BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ERIC P. GUSTAFSON, Claimant, vs. EARL'S BACKHOE SERVICE, INC., Employer, and UNKNOWN, Insurance Carrier, Defendants.	File No. 5064199 ARBITRATION DECISION Head Note Nos.: 1802, 1803, 2501, 4000.2

STATEMENT OF THE CASE

Eric Gustafson, claimant, filed a petition for arbitration against Earl's Backhoe Service, Inc. (hereinafter referred to as "Earl's"), as the employer. Earl's subsequently filed an answer. However, on February 28, 2019, counsel for the employer moved to withdraw her representation. Counsel's request to withdraw was granted in a ruling filed March 18, 2019.

In that ruling on motion to withdraw as counsel of record, the undersigned ordered the employer to enter an appearance and proceed pro se or cause substitute counsel to appear within a specified timeframe. The employer has done neither of the required actions and is in violation of the undersigned's March 18, 2019 ruling and order. In an order imposing sanctions against the employer, filed on April 25, 2019, the undersigned closed the evidentiary record from further activity by the employer.

The employer has taken no further action to remedy the situation, enter an appearance, or seek reconsideration of the order imposing sanctions. The employer's refusal to participate in these proceedings appears to be intentional and the sanctions imposed appear appropriate.

This case was scheduled to proceed to hearing before the undersigned on June 3, 2019. On the morning of June 3, 2019, counsel for claimant contacted the undersigned and gave notice of a personal illness. Counsel requested a continuance of the hearing date.

The undersigned appeared for the scheduled hearing in Waterloo, assuming that the employer may appear and request an opportunity to defend the claim. The employer did not appear for the scheduled hearing in Waterloo on June 3, 2019, and defaulted. Therefore, the undersigned granted the claimant's request for a continuance.

Hearing was rescheduled as a default hearing to occur telephonically. Notice was given to the employer. The employer has not requested an opportunity to appear or participate in the default hearing either live or telephonically. Therefore, a telephonic hearing was conducted before the undersigned on October 1, 2019. Claimant waived the right to have a court reporter present for the hearing and the hearing was recorded via digital recording. The digital recording of the October 1, 2019, hearing shall constitute the official record of that hearing.

Claimant testified on his own behalf. Claimant's Exhibits 1 and 2 were formally offered and received into the evidentiary record. No other witnesses testified and the evidentiary record closed at the conclusion of the October 1, 2019 hearing.

It should also be noted for the record that claimant filed a claim for Second Injury Fund benefits. That claim was resolved via settlement, which was approved by the Iowa Workers' Compensation Commissioner on June 28, 2019. The Second Injury Fund did not participate in the October 1, 2019, hearing and any claim against the Second Injury Fund has been resolved and will not be considered in this decision.

ISSUES

Claimant submitted the following disputed issues for resolution:

1. Claimant's entitlement to temporary total disability, or healing period, benefits.

2. Claimant's entitlement to permanent partial disability benefits.

3. The applicable weekly worker's compensation rate at which benefits should be paid.

4. Whether claimant is entitled to an order directing defendants to reimburse, pay, or otherwise satisfy and hold claimant harmless for past medical expenses related to the April 11, 2018 work injury.

5. Whether defendants should be ordered to pay penalty benefits for an unreasonable delay or denial of worker's compensation benefits.

FINDINGS OF FACT

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

Eric Gustafson, claimant, is a 22-year-old gentleman. He was single on April 11, 2018, and had no children or other dependents as of that date.

Claimant testified that he worked for Earl's on April 11, 2018. Earl's Backhoe is a company that performs water and sewer line installation. According to the original notice and petition, as conceded by the Answer, Earl's has a business address in Cedar Rapids, Iowa. This is the location from which claimant was assigned and worked, though his jobs were obviously performed at remote construction sites. (Claimant's testimony)

Claimant commenced employment for the company in early April 2018. He worked, or was scheduled, for 40 hours per week. Obviously, in construction work, claimant worked more than 40 hours per week if weather was cooperative and less than 40 hours per week if the weather made work impossible. However, on average, claimant worked 40 hours per week for Earl's and this is found to be his typical workweek for Earl's at the time of the April 11, 2018 injury. (Claimant's testimony)

Mr. Gustafson testified that he earned $13.00 per hour on April 11, 2018. Accordingly, I find that claimant's gross average weekly wage at the time of his injury was $520.00.

