

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

---

TIM BLUMBERG,

Claimant,

vs.

AMVC EMPLOYEE SERVICES, LLC,

Employer,

and

BERKSHIRE HATHAWAY  
HOMESTATE INSURANCE COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

OCT 19 2016

WORKERS COMPENSATION

File No. 5054412

ARBITRATION DECISION

Head Note Nos.: 1402.40, 1803

---

STATEMENT OF THE CASE

Claimant Timothy Blumberg ("Blumberg") filed a petition in arbitration on August 13, 2015, alleging he sustained an injury to his left shoulder and body as a whole while working for the defendant, AMVC Employee Services ("AMVC"). AMVC and the defendant, Berkshire Hathaway Homestate Insurance Company ("Berkshire Hathaway"), filed an answer on August 21, 2015.

An arbitration hearing was held on August 1, 2016, at the Division of Workers' Compensation in Des Moines. Attorney Tito Trevino represented Blumberg. Blumberg appeared and testified. Blumberg's wife, Lori Blumberg, testified on her husband's behalf. Attorney Robert Gainer represented AMVC and Berkshire Hathaway. Greg Jensen appeared on behalf of AMVC and Berkshire Hathaway, but did not testify. Exhibits 1 through 8 and A through C were admitted into the record. The record was left open through August 15, 2016, for the receipt of post-hearing briefs. At that time the record was closed.

Before the hearing the parties prepared a hearing report listing stipulations and issues to be decided. AMVC and Berkshire Hathaway withdrew all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed at the time of the alleged injury.

2. Blumberg sustained an injury on February 7, 2015, which arose out of and in the course of his employment with AMVC.
3. The alleged injury caused a temporary disability during a period of recovery.
4. Temporary benefits are no longer in dispute.
5. If Blumberg sustained a permanent disability, the disability is an industrial disability.
6. If Blumberg sustained a permanent disability, the commencement date for permanent partial disability benefits is December 1, 2015.
7. At the time of the alleged injury, Blumberg's gross earnings were \$818.00 per week, he was married and entitled to five exemptions, and his weekly rate is \$537.27.<sup>1</sup>
8. Medical benefits are no longer in dispute.
9. Prior to the hearing Blumberg was paid 36.8 weeks of compensation at the rate of \$537.27 per week.
10. AMVC and Berkshire Hathaway are entitled to a credit of \$19,771.53.

#### ISSUES

1. Did Blumberg sustain a permanent disability?
2. If Blumberg sustained a permanent disability, what is the extent of the disability?
3. Should costs be assessed against either party?

#### FINDINGS OF FACT

Blumberg was born in Kossuth County, and raised in Algona and Perry, Iowa. (Transcript, page 10) At the time of the hearing Blumberg was 59. (Tr., p. 9) Blumberg is married and has three sons. (Tr., pp. 14-15) Blumberg is right-hand dominant. (Tr., pp. 34, 53) Blumberg smokes tobacco. (Exhibit 1, p. 3)

---

<sup>1</sup> According to the rate book in effect at the time of the claimant's injury, from July 1, 2014 to June 30, 2015, the rate for a married person with five exemptions is \$554.35. [www.iowaworkcomp.gov/pdf](http://www.iowaworkcomp.gov/pdf). This is the correct rate which must be used. See Davis-Eisenhart Mktg., Inc. v. Baysden, 539 N.W.2d 140, 142 (Iowa 1995) (noting the court cannot permit litigants to bind the court with stipulations as to the law).

