BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CONNIE KUEHN,

Claimant,

vs.

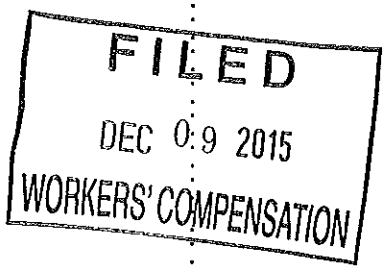
PFIZER ANIMAL HEALTH,

Employer,

and

CHARTIS CLAIMS, INC.,

Insurance Carrier,
Defendants.



File No. 5048686

ARBITRATION

DECISION

Head Note No.: 1803

STATEMENT OF THE CASE

Connie Kuehn, claimant, has filed a petition in arbitration and seeks workers' compensation from Pfizer Animal Health, employer and Chartis Claims, Inc., insurance carrier, defendants.

This matter came on for hearing before deputy workers' compensation commissioner, Jon E. Heitland, on July 1, 2015 in Des Moines, Iowa. The record in the case consists of claimant's exhibits 1 through 17; defense exhibits A through H; as well as the testimony of the claimant.

ISSUES

The parties presented the following issues for determination:

1. Whether the claimant is entitled to temporary total disability or healing period benefits during a period of recovery.

2. The extent of the claimant's entitlement to permanent partial disability benefits.

3. Whether the claimant is entitled to penalty benefits.

FINDINGS OF FACT

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

Claimant, Connie Kuehn, worked for defendant employer Pfizer Animal Health as a lab technician. Her job duties involved placing bottles onto racks, up to 600 per day, each weighing five pounds. She also had to take out bags of trash, with about 20 bottles in a bag. It would require two workers to move 50 liter bottles onto crates on wheels. Claimant described her work duties in detail. Claimant's work injury to her right shoulder on April 29, 2010, is admitted by defendants.

Prior to this injury, claimant had a pre-existing condition of carpal tunnel syndrome in both wrists. She underwent surgical releases on both wrists. She had no prior shoulder injury, and no prior work restrictions.

Claimant's injury occurred on April 29, 2010. Prior to that, she had submitted her resignation, to be effective April 30, 2010. She was injured on her next to last day of work. Pfizer had taken over Fort Dodge Animal Health, and claimant decided to resign to take advantage of a health insurance package that would no longer be available if she kept working. She planned to find a new job working with the public, such as in a bank or as an administrative assistant.

On the date of injury, she was spraying a hallway with bleach and water to sanitize it, using a small tank of liquid and a hand held nozzle, walking backwards as she sprayed the hallway. Her foot hit a large scale that normally was not in that hallway, and she fell, landing on her right side. The tank of liquid came loose and landed on her.

She felt great pain, but was able to get up and she reported the injury to the plant nurse. She was asked to fill out an injury report, but she had difficulty doing so because she had injured her shoulder. She found she could not move her hand out from her body. She later found it painful to change her clothes.

She was sent to see a doctor, and someone had to drive her there. The nurse attended this initial visit, and she kept telling the doctor claimant was going to retire the next day. Claimant was sent to the hospital, where x-rays were taken. She was then sent home and told not to use her right arm.

She returned to work on April 30, 2010, assigned to her regular duties. A co-worker had to help her. After she left the job, she would see Paul Royer, M.D., every two weeks. She was given Loratab for her pain. Her condition did not improve. In July, she underwent an MRI. She was unable to look for a new job due to not being able to use her right arm or operate a computer. The front of her upper arm hurt. She could not lay on her right side, and her sleep was disrupted. She had to prop her arm with a pillow. She was able to dress herself, but she had to use caution to avoid pain. The MRI showed a large rotator cuff tear, as well as a frayed biceps muscle. During this time the employer did not offer any light-duty work, although claimant had in fact retired.

She was referred to Darron Jones, M.D., in Mason City, Iowa, in August, 2010. He recommended surgery, and assigned her work restrictions of not lifting over 10 pounds, with no over-the-shoulder work. She would not have been able to do her job at Pfizer with these restrictions.

When her right shoulder condition did not improve by October, she underwent surgery on November 4, 2010. This was followed by physical therapy, which resulted in some improvement. However, her shoulder never returned to its pre-injury condition. On May 4, 2011, Dr. Jones returned her to full duty. She found she could use her right shoulder, but not like before. She could not lift very much. She had difficulty doing things like styling her hair. Her condition has not improved from that release to the present.

