BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHELLE KEVE, Claimant, vs. JOHN DEERE WATERLOO WORKS, Employer, Self-Insured, Defendant.	:	File No. 19700068.01 ARBITRATION DECISION Head Notes: 1108.50, 1402.40, 1701, 1801.1, 1803, 1803.1, 2907

STATEMENT OF THE CASE

Michelle Keve, claimant, filed a petition in arbitration seeking workers' compensation benefits from John Deere Waterloo Works, self-insured employer as defendant. Hearing was held on November 18, 2020. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties and the court reporter appearing remotely.

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.

Michelle Keve was the only witness to testify live at trial. The evidentiary record also includes Joint Exhibits 1-5, Claimant's Exhibits 1-7, and Defendant's Exhibits A-R. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on December 23, 2020, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. The nature and extent of permanent partial disability benefits that claimant is entitled to receive.

2. Whether the stipulated August 1, 2018 injury is the cause of temporary disability. If so, the amount of temporary partial disability benefits claimant is entitled to receive.

3. Whether defendant is entitled to a credit for sick pay/disability income against any worker' compensation benefits awarded.

4. Whether penalty benefits are appropriate in this case.

5. Whether the July 1, 2017 amendments to Iowa Codes section 85.34(2)(v) and 85.34(2)(x) are a violation of claimant's constitutional rights.

6. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Michelle Keve, sustained a stipulated work injury on August 1, 2018. Ms. Keve injured her left shoulder. At the time of the injury, Ms. Keve worked in assembly at John Deere Waterloo Works ("John Deere").

As the result of the August 1, 2018 work injury, Ms. Keve underwent surgery on her left shoulder. On December 3, 2018, Brendan M. Patterson, M.D. performed an arthroscopic rotator cuff repair. Dr. Patterson noted there was a massive full-thickness rotator cuff tear involving the supraspinatus and infraspinatus tendons in their entirety. Also, the subscapularis was torn from its insertion at the lesser tuberosity. (JE4, pp. 39-42)

Ms. Keve continued to follow up with Dr. Patterson after her operation. On May 1, 2019, Ms. Keve reported that she felt she had made excellent improvement. Ms. Keve was very happy with her shoulder and had no complaints. Dr. Patterson noted that she had done very well in physical therapy. She had no pain in her shoulder and wanted to return back to work without restrictions. Dr. Patterson noted she could return to work without restrictions. Dr. Patterson utilized chapter 16 of the Fifth Edition of the AMA Guides to the Evaluation of Permanent Impairment and assigned 8 percent impairment of the upper extremity. (JE4, pp. 48-49)

Approximately one month later Ms. Keve returned to see Dr. Patterson. She was having more discomfort and difficulty performing her job over the past few weeks. She had issues lifting heavy objects overhead. She also has problems with pushing and pulling. Dr. Patterson noted she was having some difficulties at work, but overall he felt she was doing well. He noted she had excellent range of motion and strength of the shoulder. He assigned permanent restrictions of no pushing or pulling greater than 30 pounds. Also, no lifting greater than 15 pounds overhead. (JE4, pp. 53-54)

At the request of her attorney, Ms. Keve saw Farid Manshadi, M.D. on April 15, 2020 for an independent medical examination (IME). At this point in time, Ms. Keve had been back to work for approximately one year. Dr. Manshadi believed that Ms. Keve sustained complete tears of her left rotator cuff. He noted she was status post left shoulder arthroscopic surgery for repair of the rotator cuff tears and she remained with pain and reduced range of motion of her left shoulder. Dr. Manshadi opined that it was probable that the rotator cuff tears and subsequent surgery were causally related to her work injury or job activities while working at John Deere. Dr. Manshadi stated:

> [Tt]he rotator cuff tears which were repaired by Dr. Patterson were all proximal to the glenohumeral joint. These include the supraspinatus, infraspinatus, as well as the subscapularis tendons. These muscles are all located and are originated from the scapula on the left side, which is proximal to the glenohumeral joint.

