

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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ABRAHAM TARPEH,

Claimant,

vs.

TPI COMPOSITES,

Employer,

and

INSURANCE COMPANY OF THE  
STATE OF PENNSYLVANIA,

Insurance Carrier,  
Defendants.

**FILED**

OCT 31 2017

WORKERS COMPENSATION

File Nos. 5056435, 5056436

ARBITRATION DECISION

Head Note Nos.: 1803

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Claimant Abraham Tarpeh filed two petitions in arbitration on March 31, 2016, alleging he contracted an allergy caused by exposure to epoxy resin while working for the defendant, TPI Composites ("TPI"), on July 16, 2015, and October 30, 2015. TPI, and its insurer, the defendant, Insurance Company of the State of Pennsylvania ("Insurance"), filed answers to the petitions on April 11, 2016.

An arbitration hearing was held on June 6, 2017, at the Division of Workers' Compensation in Des Moines, Iowa. Attorney Matthew Sahag represented Tarpeh. Tarpeh appeared and testified. Attorney Timothy Wegman represented TPI and Insurance. Ryan Hoenicke appeared and testified on behalf of TPI and Insurance. Joint Exhibits ("JE") 1 through 8, Exhibit A, and Exhibits 1 through 12 were admitted into the record. The record was left open for the receipt of additional testimony from Reginald McDade from the hearing of Zarka Green v. TPI and Insurance on June 14, 2017, which was received and marked as Exhibit 13. The record was held open until July 10, 2017, for the receipt of post-hearing briefs. The briefs were received and the record was closed. After the record was closed the parties submitted the deposition of Daniel Miller, D.O. The record was reopened on August 9, 2016, and Dr. Miller's deposition was marked as JE 9 and admitted into the record. At that time the record was closed.

Before the hearing the parties prepared a hearing report listing stipulations and issues to be decided for each case. TPI and Insurance waived all affirmative defenses.

**FILE NO. 5056435**

**STIPULATIONS**

1. An employer-employee relationship existed at the time of the alleged injury.
2. Tarpeh sustained an injury on July 16, 2015, which arose out of and in the course of his employment with TPI.
3. The alleged injury caused a temporary disability during a period of recovery.
4. Temporary benefits are no longer in dispute.
5. If the alleged injury is found to be a cause of permanent disability, the disability is an industrial disability.
6. If the alleged injury is found to be a cause of permanent disability, the commencement date for permanent partial disability benefits, if any are awarded, is December 1, 2015.
7. At the time of the alleged injury Tarpeh's gross earnings were \$731.52 per week, he was married and entitled to three exemptions, and the parties believe his weekly rate is \$422.35.
8. Medical benefits are no longer in dispute.
9. Prior to the hearing Tarpeh was paid ten weeks of permanent partial disability benefits at the rate of \$422.35 per week.
10. Costs are not in dispute.<sup>1</sup>

**ISSUES**

1. Is the alleged injury a cause of permanent disability?
2. If the alleged injury is a cause of permanent disability, what is the extent of disability?
3. Is Tarpeh entitled to an award of penalty benefits?

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<sup>1</sup> On the hearing reports Tarpeh indicated he was seeking costs. During the hearing when questioned, Tarpeh's counsel indicated costs were not in dispute. (Tr., p. 6) The issue of costs was not briefed by the parties in their post-hearing briefs.

**FILE NO. 5056436**

**STIPULATIONS**

1. An employer-employee relationship existed at the time of the alleged injury.
2. The alleged injury caused a temporary disability during a period of recovery.
3. Temporary benefits are no longer in dispute.
4. If the alleged injury is found to be a cause of permanent disability, the disability is an industrial disability.
5. If the alleged injury is found to be a cause of permanent disability, the commencement date for permanent partial disability benefits, if any are awarded, is December 1, 2015.
6. At the time of the alleged injury Tarpeh's gross earnings were \$843.97 per week, he was married and entitled to three exemptions, and the parties believe his weekly rate is \$544.50.
7. Medical benefits are no longer in dispute.
8. Prior to the hearing Tarpeh was paid ten weeks of permanent partial disability benefits at the rate of \$422.35 per week.
9. Costs are not in dispute.

