BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
AUG 10 2018
WORKERS' COMPENSATION

LANCE BUSHBAUM, Claimant, vs. CUSTOM WOOD PRODUCTS, Employer, and CINCINNATI INSURANCE COMPANIES, Insurance Carrier, Defendants.	File No. 5061186 ARBITRATION DECISION Head Note No.: 1802

STATEMENT OF THE CASE

Claimant, Lance Bushbaum, filed a petition in arbitration seeking workers' compensation benefits from Custom Wood Products, employer, and Cincinnati Insurance Companies, insurance carrier, both as defendants, as a result of a stipulated injury sustained on December 12, 2014. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on October 24, 2017, in Des Moines, Iowa. The record in this case consists of joint exhibits 1 through 6, claimant's exhibits 1 through 3, defendants' exhibits A through B, and the testimony of the claimant and Michelle Bushbaum. The parties were given leave to submit post-hearing briefs, the matter being fully submitted on November 14, 2017.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant's claim is barred for failure to give timely notice under Iowa Code section 85.23;
2. Whether claimant is entitled to a running award of healing period benefits from May 18, 2015 to the present and continuing;
3. Whether the December 12, 2014 injury is a cause of permanent disability;
4. Extent of industrial disability;
5. Commencement date for permanent disability benefits;
6. Whether claimant is entitled to reimbursement of an independent medical examination pursuant to Iowa Code section 85.39; and
7. Whether claimant is entitled to an award of alternate medical care pursuant to Iowa Code section 85.27.

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.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record. His demeanor at the time of evidentiary hearing was excellent and gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

Claimant was 49 years of age at the time of hearing. He is married; his wife, Michelle, is a nurse. The couple resides in Osage, Iowa. Claimant graduated high school in 1986; he possesses no other formal post-secondary education. Claimant's work history includes construction, printing production, and at defendant-employer. The majority of claimant's employment came with RR Donnelly. Claimant worked at RR Donnelly for 17 years, first as a printing press operator and later as a printing planner. He was laid off due to a reduction in force in 2010. He was unable to locate employment in a similar field and performed odd jobs. Ultimately, claimant was placed at defendant-employer by a temporary staffing agency in January 2014. Defendant-employer manufactures parts and products from composite, pressed wood. Defendant-employer hired claimant directly in March 2014. Claimant worked in production, as a production supervisor. He performed supervisory duties as well as filling in as needed on the production line. (Claimant's testimony)

On Friday, December 12, 2014, claimant suffered a stipulated work-related injury. On that date, he and a coworker were lifting and moving pieces of composite wood. When the stack of product shifted, claimant felt an immediate sensation in his low back, but denied feeling pain. Claimant continued to work, but felt tightening of his back. He attempted to avoid physical exertion. Claimant went home and over the weekend, his symptoms worsened. (Claimant's testimony)

Due to worsened symptoms, on Monday, December 15, 2014, claimant called in to work and left a voicemail. He indicated he would not be at work, as he had suffered an injury at work and was seeking medical evaluation. (Claimant's testimony) That same date, claimant presented to his personal physician, Mark Haganman, D.O., with complaints of right posterior back pain. Claimant reported sustaining an injury at work the prior Friday, with his symptoms worsening over the weekend. Dr. Haganman noted claimant had called his supervisor and advised as to his intention to seek medical treatment. Dr. Haganman assessed back pain with paraspinal spasm and removed claimant from work for the week. He ordered a course of physical therapy and issued prescriptions for Flexeril, Medrol Dosepak, and Tylenol 1000 mg. (JE6, p. 1)

Following evaluation by Dr. Haganman, claimant testified he spoke with the owner of defendant-employer, Mike Wilkerson. Claimant testified the two discussed claimant's injury and Dr. Haganman's plan for care. While claimant was not initially paid for his time off, defendants later paid claimant indemnity benefits for the time he was removed from work. (Claimant's testimony)