Blumberg dropped out of high school during his freshman year. (Tr., p. 10) Blumberg later completed his GED. (Tr., p. 10) After dropping out of high school Blumberg joined the military. (Tr., p. 11) Blumberg served in the military approximately six months until he was dishonorably discharged. (Tr., p. 11) Blumberg testified when he was young he had a problem with authority and did not like to be told what to do. (Tr., p. 11)

Blumberg has worked in a foundry a meatpacking plant, in farrowing, and as a farm hand, a truck driver, and cook. (Exhibits 6, page 3; B, pp. 17-18; Tr., pp. 12, 14) Blumberg testified he has been fully employed his entire life. (Tr., p. 12) On May 19, 2014, Blumberg was hired by AMVC to work for Cornerstone Hog Farm, located in Scranton, Iowa, as a swine specialist, in farrowing. (Exs. 4, p. 14; 6, p. 3; 7, p. 2; Tr., p. 14) The facility has 3,600 hogs and has two barns, one for farrowing, and one for breeding. (Tr., pp. 18, 57) The hogs are transported to another facility for finishing. (Tr., p. 57)

Blumberg reports to work by 5:00 a.m. or 5:15 a.m., and works between eight to 10 hours per day. (Tr., p. 20) Blumberg regularly works 45 hours per week. (Tr., p. 45) Blumberg's duties include farrowing, livestock care, feeding the animals, basic farm work, repairing light sockets and electrical plug-ins, repairing sow crates, cleaning, dumping buckets, and power washing. (Tr., pp. 18-19) Approximately twice per week AMVC moves the sows after weaning and cleans the rooms where the sows were located to control disease. (Tr., pp. 20, 58) The employees take turns power washing the rooms. (Tr., p. 20) Blumberg testified the power washing lasts between four and five hours per day. (Tr., p. 37)

Blumberg reported three of the employees worked in farrowing. (Tr., p. 22) Blumberg was assigned to farrowing three or more days per week, and would work on farrowing eight to 10 hours per day. (Tr., p. 22)

When farrowing or birthing piglets, a sow lays on her side. (Tr., p. 21) If the sow lays on her right side, Blumberg uses his right arm to assist with the birth. (Tr., p. 21) If the sow lays on her left side, Blumberg uses his left arm to assist with the birth. (Tr., p. 21) Blumberg reported the sows like to stand up, and he assists each sow by removing the piglets from two interior horns inside the sow. (Tr., p. 21) Blumberg reported that if the piglets are not removed, they will die and eventually kill the sow. (Tr., p. 22) Blumberg reported he often has to reach into sows up to his shoulder to remove all of the piglets. (Tr., pp. 22-23)

On February 7, 2015, Blumberg was farrowing a sow. (Tr., p. 23; Ex. 4, p. 1) Blumberg had opened the back door to the sow's crate, and he was on his knees behind the sow with his left arm inside the sow when the sow dropped and went straight down and Blumberg also went straight down. (Tr., pp. 23-24) Blumberg testified he experienced immediate pain, but thought it was just a sprain. (Tr., p. 25) Blumberg reported the injury to the assistant manager, Sam Fair. (Tr., p. 26) Three days later, on February 10, 2015, Blumberg went to his family practice group in Perry and saw Eric

Ash, M.D., complaining of left shoulder pain. (Tr., pp. 25-26; Ex. 1, p. 5) Blumberg's regular physician in the group is David Huante, M.D.

Blumberg experienced a prior injury to his right shoulder in 2008 while working for a different employer as a trucker. (Tr., pp. 12-13) Blumberg had surgery to repair a tear in his rotator cuff with Kyle Galles, M.D., and he was released to full-duty without restrictions. (Tr., p. 13; Ex. 1, p. 3) Blumberg reported he has had no problems with his right shoulder since 2008. (Tr., p. 13)

Blumberg told Dr. Ash he was "'shoulder deep in a hog' when the hog laid down and forced his shoulders to drop down as well." (Ex. 1, p. 5) Dr. Ash documented Blumberg was complaining of pain in both shoulders, with the left hurting worse than the right, and reported when he drives his left arm feels numb and tingly. (Ex. 1, p. 5) Blumberg told Dr. Ash he was experiencing pain with movement. (Ex. 1, p. 5) Dr. Ash assessed Blumberg with bilateral shoulder pain and prescribed cyclobenzaprine HCl, hydrocodone-acetaminophen, and meloxicam. (Ex. 1, p. 6)