On April 11, 2018, claimant was working for Earl's. The machine his crew used to cut concrete was dead and needed to be jump-started. A co-worker, Sean Payne, asked Mr. Gustafson to get into the back of the company truck to retrieve jumper cables. Claimant did so. After retrieving the jumper cables, he jumped down out of the back of truck. As Mr. Gustafson landed, his right knee gave away. Claimant fell to the ground with immediate symptoms in his right knee. (Claimant's testimony)

Claimant's counsel inquired about whether Mr. Gustafson had any prior or pre-existing right knee injuries or symptoms. Claimant testified that he had no prior right knee difficulties, symptoms, or injuries before April 11, 2018. None of the medical records introduced into evidence demonstrate any pre-existing conditions or symptoms of the right knee. It is found that claimant had no pre-existing right knee ailments, conditions, or symptoms before April 11, 2018.

After his fall and injury, claimant called Chris Slaton, a co-owner of Earl's. Ms. Slaton instructed claimant to go to his personal physician for medical care. She also instructed claimant to tell the physician's office to contact Earl's to coordinate payment of the medical expenses. Claimant believes Earl's paid for the initial medical expenses. (Claimant's testimony)

As instructed, claimant sought care through Mary Anne Nelson, M.D., his personal physician. Dr. Nelson noted swelling in claimant's right knee and scheduled x-rays of the right knee. The x-rays did not demonstrate significant issues in claimant's right knee.

Following the injury, claimant was off work for three days until his return appointment with Dr. Nelson the following Monday. Given the results of the x-rays, Dr. Nelson released claimant to return to work. However, Dr. Nelson scheduled an MRI of the right knee to further investigate the injury. (Claimant's testimony)

Mr. Gustafson gave notice of the results of the x-rays and notice of the impending MRI. Chris Slaton called the hospital on behalf of Earl's and cancelled claimant's right knee MRI. Ms. Slaton told claimant that there was nothing wrong with him since his physician had cleared him to return to work. In doing so, Ms. Slaton withdrew any authorization by the employer for further medical treatment of claimant's right knee. Since the date that authorization was withdrawn, the employer has not offered claimant any treatment for his right knee. (Claimant's testimony)

Given his ongoing right knee symptoms and the recommendations of Dr. Nelson, Mr. Gustafson went ahead and scheduled the recommended MRI. He scheduled this MRI and made financial arrangements for payment of the MRI through his parents' private insurance, Blue Cross and Blue Shield. (Claimant's testimony)

Claimant submitted to the right knee MRI on May 2, 2018. The MRI demonstrated a torn anterior cruciate ligament (ACL) in claimant's right knee. The MRI also demonstrated small to moderate joint effusion in claimant's right knee. (Claimant's Exhibit 1, pages 1-2)

After claimant received the MRI results, Mr. Gustafson spoke with Earl's. Earl's declined further treatment or payment of any ongoing medical expenses. Earl's did not give any explanation of its reason for denial of the claim. (Claimant's testimony)

Claimant then proceeded with surgery on September 24, 2018 with Kyle Switzer, D.O. The operative report notes that Dr. Switzer's post-operative diagnosis was a tear of the right knee ACL and a medical meniscus tear. (Claimant's Exhibit 1, p. 7) Dr. Switzer performed a right knee arthroscopy with ACL reconstruction using a patellar tendon and a medical meniscal repair. (Claimant's Exhibit 1, p. 7) Follow-up treatment was required after surgery, including physical therapy. (Claimant's Exhibit 1, pp. 14-17) Mr. Gustafson and his new wife moved from the Cedar Rapids area and he discharged himself from physical therapy as a result in February 2019. (Claimant's testimony; Claimant's Exhibit 1, p. 17)

Mr. Gustafson asserts a claim for healing period benefits as a result of his April 11, 2018 injury. He testified that he was off work three days prior to surgery. This testimony is accepted as accurate.