**ISSUES**

1. Did Tarpeh sustain an injury on October 30, 2015, which arose out of and in the course of his employment with TPI?
2. If Tarpeh sustained an injury which arose out of and in the course of his employment with TPI, is the alleged injury a cause of permanent disability?
3. If Tarpeh sustained an injury which arose out of and in the course of his employment with TPI, and the alleged injury is a cause of permanent disability, what is the extent of disability?
4. Is Tarpeh entitled to an award of penalty benefits?

**FINDINGS OF FACT**

Tarpeh was born in Liberia, West Africa, and lived there until 2001 due to a civil war. (Transcript, page 15; Exhibit A, p. 1) Tarpeh spoke Krahn at home and in school.

(Tr., p. 29) In high school Tarpeh studied English. (Tr., p. 29) Tarpeh graduated from high school in Liberia, Africa. (JE 7, p. 90; Ex. A, p. 1; Tr., pp. 15-16) Tarpeh has not completed any additional postsecondary education. (Tr., pp. 16-17) Tarpeh has been trained to operate a forklift. (Tr., pp. 47-48; Ex. A, p. 3) Tarpeh is married and he is the father of four children. (Tr., p. 17; Ex. A, p. 1) At the time of his work injury Tarpeh had three children living with him. (Tr., p. 17) At the time of the hearing Tarpeh was thirty-three. (Tr., p. 18)

Tarpeh's first employment occurred in the United States. Tarpeh has experience working as a tire inspector for Titan Tire earning \$16.20 per hour, and Firestone/Bridgestone, earning \$18.50 per hour. (JE 7, p. 91; Ex. A, pp. 4-5; Tr., pp. 50-51) Tarpeh left both positions due to layoffs. (Tr., pp. 50-51) Tarpeh also worked for Lomar Distributing as a general warehouse worker where he drove a forklift. (JE 7, p. 91; Ex. A, p. 5; Tr. pp. 51-52) Lomar Distributing fired Tarpeh for sleeping on the job. (JE 7, p. 91; Tr., pp. 51-52)

TPI manufactures wind blades. TPI has three departments, molding, finishing, and the support groups. (Tr., p. 65; Ex. 13, p. 81) On November 18, 2013, TPI hired Tarpeh as an associate in the molding department. (JE 7, p. 91; Ex. 1, p. 1; Tr., pp. 18-19, 73) TPI paid Tarpeh \$12.00 per hour, plus \$.60 shift pay. (Ex. 1, p. 1)

While working for TPI Tarpeh had to climb inside wind blades and apply a liquid chemical resin and a curing agent to fiberglass blades with a cloth using his hands. (Tr., pp. 20, 56-57) Tarpeh wore personal protective equipment, a paper suit that covered most of his body, but not his face, rubber gloves, and a paper mask. (Tr., pp. 54-56) Tarpeh reported the chemicals penetrated his paper suit and he changed the paper suit every two hours. (Tr., pp. 55-56)

On July 16, 2015, Tarpeh informed TPI that he had developed dermatitis on the front and back of his neck at work from "the glass" or fiberglass. (Ex. 4, pp. 15-16) Tarpeh testified he went to Newton Hospital in July 2015 on his own and the medical practitioner he saw told him to take the day off. (Tr., p. 23)

Tarpeh reported a second injury October 29, 2015, involving his scalp, ears, eyes, face, neck, skull, mouth, shoulders, arms, wrists, hands, and fingers "from the laying up glass." (Ex. 4, p. 17) Tarpeh relayed that his symptoms between July and October 2015 were "kind of off and on because they give me the three-step program, and it was something – It didn't help it. It didn't help it." (Tr., pp. 24-25) Tarpeh explained TPI has a three step program employees follow when they experience a break out. (Tr., p. 25) Tarpeh relayed, "[t]hey're going to bandage your skin, rub the creams on it, so they give me that, but it just maybe cool it down a little bit for the itching, and then that was it." (Tr., p. 25) Tarpeh relayed that he did not miss any additional work from TPI. (Tr., p. 25)