On March 5, 2015, Blumberg returned to his family practice group and saw Dr. Huante. (Ex. 1, pp. 7-8) Dr. Huante noted Blumberg was experiencing mobility problems with his left shoulder and "fairly severe pain if he lays on it or tries to move it through full range of motion, especially abduction." (Ex. 1, p. 7) Dr. Huante assessed Blumberg with acute pain of the left shoulder, and recommended a formal consultation with William Jacobson, M.D. (Ex. 1, p. 8)

Blumberg attended an appointment with Dr. Jacobson on April 16, 2016, and complained of constant dull and localized pain in his left shoulder, following a work injury which occurred on February 7, 2015. (Ex. 3, p. 1) Dr. Jacobson noted that Blumberg could return to full duty on April 16, 2015. (Ex. 3, p. 4) Dr. Jacobson prescribed tramadol and ordered a left shoulder arthrogram and magnetic resonance imaging of Blumberg's left shoulder. (Exs. 2, p. 1; 3, p. 2)

On May 1, 2015, the reviewing radiologist listed an impression of:

1. Rupture of the supraspinatus tendon at the osseous tendinous junction with retraction of the tendon.
2. Partial large full-thickness tear involving the infraspinatus tendon.
3. Superior migration of the humeral head in relationship to the glenoid fossa.
4. Large amount of arthrosis of the acromioclavicular joint with evidence of bony impingement. Significant mass effect on the myotendinous junction of the supraspinatus tendon.
5. Tendinosis and tendinitis involving the long head of the biceps tendon.

(Ex. 2, pp. 1-2)

During Blumberg's appointment on May 7, 2015, Dr. Jacobson listed an impression of left shoulder pain, left osteoarthritis of the AC joint, an acute left rotator cuff tear, "left subarach hem w opn wound," and a left subacromial spur. (Exs. 3, p. 5; A1, p. 1) Dr. Jacobson discussed treatment options with Blumberg, including surgery. (Exs. 3, p. 6; A1, p. 2) Blumberg elected to proceed with surgery. (Exs. 3, p. 6; A1, p. 2) On May 28, 2015, Dr. Jacobson performed a left shoulder arthroscopy with a rotator cuff repair, subacromial decompression with coracoacromial ligament release, distal clavicle excision, debridement of the proximal biceps, and manipulation under anesthesia. (Ex. 3, p. 7)

On June 4, 2015, Blumberg attended a follow-up appointment with Dr. Jacobson, complaining of discomfort and pain in his left shoulder. (Ex. 3, p. 9) Dr. Jacobson ordered Blumberg to continue using a SlingShot sling, arranged for a CPM machine for Blumberg to use at home to work on passive range of motion, provided a prescription for hydrocodone, and noted Blumberg could perform tabletop activities. (Ex. 3, p. 10)

During Blumberg's July 16, 2015 appointment, Dr. Jacobson noted he could "wean out of the sling and discontinue the CPM machine." (Ex. 3, p. 12) Dr. Jacobson ordered physical therapy and refilled Blumberg's Norco. (Ex. 3, p. 12) Dr. Jacobson restricted Blumberg to modified duty with no work above shoulder height and imposed a one to two pound weight restriction. (Ex. 3, p. 13)

During a follow-up appointment on September 3, 2015, Dr. Jacobson noted Blumberg had "minimal discomfort" in his left shoulder, and he had seen improvement with physical therapy. (Exs. 3, p. 14; A2, p. 4) Dr. Jacobson ordered the physical therapy to continue and modified duty with no pushing or pulling over five pounds, no lifting over five pounds below shoulder height, and to "[a]void lifting or overhead work." (Exs. 3, pp. 15-16; A2, pp. 5-6)

Blumberg attended an appointment with Dr. Jacobson on October 15, 2015. (Ex. 3, p. 17) Dr. Jacobson added work conditioning to Blumberg's physical therapy, restricted Blumberg to modified duty with no lifting over five pounds with the left arm for four weeks, and noted that after four weeks Blumberg could return to normal duty. (Ex. 3, pp. 17-19)