After surgery, claimant was off work for three months and then moved to Davenport, Iowa. Claimant's estimate of being off work three months is conservative given that he reportedly moved per Exhibit 1, page 17 in February 2019. Regardless, claimant testified that he was not released to return to his prior physical job with Earl's prior to actually returning to work in April 2019 with a different employer in Moline,

Illinois. Claimant testified that he was not physically capable of performing substantially similar work as his job at Earl's until he returned to work in April 2019.

Claimant testified that he did not return to Earl's because he was upset with the company for denying his injury and treatment. However, there is no evidence that Earl's offered Mr. Gustafson work in any capacity after his surgery in September 2018. The medical evidence is not clear as to the date claimant achieved maximum medical improvement. I find that claimant achieved maximum medical improvement when he discharged himself from physical therapy on February 7, 2019, as there is no evidence that he obtained additional treatment after this date.

Mr. Gustafson also seeks an award of permanent disability. Mr. Gustafson testifies that he has ongoing symptoms in his right knee. He further testified that he requires the use of a brace on his right knee at all times while working. Unfortunately, his health insurance carrier would not authorize or pay for him to obtain a permanent impairment rating. However, Mr. Gustafson testified that he has full range of motion of the right knee after surgery, but estimates that he loses approximately 25 percent of his function in the right knee and leg by the end of the workday.

Claimant testified that he has good knee function at the beginning of a workday. However, his symptoms increase and function decreases by the end of a workday. Given the ongoing symptoms, surgical intervention, the diagnoses of a torn ACL and torn medial meniscus, I find that there has been permanent alteration of claimant's right knee, and that he has proven a permanent functional change in his right knee as a result of the April 11, 2018 work injury. Claimant's estimate of his loss of functional ability is the only evidence in the record upon which I can estimate a loss of function. Therefore, I accept claimant's estimate of his permanent functional loss and find that claimant has proven a 25 percent permanent loss of function of the right leg as a result of the April 11, 2018 work injury at Earl's.

As a result of the April 11, 2018 work injury, Mr. Gustafson has incurred medical expenses. Claimant introduced the relevant medical expenses in Claimant's Exhibit 2. Mr. Gustafson testified that Blue Cross/Blue Shield has asserted a medical lien for any recovery in this action. He testified that his family also paid approximately $2,000.00 out of pocket in medical expenses.

Other than paying the initial medical expense, claimant testified that the employer has not paid relevant and necessary medical expenses. I find that the medical care rendered to claimant for his right knee injury was reasonable and necessary. I find that the charges, as paid by the private health insurance carrier, are reasonable and for necessary charges. I find that the medical expenses itemized and contained in Claimant's Exhibit 2 are causally related to the April 11, 2018 work injury.

Finally, Mr. Gustafson asserts that the employer unreasonably denied his claim and should be assessed penalty benefits. With this in mind, I find that the employer made no weekly benefit payments to Mr. Gustafson. The April 11, 2018 injury was

clearly work related and arose out of and in the course of claimant's employment with Earl's.

I find that claimant has clearly proven a delay in payment of benefits. I further find that the employer offered no reason or basis for its denial of benefits. Claimant believes the employer was uninsured and that is the reason they denied benefits. However, the employer never provided an explanation why benefits were not being paid to claimant, despite clearly being owed.

CONCLUSIONS OF LAW

Defendants are in default. As a result of sanctions imposed for violation of the undersigned's order, all activity has been cut off for defendants.

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

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).

Claimant testified to a work injury on April 11, 2018. Specifically, Mr. Gustafson testified he sustained a right knee injury as a result of his work activities on April 11, 2018. The medical records support that claimant sustained an injury to his right knee on April 11, 2018, as a result of his work duties. Therefore, it is concluded that claimant has established an injury that arose out of and in the course of employment with Earl's Backhoe Service, Inc., on April 11, 2018.