Tarpeh testified his rash in October 2015 was “everywhere on my body,” on “[m]y face, my chest, my back, my legs. It was everywhere.” (Tr., pp. 25-26) Tarpeh reported his face swelled and his eyes swelled three times between July and October 2015. (Tr., pp. 26-27) Tarpeh stated he was earning \$16.27 per hour in October 2015. (Tr., p. 30) Tarpeh testified he never had a rash like the rash he developed in July 2015 before he worked for TPI. (Tr., p. 53)

On November 2, 2015, Tarpeh attended an appointment with Daniel Miller, D.O., an occupational medicine physician, complaining of eye swelling and an itchy rash all over his body, which initially had drainage, but had dried up. (JE 1, p. 1) Dr. Miller noted Tarpeh had been seen by Dr. Bantell at the Newton Clinic on October 30, 2015, Dr. Bantell directed him not to work for one week, and prescribed prednisone and triamcinolone ace cream. (JE 1, p. 1) Dr. Miller examined Tarpeh, assessed him with allergic contact dermatitis, unspecified cause, and found his rash was causally related to work “from a yet to be determined, unspecified substance.” (JE 1, p. 2) Dr. Miller released Tarpeh to modified duty on November 3, 2015, and noted he should avoid working on the production floor. (JE 1, p. 3)

Tarpeh returned to Dr. Miller on November 9, 2015, reporting he went to Broadlawns Medical Clinic on November 6, 2015, because his condition was worse and his eyes were swelling. (JE 1, p. 4) Tarpeh brought Dr. Miller pictures taken at Broadlawns. (JE 1, p. 4) Tarpeh relayed he had an itchy rash all over his body, pain on the skin of his chest, and reported he “gets ‘cold and a fever with itching.” (JE 1, p. 4) Dr. Miller continued Tarpeh’s medications, released him to modified duty on November 9, 2015, and directed Tarpeh to avoid working on the production floor. (JE 1, pp. 5-6)

During his appointment on November 23, 2015, Tarpeh reported his rash was drying up, but the rash on his neck was still very itchy, and he was not having as much pain from the rash. (JE 1, p. 7) Dr. Miller imposed a restriction of avoiding working on the production floor, which he modified on November 30, 2015, after receiving skin patch testing results, and imposed a restriction of avoiding epoxy. (JE 1, pp. 8-9)

Tarpeh testified after Dr. Miller told him to avoid epoxy he took his work restriction to his supervisor and his supervisor sent him back to work in the molding department. (Tr., p. 31) Tarpeh relayed when he returned to the molding department his dermatitis became worse. (Tr., p. 31)

On December 2, 2015, Tarpeh attended a follow-up appointment with Dr. Miller, noting his rash and itching on his face and body had returned again on December 1, 2015. (JE 1, p. 10) Dr. Miller prescribed clobetasol, and released Tarpeh to modified duty with no exposure to epoxy resin. (JE 1, pp. 10-11)

TPI sent Tarpeh a letter on December 7, 2015, terminating his employment effective December 2, 2015. (Ex. 7, p. 29) TPI reported it was terminating Tarpeh’s employment because TPI could not accommodate his allergy to epoxy. (Ex. 7, p. 29)

Employees at TPI sand the blades in the plant, which creates dust containing epoxy. (Tr., p. 76)

Tarpeh returned to Dr. Miller on December 16, 2015, complaining his dermatitis was leaving black spots on his skin and he had some itching. (JE 1, p. 12) Dr. Miller found Tarpeh was at maximum medical improvement, continued his medication, discharged him from treatment, found he had not sustained a permanent impairment, and imposed a permanent restriction of avoiding epoxy resin. (JE 1, pp. 12-14)