Today, she can lift her arm over her head, but it then starts to get weak. She can shop for groceries but she has to only use small bags. She cannot play with her grandchildren as she could before, and cannot throw a ball overhand. She can no longer go bowling. She has difficulty crocheting. She has not had any right shoulder treatment since Dr. Jones released her. On June 6, 2011, Dr. Jones found her to be at maximum medical improvement. He did not give her any work restrictions because she was not working.

Claimant then began to experience pain symptoms in her left shoulder as well. Claimant asserts this is due to a sequela injury, from overuse of her left shoulder due to not being able to use her injured left shoulder. Defendants dispute this.

Claimant noticed she had to use her left hand more once she injured her right shoulder. She was not used to using her left hand, and she experienced left arm pain. She found work at Hy-Vee, and had to use her left hand more, doing repetitious work.

Today, her left arm pain is similar to her right arm pain. If she lies on her back, she needs a pillow to support it. She cannot lie on her left side at all. She drove to the hearing, a three-hour trip, but her left shoulder started to bother her by the time she reached Des Moines.

A couple months before the hearing, she went to an orthopedic doctor, James Crouse, M.D., for her left shoulder pain. He told her she needed a new socket. He did not know if she had a torn rotator cuff on that side without an MRI, and he did not want to do an MRI unless a surgery was decided upon. He gave her a cortisone injection, but it did not help her pain. The surgery was put on hold because claimant did not want to incur the financial cost.

Claimant began her job at Hy-Vee in December, 2012. She works there as a pharmacy cashier, earning $9.50 per hour. She waits on customers, and she has to do some lifting. She has to fill a "robot" with vials, which is above her shoulder, and this causes pain. One of the cash registers she uses is also too high and causes her pain.

Her work is easier than what she did at Pfizer, however. She only works 21 to 28 hours per week, and she stated she could not work more than that due to pain in her shoulders. She works with both arms, switching when one becomes painful.

She also began receiving Social Security Retirement benefits in January, 2015, a month after beginning work at Hy-Vee, and she is limited in how much she can earn. She testified she did not plan to take retirement benefits when she left Pfizer, she planned on finding a new job. Her shoulder injury prevented this. She did look on websites for jobs in banking, but they all required experience she did not have.

On cross examination, she stated she worked at Pfizer for 24 years, nine of which was office work, using a computer and doing lab work. The other years she worked in production, which involved more lab work.

She again stated she resigned to take advantage of a health insurance program, but she does not use it now. She is on her husband's insurance. When he retires, she will use the Pfizer program. The insurance offered would have not been available if she had not retired. She gave notice of her resignation about two weeks before the injury.

Her work at Hy-Vee involves a lot of standing and walking. She agreed she did not apply for any full time jobs after leaving Pfizer. She has worked at the same job at Hy-Vee since she began working there. She has had no right shoulder treatment since 2011, and no left shoulder treatment since her November, 2014, doctor visit.

She agreed during five medical appointments with doctors in 2013 and 2014, some of which were for hip pain she was experiencing, she did not mention left or right shoulder pain. Claimant states she knew what exercises she needed to do to address her right shoulder pain and did not feel a need to discuss it further with her doctors. She had the impression there was nothing further that could be done for her right shoulder. Her health insurance has paid for her left shoulder and osteoarthritis treatment.

She was seen by Sunil Bansal, M.D., for an independent medical examination (IME). His findings are set out in the Conclusions of Law section, below.

CONCLUSIONS OF LAW

The first issue in this case is whether the claimant is entitled to temporary total disability or healing period benefits during a period of recovery.

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).

Claimant seeks healing period benefits from May 1, 2010 to November 4, 2010. She also alleges she was underpaid benefits from November 5, 2010 to June 6, 2011.

Claimant submits exhibit 1 as a record of payments made. Defendants submit exhibit B.

Defendants began paying healing period benefits on November 5, 2010, the day after claimant's surgery. Claimant argues those benefits should have begun right after her injury, on May 1, 2010. On April 29, 2010, the date of injury, Dr. Royer imposed a restriction of no use of the right arm. This restriction was not honored by the employer. Claimant retired the next day. Later, on August 27, 2010, Dr. Jones also imposed a restriction of no overhead use of the right arm, and no lifting greater than 10 pounds with the right arm. (Ex.3, p. 18)

Claimant retired from Pfizer the day after her injury, but her credible testimony clearly shows she intended to find work at another job where she could interact with the public more. She "retired" from Pfizer to benefit from a health insurance package available to her and her husband that would not have been available if she had not retired, due to a change of ownership of Pfizer.