Mr. Gustafson asserts a claim for temporary total disability, or healing period, benefits. Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar

employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

In this situation, claimant missed three days of work prior to his right knee surgery. I find those days should be compensated as healing period because claimant has proven a permanent disability. Iowa Code section 85.34(1). Claimant missed work from his date of right knee surgery, September 24, 2018, until he obtained new employment in April 2019. Claimant provided unrebutted testimony that he was not medically capable of performing substantially similar employment between the date of surgery and returning to work in April 2019. However, I found that Mr. Gustafson achieved maximum medical improvement when he discharged himself from physical therapy on February 7, 2019.

Therefore, claimant is entitled to healing period benefits from September 24, 2018 through February 7, 2019, when maximum medical improvement was achieved. Iowa Code section 85.34(1).

Mr. Gustafson also seeks an award of permanent disability benefits. Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Claimant concedes that the injury is a scheduled member injury to the right leg and compensable pursuant to Iowa Code section 85.34(2)(p) (2019). Pursuant to Iowa Code section 85.34(2)(p), the leg is compensated on a 220-week schedule.

In this case, the only evidence offered as to claimant's permanent disability was claimant's estimate that he has lost approximately 25 percent of his functional abilities in his right knee as a result of the April 11, 2018 work injury. I accepted claimant's testimony and estimate. I found that claimant proved a 25 percent functional loss of the right leg as a result of the work injury. Therefore, I conclude that claimant has proven entitlement to 55 weeks (220 weeks x 25 percent) of permanent partial disability benefits. Iowa Code section 85.34(2)(p).

Permanent partial disability benefits commence once the claimant achieves maximum medical improvement. Iowa Code section 85.34(1). Claimant discharged himself from further medical care on February 7, 2019. I found that he achieved maximum medical improvement on February 7, 2019. Therefore, I conclude that permanent partial disability benefits should commence in this case on February 8, 2019.

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

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

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

The weekly benefit amount is determined under the above Code section by referring to the Iowa Workers' Compensation Manual in effect on the applicable injury date. Having found that claimant's gross average weekly wage was $520.00, that claimant was single and had no dependents on the date of injury, and using the Iowa Workers' Compensation Manual (p. 99) with effective dates of July 1, 2017 through June 30, 2018, I determine that the applicable weekly rate for healing period and permanent partial disability benefits is $327.94. Iowa Code section 85.36; Iowa Code section 85.37.

Mr. Gustafson also incurred medical expenses for treatment of his right knee injury after the April 11, 2018 work injury. The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Evidence in administrative proceedings is governed by section 17A.14. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence. The rules of evidence followed in the courts are not controlling. Findings are to be based upon the kind of evidence on which reasonably prudent persons customarily rely in the conduct of serious affairs. Health care is a serious affair.

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally mandated in a workers' compensation proceeding to support a finding that the care provided was reasonable. The success, or lack thereof, of the care provided is evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

Having found that the employer offered no medical treatment for claimant after the first medical evaluation and having found that the medical expenses identified at Claimant's Exhibit 2 are reasonable, necessary, and causally related to the right leg injury of April 11, 2018, I conclude that claimant is entitled to payment, reimbursement, or satisfaction of those medical expenses, including reimbursement of any medical liens for payment of past medical expenses. Iowa Code section 85.27.

Finally, claimant seeks an award of penalty benefits. Mr. Gustafson asserts that the employer unreasonably delayed or denied payment of weekly benefits after his work injury. Claimant clearly established a delay or denial of benefits. The employer offered no excuse of explanation for the denial of benefits.

Iowa Code section 86.13(4) provides:

> 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.

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 in 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.

In Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996), and Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996), the supreme court said:

Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."

Christensen, 554 N.W.2d at 260.

The supreme court has stated:

(1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.

(2) If no reason is given for the delay or if the "reason" is not one that a reasonable fact-finder could accept, we will hold that no such cause or excuse exists and remand to the commissioner for the sole purpose of

assessing penalties under section 86.13. See Christensen, 554 N.W.2d at 261.