Claimant returned to Dr. Haganman on December 22, 2014 and reported some improvement, but new symptoms of left-sided back and leg pain. Dr. Haganman noted the left-sided symptoms resolved shortly after development, but claimant continued to experience right flank pain with radiation into the right thigh. Dr. Haganman assessed low back pain and again recommended physical therapy. He imposed work restrictions of sitting and standing as tolerated, and a maximum lift of 10 pounds repetitively. (JE6, p. 2)

On January 6, 2015, claimant again returned to Dr. Haganman. At this visit, claimant complained of continued right-sided back pain and redevelopment of left-sided back and leg pain. Dr. Haganman assessed low back pain with left leg pain suggestive of radiculopathy. He left light duty work restrictions in place. Due to Dr. Haganman's recommendation to undergo x-rays and an MRI, claimant agreed to inform his employer of the injury and need for care. (JE6, p. 3)

Within a couple weeks of seeking care, claimant testified he and his wife met with Mr. Wilkerson and his insurance agent regarding claimant's claim. Thereafter, claimant was contacted by a claims adjuster who requested completion of paperwork and a statement. (Claimant's testimony) Claimant's wife, Michelle Bushbaum, testified the meeting occurred in early January 2015. (Ms. Bushbaum's testimony)

Defendants referred claimant for medical care at HealthWorks with Howard Kim, M.D. Claimant initially saw Dr. Kim on February 12, 2015, at which time Dr. Kim diagnosed a lumbar strain and implemented a course of conservative care including physical therapy and Mobic. Dr. Kim also ordered x-rays and an MRI. He imposed restrictions limiting claimant to sedentary work, with lifting, carrying, pushing, and pulling up to 10 pounds occasionally; standing and walking as tolerated; and avoidance of repetitive bending and twisting. (CE3)

Claimant underwent the recommended lumbar spine MRI on February 23, 2015. (JE6, p. 4) Thereafter, claimant returned to Dr. Kim on March 4, 2015. Dr. Kim assessed lumbar radiculopathy and referred claimant for care with a neurosurgeon. He left claimant's sedentary work restrictions in place. (JE1, p. 1) Claimant began a course of physical therapy. (JE6, p. 8)

On March 10, 2015, claimant presented to Neurosurgery of North Iowa for evaluation with Sandeep Bhangoo, M.D. Claimant reported complaints of pain across his low back and down his left leg to the foot, since the work injury. He described the back pain as more severe than the left foot pain. (JE2, p. 1) Dr. Bhangoo performed a physical examination. (JE2, pp. 1-2) He also reviewed claimant's MRI and opined it

revealed foraminal narrowing, especially in the lateral recess at L4-L5 and L5-S1. He opined this finding may be causing some of claimant's sciatic symptoms. Dr. Bhangoo opined claimant's stenosis was most likely arthritic and slowly progressive in nature. He opined claimant's stenosis was not severe enough to warrant surgery at that time. Given the majority of claimant's pain was located in the low back, Dr. Bhangoo opined any surgery on the low back would place claimant at a higher risk for chronic pain. As a result, Dr. Bhangoo indicated he would not advocate for aggressive intervention. He identified alternative treatment options such as injections or physical therapy, as well as recommended time to allow for the best chance of healing. (JE2, p. 2) Dr. Bhangoo expressed belief heavy work duties would not benefit claimant's back; accordingly, he imposed restrictions of a 10-pound lift until April 26, 2015, at which time claimant could resume his regular job. (JE2, pp. 2-3)

On May 18, 2015, claimant returned to Dr. Kim for evaluation. Claimant informed Dr. Kim he had met with a neurosurgeon, who opined claimant was nonsurgical but had referred claimant for pain management. Claimant reported feeling improved overall. He reported a maximum level 2 out of 10 pain with flare ups, for which he used over-the-counter Aleve, and denied radicular symptoms. Dr. Kim assessed an improved lumbar strain and discharged claimant from care, to follow up as needed. He removed all previously imposed work restrictions and released claimant to regular duty. (JE1, pp. 2-3)