However, her right shoulder injury and resulting restrictions made her unable to work for some time after her injury, either at her old job or a similar job elsewhere, regardless of having taken "retirement". She meets the definition of being in a healing period during this time. The status of "retired" was a title only in this case, and did not reflect her true status of looking for other work. Such a designation would not in any case prevent a claimant from obtaining healing period benefits if they otherwise meet the requirements of Iowa Code section 85.34(1), which claimant did.

It is found claimant is entitled to receive healing period benefits from May 1, 2010 to November 4, 2010.

The next issue is the extent of the claimant's entitlement to permanent partial disability benefits.

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.

Claimant returned to work the day after her injury, but she was unable to use her right arm. A co-worker assisted her, and her duties that day were "staging", which was lighter work than her other duties. There was no accommodation offered by the employer.

Claimant's employment with Pfizer ended, per her retirement plans in order to obtain the benefit of health insurance. She underwent conservative treatment, which did not relieve the right arm and shoulder pain she kept experiencing. The pain disrupted her sleep. Dr. Royer ordered an MRI, which showed a rotator cuff tear and a frayed bicep muscle in her right shoulder and arm. (Ex. 17, p. 24) This was confirmed by Dr. Jones as well. He recommended surgery. He also assigned work restrictions of not lifting over 10 pounds below her shoulder, and no lifting above her shoulder. The surgery occurred on November 4, 2010. (Ex. 17, p. 25; Ex. 3, pp. 21-23) The surgery involved both a rotator cuff repair as well as a biceps tenotomy, along with insertion of a pain pump. (Ex. 6, p. 69) She then underwent physical therapy. However, months later she was still experiencing pain, loss of range of motion, and loss of strength in her right arm and shoulder. However, Dr. Jones released her from care on May 4, 2011, and she has had no further care. On June 6, 2011, Dr. Jones assigned a rating of permanent partial impairment of 7 percent. (Ex. 3, p. 34)

Claimant testified that she still experiences significant pain and limitations with her right shoulder and arm. These have affected her daily life, in that she can no longer enjoy activities such as bowling, crocheting, or playing with her grandchildren. Any reaching with her right arm above shoulder height is painful, and her shoulder "catches". Her shoulder pain extends to her arm.

This injury has been admitted by the employer.

An additional issue is whether claimant suffered a sequela injury, due to overuse of her left shoulder after the injury to her right shoulder. Claimant amended her petition on May 12, 2015, to include a sequela injury.

Claimant testified that for a year after her right shoulder and right arm injury, she did most activities of daily living with her left shoulder and arm, due to the pain of using her right arm. She gradually developed left arm pain as well, which now radiates from her left shoulder to her shoulder blade and the left side of her neck. (Ex. 6, p. 72) She

cannot lift her left arm above shoulder level without pain. She has pain which shoots into her left arm. She cannot sleep without her left shoulder supported by a pillow. She described it as a sharp pain from the top of her shoulder down into the front of her upper left arm.

Claimant was seen by Dr. Crouse, an orthopedic surgeon, on April 13, 2015, for her left shoulder pain. He administered a cortisone injection, and recommended an MRI. Claimant reported popping and stiffness in her left shoulder, and increasing pain from overuse. She has difficulty putting on a seat belt in a car. Dr. Crouse recommended a total left shoulder arthroplasty. (Ex. 5, p. 60) However, claimant has not undergone the procedure for financial reasons.

Mark Taylor, M.D., on behalf of defendants issued a report on May 22, 2015. He did not examine claimant, but reviewed the medical reports of Dr. Jones and Claro Palma, M.D., who had treated claimant for hip and knee conditions unrelated to this injury. (Ex. H) He apparently did not examine Dr. Crouse's records. Dr. Taylor operated under the assumption claimant had no pain in her right shoulder and arm, even though claimant has suffered a stipulated work injury to her right shoulder, and has consistently described ongoing pain in her right shoulder. Dr. Taylor concluded her left shoulder condition was not caused by the right shoulder injury.

Dr. Bansal, in his independent medical examination of claimant, concluded claimant's left shoulder condition was caused by overcompensation for her right shoulder injury. (Ex. 6, p. 78) He felt claimant's overuse of her left shoulder due to her right shoulder pain aggravated her degenerative disc disease as well as her left rotator cuff. He also recommended an MRI like Dr. Crouse had done, and he also felt she would need an arthroplasty. (Id.)