(3) Reasonable causes or excuses include (a) a delay for the employer to investigate the claim, Christensen, 554 N.W.2d at 260; Kiesecker v. Webster City Meats, Inc., 528 N.W.2d at 109, 111 (Iowa 1995); or (b) the employer had a reasonable basis to contest the claim—the "fairly debatable" basis for delay. See Christensen, 554 N.W.2d at 260 (holding two-month delay to obtain employer's own medical report reasonable under the circumstances).

(4) For the purpose of applying section 86.13, the benefits that are underpaid as well as late-paid benefits are subject to penalties, unless the employer establishes reasonable and probable cause or excuse. Robbennolt, 555 N.W.2d at 237 (underpayment resulting from application of wrong wage base; in absence of excuse, commissioner required to apply penalty).

> If we were to construe [section 86.13] to permit the avoidance of penalty if any amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude section 86.13 is applicable when payment of compensation is not timely . . . or when the full amount of compensation is not paid.

Id.

(5) For purposes of determining whether there has been a delay, payments are "made" when (a) the check addressed to a claimant is mailed (Robbennolt, 555 N.W.2d at 236; Kiesecker, 528 N.W.2d at 112), or (b) the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235.

(6) In determining the amount of penalty, the commissioner is to consider factors such as the length of the delay, the number of delays, the information available to the employer regarding the employee's injury and wages, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

(7) An employer's bare assertion that a claim is "fairly debatable" does not make it so. A fair reading of Christensen and Robbennolt, makes it clear that the employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." See Christensen, 554 N.W.2d at 260.

Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

Weekly compensation payments are due at the end of the compensation week. Robbennolt, 555 N.W.2d 229, 235.

Penalty is not imposed for delayed interest payments. Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa App. 1999). Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008).

When an employee's claim for benefits is fairly debatable based on a good faith dispute over the employee's factual or legal entitlement to benefits, an award of penalty benefits is not appropriate under the statute. Whether the issue was fairly debatable turns on whether there was a disputed factual dispute that, if resolved in favor of the employer, would have supported the employer's denial of compensability. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

In this situation, claimant met his burden to establish a delay or denial of benefits. The employer offered no evidence that it conducted an investigation or that it had any reasonable basis for denial of benefits. I conclude that the employer unreasonably denied benefits and that penalty benefits in some amount are appropriate.

Given that the employer has failed to appear for the hearing and offered no reason for its denial of benefits, other than perhaps its potential criminal conduct in failing to purchase insurance in violation of Iowa Code section 87.14A, I conclude that a penalty of 50 percent is appropriate in this case. Having awarded 20 weeks of healing period benefits and 55 weeks of permanent partial disability benefits at the weekly rate of $327.94, I conclude that a penalty of $12,297.75 should be assessed against the defendant. Iowa Code section 86.13.

A copy of this decision is being provided to the workers' compensation commissioner to determine whether further action should take place under Iowa Code section 87.19 for failure to have workers' compensation insurance.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant healing period benefits from April 12, 2018 through April 15, 2018 and from September 24, 2018 through February 7, 2019.

Defendant shall pay claimant fifty-five (55) weeks of permanent partial disability benefits commencing on February 8, 2019.

All weekly benefits shall be paid at the rate of three hundred twenty-seven and 94/100 dollars ($327.94) per week.

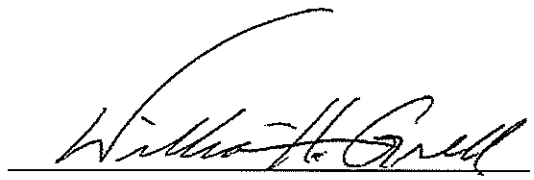
The employer shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendant shall pay outstanding charges directly to medical providers, reimburse any third-party payor for expenses already paid, reimburse claimant for out-of-pocket expenses, and hold claimant harmless for all medical expenses contained or summarized in Claimant's Exhibit 2.

Defendant shall pay to claimant penalty benefits in the amount of twelve thousand two hundred ninety-seven and 75/100 dollars ($12,297.75).

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 8th day of October, 2019.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew J. Petrzelka (via WCES)

Earl's Backhoe Service, Inc. (Certified and Regular Mail)
Attn: Chris Slaton
1200 11th St. NW
Cedar Rapids, IA 52405

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.