On December 1, 2015, Blumberg attended an appointment with Dr. Jacobson. (Exs. 3, p. 20; A3, p. 7) Blumberg testified that during his final visit with Dr. Jacobson on December 1, 2015, Dr. Jacobson was not pleased with the grinding and popping in his shoulder. (Tr., pp. 17, 33) Dr. Jacobson found Blumberg was at maximum medical improvement and imposed permanent restrictions of "[n]o power washing, limit over the head work." (Exs. 3, pp. 20-22; A3, pp. 7-9) Blumberg complained of pain in his shoulder and Dr. Jacobson administered a cortisone shot. (Ex. 3, p. 20)

Dr. Jacobson issued an opinion on a form letter on December 4, 2015, finding that under the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed.

2001) ("AMA Guides"), Blumberg had sustained a five percent permanent impairment to the left upper extremity. (Ex. 3, p. 23) Item four of the permanent impairment rating section asked, "[p]lease indicate how this impairment will affect the claimant's ability to function" and Dr. Jacobson responded, "[n]o restrictions." (Ex. 3, p. 23) The next day Dr. Jacobson issued an order, which provides, "Mr. Blumberg has permanent restrictions as noted in the 12-1-15 office note in regard to his left shoulder." (Ex. 3, p. 24)

Blumberg's job description provides that the position requires lifting or carrying of 10-50 pounds frequently and 51 to 100 pounds occasionally, and pushing and pulling 12 pounds or less frequently and 13 to 100 pounds occasionally. (Ex. 4, p. 15) The job description defines "occasionally" as activity up to 33 percent of the time, or 0 to 2.5 or more hours per day, and "frequently" as activity from 33 percent to 66 percent of the time or 2.5 to 5.5 or more hours per day. (Ex. 4, p. 15) The description notes the position requires frequent reaching above the shoulder, but does not list reaching overhead as a physical demand. (Ex. 4, p. 15) Dr. Jacobson did not impose a lifting restriction. (Ex. 3, p. 20)

Blumberg testified he provided his restrictions to his manager, Greg Jensen, and Jensen was a "little upset." (Tr., pp. 34-35) Blumberg enjoys working with livestock and is still farrowing for AMVC. (Tr., pp. 37-38) Blumberg reported that he uses his right arm to farrow whenever possible because it is painful for him to use his left arm. (Tr., p. 38) Blumberg is afraid he will be terminated. (Tr., p. 47) AMVC has not threatened to terminate Blumberg's employment. (Tr., p. 47) Blumberg received a raise after his work injury and he is currently paid \$14.44 per hour. (Tr., p. 16)

Blumberg reported his permanent restrictions preclude him from repairing light plugs and sockets because he cannot hold both hands up, and from power washing. (Tr., p. 35) Blumberg testified that the employees do not currently work with the light plugs and sockets often. (Tr., pp. 47-48, 50) Blumberg stated he performs all of the duties that he performed before except power washing. (Tr., p. 50) Blumberg testified that since his work injury he spends more time feeding the animals, administering shots to the animals, doing laundry, cleaning the office, and taking the trash to the trash bin. (Tr., pp. 36-37)

Blumberg testified the most strenuous part of his job is moving sows. (Tr., p. 55) Power washing is also strenuous because of the pressure from the water going through the hose and the vibration. (Tr., p. 56) Since his injury, Blumberg will not stick his left arm all the way into the sows because it hurts, and will only insert his left arm to his elbow. (Tr., p. 56) Blumberg continues to work an average of 45 hours per week. (Tr., p. 55)

AMVC and Berkshire Hathaway retained Lana Sellner, MS, CRC, to perform a vocational assessment of Blumberg. (Ex. A4) Sellner never met with or spoke with Blumberg before issuing her opinion. (Tr., pp. 38-39) Before preparing her opinion, Sellner reviewed Blumberg's answers to interrogatories, his job description, and an office note from Dr. Jacobson dated December 1, 2015. (Ex. A4, p. 10)

