimant is entitled to healing period benefits from July 22, 2015 through September 28, 2015.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). 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). 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).

In this case, the parties stipulate that claimant's injury should be compensated as a scheduled member injury to the right leg. (Hearing Report) The Iowa legislature has established a 220 week schedule for leg injuries. Iowa Code section 85.34(2)(o). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of his leg. Iowa Code section 85.34(2)(v); Blizek v. Eagle Signal Company, 164 N.W.2d 84 (Iowa 1969).

Having found that Mr. Krell proved he sustained a nine percent impairment of the leg, I conclude he is entitled to a nine percent permanent disability of the right leg. Nine percent of 220 weeks equals 19.8 weeks. Claimant is, therefore, entitled to an award of 19.8 weeks of permanent partial disability benefits against the employer and insurance carrier. Iowa Code section 85.34(2)(o), (v).

The parties disputed the proper weekly rate at which benefits should be paid. As noted in the findings of fact, the parties' dispute revolves about whether the claimant's earnings for the week of May 31, 2015 should be included or excluded as representative earnings.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings that fairly represent the employee's customary earnings, however. Section 85.36(6).

In this case, I found that the claimant's earnings for the week of May 31, 2015 were customary or typical of his weekly earnings and that the only explanation for the lower number of hours worked in this record was weather related. Since I also find that weather related variances were common reasons for fluctuating hours in claimant's employment, I found that the earnings for the week of May 31, 2015 were representative. I conclude that those earnings should be included in the calculation of

claimants' weekly earnings. Having found that claimant's average gross weekly earnings prior to the date of injury were $512.72, I also accept the parties' stipulations that claimant was single and entitled to only one exemption on the date of injury.

The weekly benefit amount payable to an employee shall be based upon 80 percent of the employee's weekly spendable earnings, but shall not exceed an amount, rounded to the nearest dollar, equal to 66-2/3 percent of the statewide average weekly wage paid employees as determined by the Department of Workforce Development. Iowa Code section 85.37.

The weekly benefit amount is determined under the above Code section by referring to the Iowa Workers' Compensation Manual in effect on the applicable injury date. Having found that claimant's gross average weekly wage was $512.72, and using the Iowa Workers' Compensation Manual with effective dates of July 1, 2015 through June 30, 2016, I determine that the applicable weekly rate is $323.74.

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).

There appears to be no significant dispute that claimant required medical care and that the medical expenses he submits are causally related to his ankle injury. (Hearing Report) Having concluded that claimant established a compensable work injury, I conclude that he is entitled to payment or reimbursement of all medical expenses submitted in claimant's exhibit 17.

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

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify

for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

In this instance, defendants did not obtain a permanent impairment rating with a physician of their choosing. Therefore, claimant cannot establish the necessary prerequisites to qualify for reimbursement of Dr. Bansal's fees pursuant to Iowa Code section 85.39.

Claimant also seeks assessment of his costs and specifically his $100.00 filing fee. (Statement of Costs) Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion and recognizing that claimant has received an industrial disability award in this case, claimant's filing fee of $100.00 shall be assessed pursuant to 876 IAC 4.33(7).

Claimant also seeks assessment of his service costs totaling $13.48. Claimant's service fees are assessed pursuant to 876 IAC 4.33(3).

Finally, claimant seeks assessment of the cost of his independent medical evaluation and report performed by Dr. Bansal. Dr. Bansal's itemized billing statement does not break down the cost of preparing his written report separate of other charges. (Ex. 18, p. 117). The Iowa Supreme Court addressed a similar request for assessment of costs in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015). The Court noted that statutes permitting the assessment of costs are strictly construed. Id. at 846.

The Young Court held that the expenses associated with drafting a written report can become a cost of litigation if the report is used in lieu of the doctor's testimony. However, the expense of the examination and preparation work performed by the physician are not litigation costs that are taxable under Iowa Code section 86.40. Id. at 846. In this instance, it is not possible from review of the doctor's itemized billing statement to isolate and identify the expense specifically associated with preparation of his report. Therefore, I conclude that Dr. Bansal's fees cannot be taxed as a cost in this matter.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant weekly healing period benefits from July 22, 2015 through September 28, 2015.

Defendants shall pay claimant nineteen point eight (19.8) weeks of permanent partial disability benefits commencing on September 29, 2015.

All weekly benefits shall be paid at the weekly rate of three hundred twenty-three and 72/100 dollars ($323.72).

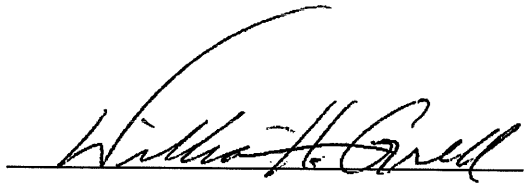
Defendants shall pay all accrued weekly benefits in lump sum, along with applicable interest calculated pursuant to Iowa Code section 85.30.

Defendants shall pay, reimburse, otherwise satisfy and hold claimant harmless for all medical expenses contained and itemized in claimant's exhibit 17.

Defendants shall reimburse claimant's costs totaling one hundred thirteen and 48/100 dollars ($113.48).

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 1ST day of November, 2017.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Martin Ozga
Attorney at Law
1441 – 29TH Street, Suite 111
West Des Moines, Iowa 50266
mozga@nbolawfirm.com

Matthew R. Phillips
Attorney at Law
801 Grand Ave., Ste. 3700
Des Moines, IA 50309-8004
Phillips.matthew@bradshawlaw.com

WHG/kjw

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