Claimant testified he returned to defendant-employer's facility that same date, May 18, 2015. He met with Mr. Wilkerson and was advised that claimant had been laid off. Claimant testified he was never offered work at defendant-employer. (Claimant's testimony)

Dr. Kim examined claimant on June 23, 2015. He ordered a course of physical therapy. (JE1, p. 6) Claimant participated in physical therapy and experienced progressive improvement. (JE3, pp. 1-4) On September 17, 2015, the physical therapist recommended discontinuation of therapy, due to a plateau in symptoms. Claimant reported continued pain, but better tolerance of activities. The therapist noted continued impaired sacroiliac (SI) joint dysfunction, present with heavier activities. (JE3, pp. 5-6)

On October 1, 2015, claimant presented to Dr. Kim with reports of persistent low back and left hip pain. Claimant described worsened pain to a level 7 out of 10. Dr. Kim referred claimant to pain specialist, Dr. Kloc. He also imposed work restrictions of lifting, carrying, pushing, and pulling up to 10 pounds occasionally and 5 pounds frequently; and avoidance of repetitive bending and twisting. (JE1, pp. 4-6)

At the referral of Dr. Kim, claimant presented to Ronald Kloc, D.O. On November 2, 2015, Dr. Kloc performed a left-sided SI joint injection for a noted diagnosis of sacroilitis. (JE4, p. 1)

Dr. Haganman authored a letter dated September 26, 2016 in response to inquiries from claimant's former counsel. Thereby, Dr. Haganman indicated he reviewed claimant's radiographic studies, including the lumbar MRI. Given these findings and the duration of claimant's symptoms, Dr. Haganman opined it would be reasonable to consider an evaluation at a spine center such as UIHC, the Mayo Clinic, or in Minneapolis. (JE6, p. 9)

On March 24, 2017, claimant presented to the University of Iowa Hospitals and Clinics (UIHC) Work Injury Center for evaluation with physiatrist, Joseph Chen, M.D. Dr. Chen reviewed claimant's medical treatment and imaging studies. He opined the MRI revealed multilevel degenerative changes without significant canal stenosis, but some mild neural foraminal stenosis. (JE5, p. 1) He described the changes as age-appropriate degenerative changes in the discs, without focal nerve root compression. Claimant underwent a physical examination; Dr. Chen noted normal strength and reflexes and negative nerve provocative maneuvers. (JE5, pp. 2-4)

Following examination, Dr. Chen assessed chronic right-sided low back pain without sciatica, and physical deconditioning. Dr. Chen opined claimant did not present with a specific, treatable nerve root abnormality or radiculopathy that would explain the extent and intensity of claimant's pain. Rather, Dr. Chen opined claimant presented with chronic musculoskeletal pain. He opined such pain was not treatable with prescriptions or interventions, but claimant needed to learn to manage his pain. Dr. Chen described the UIHC spine rehabilitation program and claimant expressed interest in returning for evaluation by the team. (JE5, pp. 3-4)

Claimant testified he awaited approval of the trial program at UIHC. He subsequently learned the care had been authorized, but his former attorney had failed to inform claimant of the appointment date. Thereafter, claimant sought new counsel. (Claimant's testimony)

Dr. Haganman reevaluated claimant on June 5, 2017. Thereafter, on June 26, 2017, Dr. Haganman authored a letter to claimant's attorney. Dr. Haganman expressed belief claimant had not been afforded the opportunity to see a spine specialist, as previously recommended. Dr. Haganman opined claimant's evaluations to date had not been reasonable in light of claimant's MRI findings and subjective complaints. He opined claimant would benefit from an updated MRI and recommended evaluation by a spinal expert such as: Summit Orthopedics; Spine Center of Minneapolis; or Spine & Brain Clinic. Dr. Haganman commented that nearly two years following claimant's injury, "nothing ha[d] been accomplished." (JE6, p. 10)

Claimant filed an application for alternate medical care with this agency. Following a hearing, a distinct deputy issued a decision on August 3, 2017. Thereby, the deputy ordered a repeat lumbar spine MRI and evaluation by a spinal specialist.