Sellner noted Blumberg's pre-injury work history demonstrates he was capable of working in the heavy work category, which is defined in the Dictionary of Occupational Titles as "[e]xerting up to 50-100 pounds of force occasionally; and/or up to 25-50 pounds of force frequently, and/or 10-20 pounds of amount of force constant. Physical Demand requirements are in excess of those for Medium Work." (Ex. A4, p. 12) Sellner opined Blumberg's restrictions of no power washing and to limit overhead work have no effect on Blumberg's ability to return to the heavy work category. (Ex. A4, p. 12)

Sellner performed a labor market survey and contacted potential employers within Blumberg's geographic area of Grand Junction, Iowa, regarding open positions including meter reader, security officer, warehouse worker, truck driver, and housekeeper/laundry aide. (Ex. A4, pp. 12-13) Sellner discussed the physical demands and wage information with the employers. (Ex. A4, p. 12) Sellner found additional positions in Blumberg's geographic area, including laborer positions, a feed mill operator position, and a truck driver position, but she did not speak with the employers. (Ex. A4, pp. 13-14) Sellner noted the hourly wages ranged from \$10.17 per hour through \$16.51 per hour, with a median hourly wage of \$13.04 per hour. (Ex. A4, p. 14) Sellner opined Blumberg continues to be employable, and several positions are available to him consistent with his work experience, transferable skills and education, and with the restrictions imposed by Dr. Jacobson if he chooses to terminate his employment. (Ex. A4, pp. 14-15)

Blumberg does not have a CDL. (Tr., p. 51) Blumberg testified he could not work as a tractor trailer truck driver because he cannot unload heavy loads, he would have a difficult time with tarping loads, and he has no experience with wide loads. (Tr., pp. 39, 43) Blumberg noted he could not lift and roll a semi tire. (Tr., p. 52) Blumberg reported he would have difficulty with the vibration from power steering and hitting bumps, changing a tire, hooking up and unhooking the tractor, and climbing ladders. (Tr., p. 53) The last time Blumberg applied for a truck driving position was in 2004, and he worked for the company until he injured his right shoulder. (Tr., pp. 54-55)

Blumberg believes he could not work as a security officer because he does not have any education in that area. (Tr., p. 40) Blumberg does not believe he could work as a feed mill operator because he would not be able to lift 40 to 50 pounds of feed. (Tr., p. 42)

Blumberg testified he has good days and bad days. (Tr., p. 31) On an average day, his shoulder is fine when he wakes up and hurts more during the day. (Tr., p. 31) Blumberg reported he cannot raise his left hand above his head. (Tr., p. 31) Blumberg needs assistance to replace light bulbs at home because he cannot lift his arm above his head. (Tr., pp. 44, 64) Blumberg and his wife testified he cannot tolerate activities with vibration, including using an electric drill, mowing, and using a weed eater because the activities cause pain. (Tr., p. 32, 44, 64)

Blumberg has not seen a physician for his left shoulder since December 2015. (Tr., p. 50) Blumberg takes Aleve for his left shoulder, and did not take Aleve before his work injury. (Tr., p. 50)

## CONCLUSIONS OF LAW

### I. Extent of Disability

Blumberg contends he has sustained a permanent impairment to his left shoulder as a result of the work injury. AMVC and Berkshire Hathaway contend Blumberg has failed to establish he sustained a permanent injury to his left shoulder causing an industrial disability.

The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, "[i]t only needs to be one cause." Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

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

Using the AMA Guides, Dr. Jacobson issued an opinion on December 4, 2015, finding Blumberg had sustained a five percent permanent impairment to the left upper extremity. (Ex. 3, p. 23) Dr. Jacobson placed Blumberg at maximum medical improvement on December 1, 2015, and imposed permanent restrictions of "[n]o power washing, limit over the head work." (Exs. 3, pp. 20-22, 24; A3, pp. 7-9) Dr. Jacobson has opined Blumberg sustained a permanent impairment. No other physician has provided an opinion regarding Blumberg's condition.

"Industrial disability is determined by an evaluation of the employee's earning capacity." Pease, 807 N.W.2d at 852. In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications,



experience, and ability to engage in similar employment.” Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee’s “ability to be gainfully employed.” Id. at 138.