He felt that if claimant underwent surgery, she would reach maximum medical improvement (MMI) six months later. If she did not undergo surgery, he felt she had reached MMI at the time of her last visit with Dr. Crouse, or April 13, 2015. He found her left shoulder condition without surgery to have a permanent partial impairment of five percent of the upper left extremity. (Ex. 6, p. 79)

Dr. Taylor concluded:

> Based on the records, the etiology of her left shoulder "flare" is unknown. Her left shoulder pain is likely multifactorial, including possible arthritis given her understanding of needing her "socket replaced". I do not see evidence that there were significant, persistent issues with her right shoulder after she was released in 2011. In fact, she never returned to Dr. Jones. However, there were multiple opportunities for Ms. Kuehn to convey to her medical providers (and physical therapists) that she was experiencing shoulder problems. If Ms. Kuehn were to have had left shoulder pain related to her right shoulder injury, it would have likely been

> noted between April 2010 (her date of injury) and November 2011 when she was released and the right shoulder was doing well.
>
> For the above reasons, I am unable to state, within a reasonable degree of medical certainly [sic] that her current left shoulder pain is related to her 2010 right shoulder injury.

(Ex. H, p. 2)

Dr. Taylor's examination of claimant's records is flawed both by his non-examination of claimant and by his erroneous assumptions regarding right arm pain. Claimant explained she did not report left arm pain during the medical visits in question because those visits were with other doctors who were treating conditions other than her work injury. That explanation is accepted as reasonable. She also credibly testified her right shoulder pain was significant and ongoing throughout this case, which Dr. Taylor ignored. Greater weight will be given to the conclusions of Dr. Bansal.

It is concluded claimant's left shoulder and arm conditions were a sequela injury stemming from her right shoulder and arm work injury, in that claimant was compelled to overcompensate for her inability to use her right arm and shoulder by using her left arm and shoulder to such an extent it resulted in a left shoulder and arm condition.

Claimant's industrial disability will be determined based on both her right and left shoulder and arm injuries.

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.

Claimant is 63 years old. She has a high school diploma. She is right hand dominant. As a result of her injuries, she has restrictions from Dr. Bansal consisting of no lifting greater than 10 pounds occasionally with her right arm, or five pounds frequently, no lifting over shoulder level on the right, no frequent pushing or pulling or pushing or pulling more than 20 pounds with the right arm. (Ex. 6, p. 77) For her left shoulder and arm, Dr. Bansal restricted claimant to no lifting greater than 10 pounds occasionally, no lifting over 5 pounds over shoulder level, and no frequent over-the-shoulder lifting. (Ex. 6, p. 79) She has a rating of impairment of five percent from Dr. Bansal. Dr. Jones rated her right arm impairment as seven percent. (Ex. 3, p. 34)

Claimant tried to return to the work force, but found after working 24 years for Pfizer, she lacked the experience most employers were looking for. She experienced pain when trying to use a keyboard. She eventually found work at a grocery store pharmacy department beginning in December 2012. She still works there, and earns $9.50 per hour. She works only 21 to 28 hours per week, and thus earns about one fourth of her prior wages. (Ex. A) She initially, from December 2012 to January 2015, limited her hours due to her shoulder pain, and now must limit them due to receiving Social Security retirement benefits.

She does not feel she could return to her job at Pfizer because of the repetitive overhead reaching required in obtaining bottles from high shelves, as well as the need to don and remove sterile clothing frequently, as these activities would cause severe shoulder pain. Her job at a Hy-Vee pharmacy requires far less reaching.

Claimant was evaluated by a vocational expert, Carma Mitchell. On April 17, 2015. She concluded claimant, as a result of her shoulder injuries, her age, employment history, etc., had lost access to "heavy" and "medium" category jobs, and to 90 percent of "light" jobs. She found claimant to have a combined 84 percent loss to all jobs due to her injuries.

Claimant has not one, but two significant shoulder injuries. Her age also works against her in finding work similar to what she has done the past 24 years. The vocational study shows a very high degree of loss to the job market, more than 80 percent. She has suffered a significant loss of earnings, approximately 75 percent of what she earned before. Based on these and all other appropriate factors of industrial disability, claimant has, as a result of her right shoulder work injury and her left shoulder sequela injury, an industrial disability of 60 percent.

The next issue is whether the claimant is entitled to penalty benefits.

If weekly compensation benefits are not fully paid when due, section 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996).

Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It also is not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

If the employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall impose a penalty in an amount up to 50 percent of the amount unreasonably delayed or denied. Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

Iowa Code section 86.13(4)(c) states:

> *c.* In order to be considered a reasonable or probable cause or excuse under paragraph *"b"*, an excuse shall satisfy all of the following criteria:
>
> (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.
>
> (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.
>
> (3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits.

Defendants failed to address the penalty issue in their post-hearing brief.

Claimant seeks penalty benefits for defendants' failure to communicate the basis for the denial of benefits from May 1, 2010, to November 4, 2010.

The record shows defendants simply denied healing period benefits to claimant between her injury and her surgery because her status was "retired". As noted above, this was simply a designation that allowed claimant to avail herself of health insurance benefits. She clearly had every intention of continuing to work, but found herself unable to do so due to her right shoulder injury. She was clearly entitled to healing period benefits during this period of time. Yet defendants failed to pay those benefits, failed to investigate her condition, and failed to inform her why healing period benefits were being withheld, all as required by Iowa Code 86.13(4)(c). It is concluded defendants acted unreasonably and penalty benefits are appropriate. Defendants will be ordered to pay claimant an additional 50 percent of the healing period benefits between May 1, 2010, to November 4, 2010, as a penalty.

Claimant also seeks penalty benefits for the late payment of healing period benefits following her surgery, from November 5, 2010 to May 4, 2011, or 25 weeks and 6 days. Claimant asserts defendants made two lump sum payments during this period, interspersed with regular weekly payments. One lump sum payment for the first three weeks of this period, and another later for the last nine weeks. Claimant asserts no reason for these lump sum payments, which represent delays in payment, have been offered.

It is found that the delays have not been explained and therefore are unreasonable. However, the delays are not significant. Defendants will be ordered to pay a penalty of $100.00 for these delays.

Claimant also seeks penalty benefits for the late payment of permanency benefits.

Claimant was found to be at MMI on June 6, 2011. (Ex. 3, p. 32) Shortly thereafter, on June 30, 2011, Dr. Jones issued a right shoulder impairment rating of seven percent. (Ex. 3, p. 34) This would represent 17.5 weeks of benefits based on the rating alone. Defendants did not pay any permanent partial disability benefits until five months later, on November 28, 2011. (Ex. B) When it was paid, no interest was added. At that time 20.5 weeks of benefits were paid.

Again, no reasonable basis for the delay is offered. It is found defendants acted unreasonably. Defendants shall pay a penalty of 50 percent of the 17.5 weeks of permanent partial disability benefits indicated by the rating of impairment.

The costs are also in dispute. Claimant seeks reimbursement for the costs of this action, including the cost of an independent medical examination by Dr. Bansal in the amount of $3,395.00. (Ex. 16)

Defendants obtained an examination and rating by Dr. Jones. Under Iowa Code 85.39, claimant is entitled to be reimbursed for an independent medical examination.

Defendants seek a credit for temporary total disability benefits paid in the amount of $9,556.21, and permanent partial disability (PPD) benefits in the amount of $16,859.89. (Hearing report) Claimant asserts this amount for credit for PPD would result in an underpayment of temporary total disability (TTD). This stems from defendants position they did not owe temporary benefits from the injury to the date of surgery, which has been addressed above.

Claimant argues crediting defendants with paying $16,869.89 in PPD benefits would automatically result in an underpayment of temporary benefits. Alternatively, applying that payment to the healing period that should have been paid but was not would reduce their credit for PPD to $11,525.40.

Defendants are liable for both the additional healing period awarded in this decision and the permanent partial disability awarded. They will receive a credit against that obligation for the dollar amount they have paid to claimant regardless of how they were originally designated.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay unto the claimant healing period benefits from May 11, 2010 to November 4, 2010, at the rate of five hundred seventy-six and 27/100 dollars ($576.27) per week.

Defendants shall pay unto the claimant three hundred (300) weeks of permanent partial disability benefits at the rate of five hundred seventy-six and 27/100 dollars ($576.27) per week from June 6, 2011.

Defendants shall pay additional amounts as a penalty pursuant to Iowa Code section 86.13 as set forth in the decision above.

Defendants shall pay accrued weekly benefits in a lump sum.

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

Defendants shall be given credit for benefits previously paid.

Defendants shall pay the claimant's prior medical expenses submitted by claimant at the hearing.

Defendants shall pay the future medical expenses of the claimant necessitated by the work injury.

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

Costs are taxed to defendants.

Signed and filed this 9th day of December, 2015.

JON E. HEITLAND
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.