Thereafter, defendant authorized evaluation with Russell Buchanan, M.D., of Heartland Neurosurgery. (CE2, pp. 1-2) Prior to evaluation by Dr. Buchanan, claimant underwent a repeat MRI of the lumbar spine on August 28, 2017. (JE6, p. 11)

At the arranging of claimant's counsel, on September 7, 2017, claimant presented to John Kuhnlein, D.O., for an independent medical examination (IME). Dr. Kuhnlein issued a report containing his findings and opinions dated September 12, 2017. Dr. Kuhnlein performed a records review and interviewed claimant. He thereafter summarized claimant's history of injury and treatment. Claimant complained of a nagging toothache-like pain of the left low back, which worsened with activity, and radiating pain through the thigh down into the foot. Claimant described the leg symptoms as far more severe than the back pain. (CE1, pp. 1-5) Claimant reported worsened symptoms over the last year, with more quickly intensifying pain and leg symptoms. (CE1, p. 6)

Dr. Kuhnlein performed a physical examination. (CE1, pp. 7-8) He also reviewed claimant's x-rays and February 2015 MRI, which he opined revealed multilevel degenerative changes with mild neural foraminal narrowing from L3-S1. He opined claimant's completed pain diagram described an L5-S1 radiculopathy pattern. Dr. Kuhnlein ultimately assessed low back pain with probable L5-S1 radiculopathy. He noted differential diagnoses of facet arthropathy and neurogenic claudication. (CE1, p. 8)

Dr. Kuhnlein opined claimant's symptoms did not resolve fully with treatment and claimant's ongoing symptoms were related to the work injury of December 2014. (CE1, p. 8) Dr. Kuhnlein opined claimant had not achieved maximum medical improvement (MMI). He endorsed Dr. Haganman's recommendation for additional evaluation, as conservative treatment had failed to result in any significant benefit and claimant presented with evidence of unexplained radiculopathy. Dr. Kuhnlein noted claimant had been approved to see Dr. Buchanan. In the event Dr. Buchanan opined claimant was not a surgical candidate, Dr. Kuhnlein recommended claimant participate in the chronic pain program at the Mayo Clinic. Dr. Kuhnlein noted he recommended the Mayo Clinic, as opposed to UIHC, due to claimant's reservations regarding his prior evaluation at UIHC. Dr. Kuhnlein opined claimant may require further diagnostic injections to determine the generator of his pain, as the SI joint is or was a pain generator, but did not account for claimant's radicular findings. Additionally, Dr. Kuhnlein noted claimant may require medication for chronic pain and assist with sleep. In the event no additional intervention was undertaken, Dr. Kuhnlein opined claimant would achieve MMI two to three weeks following completion of the chronic pain program. (CE1, pp. 9-10)

Given Dr. Kuhnlein opined claimant had not achieved MMI, he provided opinions with respect to claimant's permanent disability from an administrative standpoint only. He opined claimant fell within DRE Lumbar Category III, warranting a permanent impairment rating of 13 percent whole person. Dr. Kuhnlein also recommended the following permanent restrictions: lifting 20 pounds occasionally; changing positions for

comfort; stooping or squatting rarely; bending, crawling, or kneeling occasionally; no work on ladders or at heights; avoidance of climbing or descending stairs; work at or above shoulder height occasionally; no foot-operated machinery or travel for work; no work on uneven surfaces or on a production line; and avoidance of evening or night shifts due to impacted sleep and its impact on pain levels. (CE1, pp. 10-11)