(Cl. Ex. 1, pp. 3-4)

He placed Ms. Keve at MMI for her left shoulder injury as of April 15, 2020. He utilized Chapter 16, pages 475-479 of the AMA Guides, Fifth Edition, to assign 12 percent impairment of the left upper extremity as the result of the work injury. Dr. Manshadi permanently restricted Ms. Keve to avoid pushing/pulling greater than 30 pounds with the left arm, no overhead lifting greater than 15 pounds with the left arm. She should also avoid any activity which requires repetitious reaching, shoulder height or overhead activities. (Cl. Ex. 1)

The central dispute in this case is whether Ms. Keve's injury extends beyond her shoulder and the amount of permanent disability Ms. Keve is entitled to receive. Based on the operative report of Dr. Patterson, I find that Ms. Keve's injury included a massive full-thickness rotator cuff tear involving the supraspinatus and infraspinatus tendons in their entirety. Additionally, the subscapularis was torn from its insertion at the lesser tuberosity. (JE4, pp. 39-42)

There are two opinions in this case regarding permanent functional impairment. On May 1, 2019, the surgeon in this case assigned 8 percent impairment of the upper extremity. More recently, Dr. Manshadi evaluated Ms. Keve and assigned 12 percent impairment of the left upper extremity as the result of the work injury. I find both Dr. Patterson and Dr. Manshadi utilized the Fifth Edition of the AMA Guides to the Evaluation of Permanent Impairment when they rendered their opinions regarding functional impairment. Pursuant to the impairment rating of Dr. Manshadi, I find Ms. Keve sustained 12 percent permanent functional impairment of her upper extremity.

We now turn to the issue of temporary partial disability (TPD) benefits. Claimant is seeking TPD benefits from August 1, 2018 through December 2, 2018. I find claimant worked with restrictions from August 2, 2018 until December 3, 2018. Ms. Keve was restricted to no use of the left arm from August 2, 2018 until the time of her surgery on December 3, 2018. She was in a healing period and able to work during this time.

However, she testified that she sustained a loss of wages because she was not able to work overtime. (JE1, pp. 3-4; JE4, p. 27; JE4, pp. 31-38; testimony)

Claimant's exhibit 7 contains paystubs from July 16, 2018 through May 22, 2020. As noted, Ms. Keve is seeking TPD benefits from August 1, 2018 through December 2, 2018. The paystub for the pay period from July 30, 2018 to August 5, 2018 shows Ms. Keve's earnings were $1329.34. This amount is greater than the average weekly wage of $971.27. Unfortunately, this is the only paystub in evidence from the relevant timeframe. Claimant's exhibit 6 contains pay records dated July 27, 2018 through December 21, 2018. However, this information is based on pay dates without an explanation as to what pay periods the information pertains to. Additionally, there does not appear to be gross earnings listed on these records. I find claimant has failed to demonstrate what her actual earnings were from August 6, 2018 through December 2, 2018. (Cl. Ex. 6 and 7)

The next issue to be addressed is whether defendant is entitled to a credit for the benefits paid to Ms. Keve under a group plan. The payments that defendant seeks a credit for were paid to Ms. Keve while she was off work from October 24, 2019 through May 15, 2020 due to lumbar radiculopathy. (Ex. Q) Ms. Keve testified that her low back/sciatic nerve condition is not work-related. I find that the payments made to Ms. Keve as set forth in exhibit Q were paid for her lumbar radiculopathy, a condition which is not related to the work injury. I find these payments were made under a group plan and would have been payable even though Ms. Keve sustained the left shoulder injury on August 1, 2018.

We now turn to the claim for penalty benefits. Claimant asserts penalty benefits are appropriate in this case for several reasons. First, claimant asserts penalty benefits are appropriate on the basis that defendant failed to pay TPD benefits for the period of August 2, 2018 through December 2, 2018. Claimant failed to prove entitlement to TPD benefits during this time. Thus, I find there was not an unreasonable denial of such payments.

Second, claimant contends penalty benefits are appropriate on the basis that payment of permanent partial disability benefits was late. Claimant argues that she was placed at MMI and given an impairment rating by Dr. Patterson on May 1, 2019. (JE4, pp. 48-49) However, defendant did not begin paying the rating until June 28, 2019. (Cl. Ex. 3, p. 15) Claimant asserts that a delay of 8 weeks and 2 days is unreasonable. Defendant points out that the impairment rating was not faxed from the doctor's office until the afternoon of June 18, 2019. Within 10 days of receipt of the rating, the defendant paid the impairment rating. (JE4, p. 48; Cl. Ex. 3, p. 15) I find that a 10-day delay between receipt of the impairment rating until the date the payment is made is not unreasonable.