Jacqueline Stoken, D.O., a physical medicine and rehabilitation physician, performed an independent medical examination for Tarpeh on January 20, 2016. (JE 3) Dr. Stoken examined Tarpeh and reviewed his medical records. (JE 3, pp. 35, 39-43) Dr. Stoken listed an impression of "[s]tatus post work injury 7/16/15 and 10/30/15 severe allergic contact dermatitis." (JE 3, p. 43)

Dr. Stoken found Tarpeh sustained a permanent injury as a result of his exposure to epoxy resin at work. (JE 3, pp. 36, 43-44) Using Chapter 8, table 8-2, page 178 of the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides") Dr. Stoken found Tarpeh

fits into Class I with 0-9% Impairment of the Whole Person. His skin disorder signs and symptoms are present or intermittently present and cause no or few limitations in performance of activities of daily living. Exposure to certain chemical or physical agents may temporarily increase his limitation, and he requires intermittent treatment. I would award him 9% Impairment of the Whole Person due to the skin disorder.

(JE 3, pp. 36, 43-44) Dr. Stoken found Tarpeh could not return to his employment with TPI and noted if Tarpeh is exposed to epoxy in the future, he would need dermatologic creams or medications to stop the allergic reaction. (JE 3, p. 36, 44)

On January 27, 2016, Tarpeh attended a follow-up appointment with Dr. Miller complaining of dermatitis and itching on his bilateral arms, back of his left thigh, and bilateral eye itching and tearing. (JE 1, p. 15) Dr. Miller documented Tarpeh had not worked for TPI since December 2015, and found his current rash was not related to his former employment with TPI because "[t]his is dry skin and totally different than what he had" and directed him to follow up with his primary care provider if he continued to experience problems. (JE 1, p. 15)

Tarpeh testified that after January 2016 he continued to have periodic breakouts. (Tr., p. 35) Tarpeh relayed that at the time of the hearing he was not having periodic breakouts, but testified his skin gets hot and itchy at times. (Tr., p. 36)

Johnson Brothers hired Tarpeh to operate a forklift in the warehouse on July 7, 2016. (JE 7, p. 88; Ex. A, p. 3; Tr., p. 48) Tarpeh also performed welding. (Ex. A, p. 3)

Tarpeh worked full-time and earned \$16.00 per hour, with some overtime. (JE 7, p. 88; Ex A, p. 4; Tr., pp. 37-38)

Robin Sassman, M.D., an occupational medicine physician, conducted an independent medical examination for Tarpeh on November 15, 2016. (JE 5) Dr. Sassman examined Tarpeh and reviewed his medical records. (JE 5, pp. 63-70) Dr. Sassman diagnosed Tarpeh with “[d]ermatitis with possible pulmonary sensitization.” (JE 5, p. 70) Dr. Sassman concluded Tarpeh’s allergic dermatitis is directly and causally related to exposure to fiberglass and chemicals used at TPI, but found she did not have enough information to opine on causation regarding possible pulmonary sensitization. (JE 5, pp. 70-72) Using the Table 8-2, on page 178 of the AMA Guides, Dr. Sassman opined for his allergic dermatitis “Mr. Tarpeh will be placed in a Class 1 and assigned 9% impairment of the whole person. He fits into this class based on the fact that his skin disorder signs and symptoms are present or intermittently present, he had few limitations of ADL’s and he requires intermittent treatment.” (JE 5, p. 72) Dr. Sassman recommended Tarpeh avoid exposure to any type of resin. (JE 5, p. 72)

Tarpeh’s employment with Johnson Brothers ended on February 19, 2017, due to a layoff. (Tr., p. 38) Tarpeh relayed he did not have any breakouts during the time he worked for Johnson Brothers between June 2016 and February 2017. (Tr., p. 46)