Defendants provided Dr. Buchanan with claimant's medical records for review. Following review, on September 21, 2017, Dr. Buchanan declined to see claimant, indicating he had no surgical options to offer. (CE2, p. 8; DEA) After Dr. Buchanan declined to evaluate claimant, claimant's attorney recommended defendants contact one of the physicians previously identified by Dr. Haganman with respect to further care. (CE2, p. 10) Claimant's counsel requested an update on October 17, 2017. Defendants' counsel responded that same date, indicating he had contacted two of the listed physicians, without reply. (CE2, p. 13)

Subsequent to evidentiary hearing, claimant filed another application for alternate medical care. A distinct deputy heard the matter and issued a decision on April 4, 2018. Thereby, the deputy determined defendants had abandoned claimant's care and provided claimant the authority to select his own medical providers.

Claimant testified to ongoing symptomatology of his low back and left leg, which increases progressively with activity. He has utilized Dr. Kuhnlein's recommended restrictions in his daily life. Claimant testified he has intermittently performed some odd jobs, but is unable to tolerate a full eight-hour workday. From his lay off by defendant-employer until the date of hearing, claimant estimated he earned approximately $2,000.00 to $3,000.00 for such tasks. Claimant worked with Iowa Workforce Development and Vocational Rehabilitation; he remains unemployed. Claimant desires further treatment and is hopeful more can be done to remedy his symptoms. (Claimant's testimony)

CONCLUSIONS OF LAW

The first issue for determination is whether claimant's claim is barred for failure to give timely notice under Iowa Code section 85.23.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

The Iowa Workers' Compensation Act imposes time limits on injured employees both as to when they must notify their employers of injuries and as to when injury claims must be filed.

Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days from the date of the occurrence, unless the employer has actual knowledge of the occurrence of the injury.

The purpose of the 90-day notice or actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The actual knowledge alternative to notice is met when the employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940).

Claimant sustained a stipulated work-related injury on December 12, 2014. Defendants directed claimant to Dr. Kim on February 12, 2015, a date 63 days post-injury. Clearly, defendants possessed knowledge of claimant's claim within the requisite 90-day reporting period, as defendants authorized medical care within that period. Furthermore, the Iowa Court of Appeals has held that a payment of workers' compensation benefits to claimant waived any defense regarding lack of timely notice of a work-related injury under section 85.23. Hawkins v. TMC Transportation, 674 N.W.2d 683 (Table), (Ct. of App. Nov. 17, 2003). Defendants made payment of weekly indemnity benefits to claimant related to this work injury. As a result of the foregoing, defendants cannot prevail on the claim of lack of timely notice pursuant to Iowa Code section 85.23.

The next issue for determination is whether claimant is entitled to a running award of healing period benefits from May 18, 2015 to the present and continuing. The next issue for determination is whether claimant is entitled to an award of alternate medical care pursuant to Iowa Code section 85.27. These issues will be considered together.

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v.

Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

Following the December 12, 2014 work injury, defendants authorized care with Dr. Kim. Claimant remained restricted and under Dr. Kim's care until May 18, 2015, at which time Dr. Kim released claimant to return to work without restrictions. Claimant attempted to return to work at defendant-employer, but was laid off that same day. Due to continued complaints, claimant returned to Dr. Kim on June 23, 2015. Dr. Kim recommenced conservative care and imposed work restrictions on October 1, 2015. Claimant remained under restrictions while receiving pain management treatment from Dr. Kloc.

Claimant's care effectively ceased and on September 26, 2016, Dr. Haganman recommended evaluation at a spine center. This referral was not accomplished until claimant was evaluated by Dr. Chen at UIHC on March 24, 2017. At that time, Dr. Chen recommended further evaluation for the spine rehabilitation program. Claimant agreed and the care was authorized, but the appointment date was not relayed to claimant.

Dr. Haganman subsequently evaluated claimant on June 5, 2017 and on June 26, 2017, opined claimant's care to date had been unreasonable. He recommended a repeat lumbar spine MRI and evaluation by a spinal specialist. This care was ordered via an alternate medical care decision issued August 3, 2017. The MRI was undertaken, but the authorized spinal specialist declined to see claimant due to a lack of surgical options. Claimant was not subsequently seen by another spinal specialist.