Third, claimant seeks penalty benefits on the basis that John Deere failed to perform an ongoing investigation of the claim, specifically that they did not reevaluate

claimant's entitlement to additional permanency benefits after they received the June 23, 2020, IME report of Dr. Manshadi. At this point, defendant had already obtained an impairment rating from at least one other physician. Thus, I find a good faith issue of fact existed and the employer's liability for the additional impairment was fairly debatable. Thus, I find there was no unreasonable delay or denial of benefits and penalty benefits are not appropriate in this matter.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).

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

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

In 2017 there were legislative changes to Iowa Code Chapter 85 which added the "shoulder" to the list of scheduled members in Iowa Code section 85.34(2)(2019). The primary issue regarding the August 1, 2018 injury surrounds whether the injury should be compensated as a shoulder under Iowa Code section 85.34(2)(n) or as an unscheduled disability under section 85.34(2)(v). Claimant contends that the injury extends beyond the left shoulder into the body as a whole. Ms. Keve argues that the affected areas from the 2018 injury involve structures proximal to the glenohumeral joint and thus should be determined to be an unscheduled injury compensated with industrial disability pursuant to Iowa Code section 85.34(2)(v).

The central dispute in this case is whether Ms. Keve's injury extends beyond her shoulder. Based on the operative report of Dr. Patterson, I find that Ms. Keve's injury

included a massive full-thickness rotator cuff tear involving the supraspinatus and infraspinatus tendons in their entirety. Additionally, the subscapularis was torn from its insertion at the lesser tuberosity. (JE4, pp. 39-42) There is no dispute that these conditions are related to the August 1, 2018 work injury.

Claimant correctly points out that the legislature did not define a shoulder. Based on the situs of her injury, Ms. Keve contends that her injury extends proximal from the glenohumeral joint, and therefore, her injury should be compensated as a body as a whole injury. Defendant contends the 2018 injury is confined to the shoulder.

The Iowa Workers' Compensation Commissioner has issued several decisions regarding Iowa Code section 85.34(2)(n). In Deng v. Farmland Foods, File No. 5061883, for the first time, the Commissioner addressed what constitutes a shoulder under the 2017 amendments. In that case the Commissioner determined the Legislature's use of "shoulder" rendered the statute ambiguous. The Commissioner ultimately determined, under section 85.34(2)(n), the term "shoulder" is not limited to the glenohumeral joint. The Commissioner also rejected the bright line rule that anything proximal to the shoulder joint should be treated as an unscheduled injury under Iowa Code section 85.34 (2)(n). Id.

The Commissioner addressed Iowa Code section 85.34(2)(n) again in Chavez v. MS Technology, LLC, File No. 5066270 (App. September 30, 2020. The Commissioner stated:

> The injury at issue in Deng was to claimant's rotator cuff – specifically the infraspinatus. Given the entwinement of the glenohumeral joint and the muscles that make up the rotator cuff and the importance of the rotator cuff to the function of the joint, I determined the muscles of the rotator cuff are included within the definition of "shoulder" under section 85.34(2)(n). Thus, I found claimant's injury in Deng should be compensated as a shoulder under section 85.34(2)(n). (Chavez, at p. 2)

Based on the Chavez decision, I conclude that Ms. Keve's rotator cuff tear which included a full-thickness tear of the superior rotator cuff, which involved the supraspinatus tendon and subscapularis tendon, should be compensated as a shoulder under section 85.34 (2)(n).

Based on agency precedent, I conclude that none of claimant's injuries which resulted from the August 1, 2018 work injury are compensable as unscheduled, whole body injuries under section 85.34(2)(v). I conclude that the August 1, 2018 work injury should be compensated based on the 400-week schedule pursuant to section 85.34(2)(n).

Having found claimant's 2018 injuries must be compensated as a shoulder under section 85.34(2)(n), a determination must be made whether to apply the upper extremity

rating or the whole person rating to the 400-week schedule. The Commissioner addressed this question in Deng. He stated:

> The question then becomes whether to apply the upper extremity or whole person rating to the 400-week schedule set forth in section 85.34(2)(n). The Commissioner has stated that it is appropriate to apply the upper extremity impairment rating for a shoulder injury. See Deng v. Farmland Foods, Inc., File No. 5061883 (App., September 29, 2020); Chavez v. MS Technology, LLC, File No. 5066270 (App., September 30, 2020); Smidt v. JKB Restaurants, LC, File No. 506776 (App, December 11, 2020).
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> With regard to permanent disabilities the Code states:
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> x. In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34(2)(x).