In March 2017, Tarpeh applied for a position with Titan Tire, his former employer, that also paid \$16.00 per hour. (JE 1, pp. 18-28; Tr., p. 39) Titan Tire offered Tarpeh a position as a tire builder, but withdrew the offer of employment after Tarpeh attended a physical examination with Dr. Miller. (Tr., p. 40) Dr. Miller documented during the physical examination that Tarpeh has dermatitis and he cannot be exposed to epoxy. (JE 1, pp. 23-24) Tarpeh testified he inquired why Titan Tire was withdrawing the offer and Titan Tire responded, “[w]e’re sorry, but we just going to withdraw the offer.” (Tr., p. 40)

Aerotek, a temporary staffing agency hired Tarpeh in May 2017 to work for Seiwerk. (JE 7, p. 88; Tr., pp. 42-43) Tarpeh earns \$13.00 per hour and he worked full-time. (JE 7, p. 88; Tr., p. 43)

Tarpeh testified he did not have a breakout at the time of the hearing, or in March 2017. (Tr., p. 45) Tarpeh had not taken any medication or received medical treatment for his skin problems within six months of the June 2017 hearing. (Tr., p. 45)

## **CONCLUSIONS OF LAW**

### **I. Extent of Disability**

“Industrial disability is determined by an evaluation of the employee’s earning capacity.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee’s earning capacity, the deputy commissioner evaluates

several factors, including “consideration of not only the claimant’s functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment.” Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee’s “ability to be gainfully employed.” Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u). When considering the extent of disability, the deputy commissioner considers all evidence, both medical and nonmedical. Evenson v. Winnebago Indus., Inc., 818 N.W.2d 360, 370 (Iowa 2016).

The question of medical causation is “essentially within the domain of expert testimony.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

The Iowa Supreme Court has held, “it is a fundamental requirement that the commissioner consider all evidence, both medical and nonmedical. Lay witness testimony is both relevant and material upon the cause and extent of injury.” Evenson, 818 N.W.2d 360, 369 (Iowa 2016) (quoting Gits Mfg. Co. v. Frank, 855 N.W.2d 195, 199 (Iowa 2014)).

Tarpeh alleges he sustained a cumulative injury, allergic dermatitis due to epoxy exposure at TPI. Cumulative injuries are occupational diseases that develop over time. Baker v. Bridgestone/Firestone, 872 N.W.2d 672, 681 (Iowa 2015). A cumulative injury results from repetitive trauma in the workplace. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842, 851 (Iowa 2009); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368, 372-74 (Iowa 1985). “A cumulative injury is deemed to have occurred when it manifests – and ‘manifestation’ is that point in time when ‘both the fact of the injury and the causal relationship of the injury to the claimant’s employment would have become plainly apparent to a reasonable person.’” Baker, 872 N.W.2d at 681. Tarpeh contends he was not aware of his cumulative injury until October 30, 2015. TPI and Insurance allege the correct injury date is July 2015.

During the hearing Tarpeh testified he suffered his first breakout in July 2015. (Tr., pp. 23) Tarpeh testified he continued to experience symptoms on and off from July



through October 2015, during the period of time when he was involved in the three step program at TPI. (Tr., pp. 24-25) Tarpeh did not testify he sustained a traumatic injury or that his exposure differed in October 2015. Tarpeh testified his symptoms became more severe over time. Tarpeh sought medical treatment for his condition in July 2015. He continued to experience symptoms through October 2015, including a rash and eye swelling. The evidence supports Tarpeh experienced one cumulative injury while working for TPI, with intermittent exacerbations over the course of his employment starting in July 2015. The correct injury date is July 16, 2015.

Tarpeh contends he has sustained at least a thirty-five percent permanent disability. TPI and Insurance allege Tarpeh has not sustained a permanent impairment.