On September 7, 2017, Dr. Kuhnlein performed a comprehensive examination of claimant. He subsequently opined claimant had not achieved MMI and expressed agreement with Dr. Haganman's recommendation for further care. In the event claimant was not a surgical candidate, Dr. Kuhnlein recommended participation in the Mayo Clinic chronic pain program. Absent further intervention, Dr. Kuhnlein opined claimant would achieve MMI following completion of this program. Such care was not authorized.

Subsequent to evidentiary hearing, claimant filed an alternate medical care application. The presiding deputy found defendants had abandoned claimant's care and awarded claimant the opportunity to select his own treatment providers. This award renders moot the issue of alternate medical care raised at evidentiary hearing.

Claimant has received limited medical treatment and defendants were less than forthcoming in authorizing treatment. As a result, this agency removed defendants' right to direct claimant's medical treatment. Claimant now holds the ability to seek further medical care in treatment of his work-related conditions. These work-related conditions have left claimant restricted and in need of medical care since October 1, 2015. Since that date, claimant has not returned to work or reached a state of physical capability to return to substantially similar employment. Drs. Kuhnlein and Haganman both

recommended further treatment of claimant's chronic pain. Dr. Kuhnlein specifically opined claimant has not achieved MMI; his opinion is unrebutted.

On these facts, it is determined claimant has proven by a preponderance of the evidence that he is entitled to a running award of temporary total disability/healing period benefits, commencing on October 1, 2015. Such benefits shall continue until claimant is no longer entitled to temporary disability benefits pursuant to Iowa Code section 85.33 or section 85.34, whichever should ultimately prove applicable. The parties stipulated claimant's gross average weekly wage was $579.25 and claimant was married and entitled to two exemptions. The proper rate of compensation is therefore, $389.69.

Having determined claimant has not achieved MMI and is entitled to a running award of temporary total disability/healing period benefits, consideration of the issues of causation of permanent disability, extent of industrial disability, and commencement date for permanent disability benefits, are unnecessary as the issues are not yet ripe.

The final issue for determination is whether claimant is entitled to reimbursement of an independent medical examination pursuant to Iowa Code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

If the evaluation by the physician retained by the employer includes a permanent disability rating and "the employee believes this evaluation to be too low," the employee may obtain a subsequent examination by a physician of the employee's choice and be reimbursed by the employer for the reasonable fee of the examination, plus transportation expenses. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 843 (Iowa 2015).

In this case, defendants admitted claimant sustained a work-related injury and authorized medical care. However, at no point did defendants obtain an evaluation of claimant's permanent disability. As a result, claimant's right to a section 85.39 examination was not triggered. I find this result somewhat unjust, as it rewards

defendants for failing to properly and fully investigate claimant's claim. However, precedent is clear and no employer-retained physician opined as to the extent of claimant's permanent disability. Without this triggering event, I cannot award claimant reimbursement for Dr. Kuhnlein's IME under section 85.39.

ORDER

THEREFORE, IT IS ORDERED:

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendants shall pay unto claimant temporary total disability/healing period benefits at the weekly rate of three hundred eighty-nine and 69/100 dollars ($389.69), commencing on October 1, 2015 and continuing until claimant is no longer entitled to such disability benefits pursuant to Iowa Code section 85.33 or section 85.34, whichever should ultimately prove applicable.

Defendants shall pay accrued weekly benefits in a lump sum.

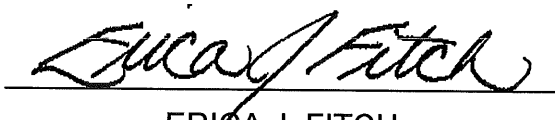
Defendants shall receive credit for benefits paid.

Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. Defendants 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 Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

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

Costs are taxed to defendants pursuant to 876 IAC 4.33.

Signed and filed this 10th day of August, 2018.



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