Ms. Keve's injury is to be compensated pursuant to Iowa Code section 85.34(2)(n). Thus, subsection x of section 85.34(2) applies in this case and the percentage of permanent impairment shall be determined solely by utilizing the Guides to the Evaluation of Permanent Impairment. Unfortunately, the law does not provide any guidance on which impairment rating should be utilized in a case where there is more than one opinion rendered pursuant to the Guides to the Evaluation of Permanent Impairment, published by the American Medical Association. The law is clear that lay testimony and/or agency expertise shall not be used to determine the percentage of impairment. Based on the above findings of fact, I conclude that the rating of Dr. Manshadi should be applied in this case. Dr. Manshadi assigned 12 percent impairment of the left upper extremity. Pursuant to the 400-week schedule, Ms. Keve is entitled to 48 weeks of permanent partial disability (PPD) for the August 1, 2018 work injury. (Cl. Ex. 1, p. 3) These benefits shall be paid at the stipulated weekly rate of six hundred twenty-nine and 73/100 dollars ($629.73) and commence on stipulated date of May 1, 2019. (Hearing Report)

We now turn to the issue of temporary partial disability benefits (TPD). Claimant is seeking TPD benefits from August 1, 2018 through December 2, 2018. Under Iowa law, an employee is entitled to appropriate temporary partial disability benefits during

those periods in which the employee is temporarily, partially disabled. An employee is temporarily, partially disabled when the employee is not capable medically of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability. Temporary partial benefits are not payable upon termination of temporary disability, healing period, or permanent partial disability simply because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury. Section 85.33(2).

The Iowa Code states:

> If an employee is entitled to temporary partial benefits under subsection 3 of this section, the employer for whom the employee was working at the time of injury shall pay to the employee weekly compensation benefits, as provided in section 85.32, for and during the period of temporary partial disability. The temporary partial benefit shall be sixty-six and two-thirds percent of the difference between the employee's weekly earnings at the time of injury, computed in compliance with section 85.36, and the employee's actual gross weekly income from employment during the period of temporary partial disability.

Iowa Code section 85.33(4).

Claimant is seeking temporary partial disability (TPD) benefits from August 1, 2018 through December 2, 2018. Ms. Keve testified that during this time she was able to work straight time, but due to her restrictions she was not able to work overtime hours. During these weeks Ms. Keve claims she was earning less than her gross average weekly wage of $971.27. Defendant does not contend that claimant's healing period had terminated. Rather, defendant argues that claimant failed to provide evidence that overtime hours were available to her. I do not find defendant's argument to be compelling. Under Iowa law, the claimant must merely demonstrate that she is in a healing period and that her actual wages were less than her gross average weekly wages before the injury. During the week of July 30, 2018 through August 5, 2018, claimant's gross earnings were greater than her gross average weekly wages before the injury; thus, claimant is not entitled to any TPD benefits for that week. Claimant failed to provide adequate evidence of what her actual earnings were during the weeks of August 6, 2018 through December 2, 2018. Based on the above findings of fact, I conclude claimant has failed to demonstrate entitlement to any TPD benefits.

Defendant asserts it is entitled to a credit under Iowa Code section 85.38(2) for payment of weekly indemnity payments ("WI"). With regard to benefits paid under group plans, the Code states:

> In the event the employee with a disability shall receive any benefits, including medical, surgical, or hospital benefits, under any group plan covering nonoccupational disabilities contributed to wholly or partially by

> the employer, which benefits should not have been paid or payable if any rights of recovery existed under this chapter, chapter 85A, or chapter 85B, then the amounts so paid to the employee from the group plan shall be credited to or against any compensation payments, including medical surgical, or hospital, made or to be made under this chapter, chapter 85A, chapter 85B. The amounts so credited shall be deducted from the payments made under these chapters. Any nonoccupational plan shall be reimbursed in the amount deducted. This section shall not apply to payments made under any group plan which would have been payable even though there was an injury under this chapter . . .