Dr. Miller, the treating occupational medicine physician, Dr. Stoken, a physiatrist retained to conduct an independent medical examination for Tarpeh, and Dr. Sassman, an occupational medicine physician retained to conduct an independent medical examination for Tarpeh have issued differing opinions in this case. Dr. Miller has opined Tarpeh did not sustain a permanent impairment, and Drs. Stoken and Sassman found he sustained a nine percent permanent impairment. I find the opinions of Drs. Stoken and Sassman more persuasive than the opinion of Dr. Miller.

All three physicians agree Tarpeh developed allergic dermatitis from epoxy exposure and he cannot work in an environment where he is exposed to epoxy in the future. Drs. Stoken and Sassman opined Tarpeh will require intermittent treatment if he is exposed to epoxy in the future. (JE 3, pp. 36, 44; 5, p. 72)

Tarpeh applied for a position with Titan Tire after TPI terminated his employment. Tarpeh had worked for Titan Tire for several years in the past until he was laid off. In March 2017, Titan Tire hired Tarpeh subject to a physical examination. Dr. Miller conducted the physical examination for Titan Tire and opined Tarpeh had dermatitis and he could not be exposed to epoxy. (JE 1, pp. 23-24) After the examination which revealed no other impairments or need for other restrictions, Titan Tire withdrew Tarpeh's offer of employment. (Tr., p. 40)

Tarpeh testified he did not have dermatitis prior to his employment with TPI. He also testified that his dermatitis became worse over time with repeated exposure. During the hearing I did not observe Tarpeh engage in any furtive or suspicious movements, his eye contact was appropriate, and his rate of speech was appropriate. Based on my observations I found Tarpeh to be a credible witness and I believe he did not have dermatitis prior to his employment with TPI. His medical records also support his condition worsened over time. Drs. Miller, Sassman, and Stoken have restricted Tarpeh from epoxy exposure for the future. I conclude Tarpeh has sustained a permanent impairment.

At the time of the hearing Tarpeh was thirty-three. (Tr., p. 18) Tarpeh graduated from high school in Liberia. (Tr., p. 15; Ex. A, p. 1) Tarpeh has experience working as

a tire inspector, forklift operator, and welder. (JE 7, pp. 88, 91; Ex. A, pp. 3-5; Tr., pp. 48, 50-51) Tarpeh is a young man and he has been able to learn new skills, including welding at work.

Following his discharge from TPI, Tarpeh secured a full-time forklift driver and welder position with Johnson Brothers earning \$16.00 per hour. (JE 7, p. 88; Ex. A, p. 3; Tr., p. 48) Tarpeh's employment ended on February 19, 2017, due to a layoff. (Tr., p. 38) Tarpeh applied for work with Titan Tire in March 2017. Titan Tire offered him a position paying \$16.00 per hour, but rescinded the offer after his physical examination with Dr. Miller. In May 2017, Tarpeh secured employment with Aerotek, a temporary staffing agency, working at Seiwark. (JE 7, p. 88; Tr., pp. 42-43) Tarpeh works full-time and he earns \$13.00 per hour. (JE 7, p. 88; Tr., p. 43)

Tarpeh accepted a position with Johnson Brothers, earning a similar hourly wage within months of his discharge. Tarpeh's employment ended due to a lack of work, not due to a physical condition or allergy. The record supports Tarpeh cannot work in an environment where he is exposed to epoxy, which limits Tarpeh from working for TPI and other employers who use epoxy resin. Based on all the factors of industrial disability, I conclude Tarpeh has sustained a thirty percent industrial disability. See St. Luke's Hosp. v. Gray, 604 N.W.2d 646, 652-53 (Iowa 2000) (upholding commissioner's award of thirty-five percent industrial disability to a nurse with a latex allergy who was no longer able to engage in many positions similar to what she had, even though she was earning more in her new position).