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

At the time of the hearing Blumberg was 59. (Tr., p. 9) Blumberg has not completed high school, but he has completed a GED. (Tr., p. 10) Blumberg served in the military for six months until he was dishonorably discharged. (Tr., p. 11) Blumberg has not received any additional training beyond a GED.

Blumberg has worked in a foundry a meatpacking plant, in farrowing, and as a farm hand, a truck driver, and a cook. (Exs. 6, p. 3; B, pp. 17-18; Tr., pp. 12, 14) Blumberg has worked for AMVC since May 19, 2014, as a swine specialist in farrowing. (Exs. 4, p. 14; 6, p. 3; 7, p. 2; Tr., p. 14) Blumberg returned to his position and with permanent restrictions of no power washing and, to “limit over the head work.” (Exs. 3, pp. 20-22, 24; A3, pp. 7-9) Blumberg does not have a permanent lifting restriction.

While Blumberg believes his job may be in jeopardy, he remains employed, in the same position he held before his work injury. Blumberg has permanent restrictions of no power washing and limited overhead work. AMVC has accommodated Blumberg’s restrictions. Blumberg testified the power washing duties are two days per week, for 4.5 to five hours. (Tr., p. 58) Blumberg has not been disciplined since his work injury.

Sellner opined Blumberg continues to be employable, and several positions are available to him consistent with his work experience, transferable skills and education, and with the restrictions imposed by Dr. Jacobson if he chooses to terminate his employment. (Ex. A4, pp. 14-15) Sellner conducted a labor market survey and concluded Blumberg could perform the duties of meter reader, security officer, warehouse positions, truck driver positions, housekeeper/laundry aide, laborer, and feed mill operator within his geographic area. (Ex. A4, pp. 12-14) Sellner noted the hourly wages ranged from \$10.17 per hour through \$16.51 per hour, with a median hourly wage of \$13.04 per hour. (Ex. A4, p. 14) Blumberg received a raise after his work injury and is currently paid \$14.44 per hour. (Tr., p. 16) Based on the industrial disability factors, I conclude Blumberg has sustained a 10 percent industrial disability.

## II. Costs

Blumberg seeks to recover \$34.50 for medical records from Dr. William Jacobson, \$250.00 for a conference with Dr. Jacobson, and the \$100.00 filing fee, for a

total of \$384.50. The workers' compensation commissioner has discretion to tax costs. Iowa Code § 86.40; Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 262 (Iowa 1996). Rule 876 Iowa Administrative Code 4.33 outlines the costs that can be taxed, as follows,

Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The administrative rule expressly allows for recovery of the filing fee. The administrative rule does not expressly provide that the cost of the medical records and the consultation is recoverable. Blumberg is awarded \$350.00 in costs.

ORDER

IT IS THEREFORE ORDERED, that:

Defendants shall pay the claimant fifty (50) weeks of permanent partial disability benefits, commencing on December 1, 2015, at the rate of five hundred fifty-four and 35/100 dollars (\$554.35).

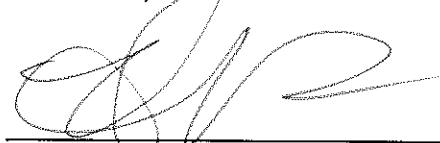
Defendants shall take credit for all benefits previously paid.

Defendants shall pay accrued benefits in a lump sum.

The one hundred and 00/100 dollar (\$100.00) filing fee and the two hundred fifty and 00/100 dollar (\$250.00) consultant fee are taxed to the defendants.

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

Signed and filed this 19<sup>th</sup> day of October, 2016.

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

Copies to:

Tito Trevino  
Attorney at Law  
1003 Central Ave., Ste. 801  
Fort Dodge, IA 50501-4050  
trevino@hawkeyemail.net

Robert C. Gainer  
Attorney at Law  
1307 – 50<sup>th</sup> St.  
West Des Moines, IA 50266  
rgainer@cutlerfirm.com

HLP/srs

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