Iowa Code section 85.38(2)(a).

The payments that defendant seeks a credit for were paid to Ms. Keve while she was off work from October 24, 2019 through May 15, 2020 due to lumbar radiculopathy. (Ex. Q) Ms. Keve testified that her low back/sciatic nerve condition is not work-related. Although defendant asserts a credit, they make no argument why they are entitled to such a credit when the payments were made for a nonwork-related condition. I conclude that the payments made to Ms. Keve as set forth in exhibit Q were paid for her lumbar radiculopathy which is not related to the work injury. I conclude these payments were made under a group plan and would have been payable even though Ms. Keve sustained the left shoulder injury on August 1, 2018. Thus, I conclude that defendant has failed to show entitlement to credit pursuant to Iowa Codes section 85.38(2)(a).

We now turn to the issue of penalty benefits. Iowa Code states:

> 4. a. If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.
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> b. The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts: (1) The employee has demonstrated a denial, delay in payment, or termination of benefits. (2) The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.
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> 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.
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> (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.
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> (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.

Iowa Code section 86.13(4).

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 Custom 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).

Based on the above findings of fact, I conclude claimant failed to demonstrate entitlement to TPD benefits. Thus, claimant has failed to prove there was an unreasonable denial of payments she was entitled to receive. Thus, I conclude penalty benefits are not appropriate.

Claimant seeks penalty for unreasonable delay in PPD benefits. Based on the above findings of fact, I conclude that claimant failed to demonstrate by a preponderance of the evidence that the delay in payment of PPD benefits was unreasonable. Thus, I conclude penalty benefits are not appropriate.

Additionally, claimant also seek penalty benefits for failure to conduct an ongoing investigation. Based on the above findings of fact, I conclude at the time Dr. Manshadi's report was issued defendant already had another expert opinion regarding

impairment. Thus, I conclude a good faith issue of fact existed and the employer's liability for the additional impairment was fairly debatable. Thus, I conclude claimant has failed to demonstrate by a preponderance of the evidence that the defendant unreasonably delayed or denied payments. Thus, I conclude penalty benefits are not appropriate in this case.

The next issue to be determined is whether Iowa Code section 85.34(2)(v) and/or 85.34(2)(x) is a violation of claimant's protections under the United States Constitution.

The Iowa Supreme Court has ruled that agencies cannot decide issues of statutory validity or the constitutional validity of a statute. Salsbury Laboratories v. Iowa, Etc., 276 N.W.2d 830, 836 (Iowa 1979). Based on this precedent, this agency cannot rule on the claim that the statutory provisions of Iowa Code section 85.34(2)(v) and/or 85.34(2)(x) is unconstitutional and legally invalid.

Finally, claimant is seeking an assessment of costs in this case. Costs are to be assessed at the discretion of the Iowa Workers' Compensation Commissioner or at the discretion of the hearing deputy. 876 IAC 4.33. I conclude that claimant was somewhat successful in her claim and therefore an assessment of costs is appropriate. First, claimant is seeking costs in the amount of one hundred and no/100 dollars ($100.00) for the filing fee; I conclude this is an appropriate cost under 4.33(7). Second claimant is seeking costs in the amount of sixty-six and 70/100 dollars ($66.70) for the deposition fee of the claimant; I conclude this is an appropriate cost pursuant to 4.33(1). Thus, I exercise my discretion and assess costs in the amount of one hundred sixty-six and 70/100 dollars ($166.70). (Def. Ex. C; Cl. Ex. 4)

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of six hundred twenty-nine and 73/100 dollars ($629.73).

Defendant shall pay forty-eight (48) weeks of permanent partial disability benefits commencing on the stipulated commencement date of May 1, 2019.

Defendant shall be entitled to credit for all weekly benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Deciga-Sanchez v. Tyson Fresh Meats, Inc., File No. 5052008 (App. Apr. 23, 2018) (Ruling on Defendants' Motion to Enlarge, Reconsider or Amend Appeal Decision re: Interest Rate Issue).

Defendant shall reimburse claimant costs as set forth above.

Defendant 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 ____29th___ day of June, 2021.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Benjamin Roth (via WCES)

James Kalkhoff (via WCES)

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 filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation 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 legal holiday.