## **II. Penalty Benefits**

Iowa Code section 86.13 governs penalty benefits. Under the statute's plain language, if there is a delay in payment absent "a reasonable or probable cause or excuse," the employee is entitled to penalty benefits, of up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse. Iowa Code § 86.13(4); see also Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996) (citing earlier version of the statute). "The application of the penalty provision does not turn on the length of the delay in making the correct compensation payment." Robbenolt v. Snap-On Tools Corp., 555 N.W.2d 229, 236 (Iowa 1996). If a delay occurs without a reasonable excuse, the commissioner is required to award penalty benefits in some amount to the employee. Id.

The statute requires the employer or insurance company to conduct a "reasonable investigation and evaluation" into whether benefits are owed to the employee, the results of the investigation and evaluation must be the "actual basis" relied on by the employer or insurance company to deny, delay, or terminate benefits, and the employer or insurance company must "contemporaneously convey the basis for the denial, delay, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits." Iowa Code § 86.13(4)(a). An employer may establish a "reasonable cause or excuse" if "the delay was necessary for the insurer to investigate

the claim,” or if “the employer had a reasonable basis to contest the employee’s entitlement to benefits.” Christensen, 554 N.W.2d at 260. “A ‘reasonable basis’ for denial of the claim exists if the claim is ‘fairly debatable.’” Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 267 (Iowa 2012). “Whether a claim is ‘fairly debatable’ can generally be determined by the court as a matter of law.” Id. The issue is whether the employer had a reasonable basis to believe no benefits were owed to the claimant. Id. “If there was no reasonable basis for the employer to have denied the employee’s benefits, then the court must ‘determine if the defendant knew, or should have known, that the basis for denying the employee’s claim was unreasonable.’” Id.

Benefits must be paid beginning on the eleventh day after the injury, and “each week thereafter during the period for which compensation is payable, and if not paid when due,” interest will be imposed. Iowa Code § 85.30. In Robbennolt, the Iowa Supreme Court noted, “[i]f the required weekly compensation is timely paid at the end of the compensation week, no interest will be imposed . . . . As an example, if Monday is the first day of the compensation week, full payment of the weekly compensation is due the following Monday.” Robbennolt, 555 N.W.2d at 235. A payment is “made” when the check addressed to the claimant is mailed, or personally delivered to the claimant. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996) (abrogated by Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299 (Iowa 2005) (concluding the employer’s failure to explain to the claimant why it would not pay permanent benefits upon the termination of healing period benefits did not support the commissioner’s award of penalty benefits)).

When considering an award of penalty benefits, the commissioner considers “the length of the delay, the number of delays, the information available to the employer regarding the employee’s injuries and wages, and the prior penalties imposed against the employer under section 86.13.” Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 336 (Iowa 2008). The purposes of the statute are to punish the employer and insurance company and to deter employers and insurance companies from delaying payments. Robbennolt, 555 N.W.2d at 237.

In his post-hearing brief Tarpeh did not address the issue of penalty. Dr. Miller opined Tarpeh did not sustain a permanent impairment. I conclude the claim was fairly debatable and decline to award Tarpeh penalty benefits.

#### ORDER

IT IS THEREFORE ORDERED, THAT:

Claimant shall take nothing with respect to File Number 5056436.

With respect to File 5056435:

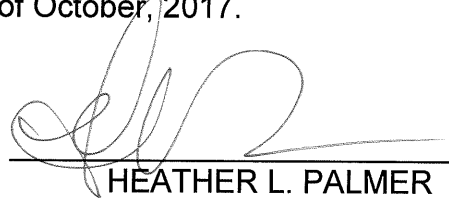
Defendants pay the claimant one hundred fifty (150) weeks of permanent partial disability benefits, at the rate of four hundred twenty-two and 35/100 dollars (\$422.35) per week, commencing on December 1, 2015.

Defendants shall take credit for all benefits previously paid.

Defendants shall pay accrued benefits in a lump sum with interest on all weekly benefits provided by law.

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

Signed and filed this 31<sup>st</sup> day of October, 2017.

  
\_\_\_\_\_  
HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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HLP/srs

**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.