BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ZACHARY ALLEN SCOTT-GRAY,

Claimant,

vs.

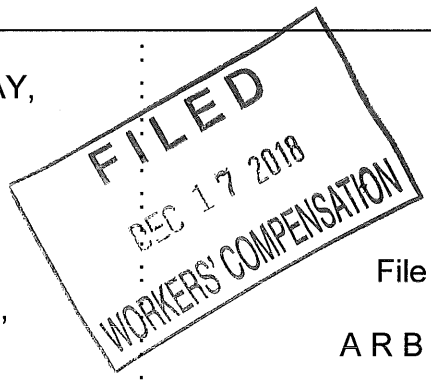
BURESH BUILDING SYSTEMS,

Employer,

and

ARCH INSURANCE CO.,

Insurance Carrier,
Defendants.



File No. 5058676

ARBITRATION

DECISION

Head Notes: 1402.30, 1402.40, 1801, 2501, 2907, 4000.2

STATEMENT OF THE CASE

Zachary Scott-Gray, claimant, filed a petition for arbitration against Buresh Building Systems (hereinafter referred to as "Buresh"), as the employer and Arch Insurance Company as the insurance carrier. An in-person hearing occurred in Des Moines on July 12, 2018.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 8, Claimant's Exhibits 1 through 11, as well as Defendants' Exhibits A through I and K through O. All joint and claimant's exhibits were received without objection. All of defendants' exhibits were received over objections to Exhibit C and Exhibit H.

Claimant testified on his own behalf and offered rebuttal testimony from his mother, Amanda Scott. Defendants called Michael "Mack" McMahon, claimant's supervisor, to testify. The evidentiary record closed at the conclusion of the arbitration hearing.

However, counsel for the parties requested the opportunity to file post-hearing briefs. Their request was granted. The case was deemed fully submitted upon the simultaneous filing of the post-hearing briefs by the parties on August 31, 2018.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury that arose out of and in the course of his employment with Buresh on September 1, 2015.

2. Whether the alleged injury caused a period of temporary disability and, if so, the extent of claimant's entitlement to temporary disability, or healing period, benefits.

3. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits.

4. The proper commencement date for permanent disability benefits, if permanent disability is awarded.

5. Claimant's gross average weekly earnings immediately prior to the alleged injury date and the applicable corresponding weekly worker's compensation rate at which benefits, if any, should be awarded and paid.

6. Whether claimant is entitled to an order directing defendants to pay claimant's past medical expenses, reimburse any out-of-pocket expenses, or otherwise hold claimant harmless for past medical expenses.

7. Whether claimant is entitled to reimbursement of an independent medical evaluation pursuant to Iowa Code section 85.39.

8. Whether penalty benefits should be assessed against the defendants for an alleged unreasonable denial of benefits in this case.

9. Whether costs should be assessed against any party and, if so, the extent to which costs should be assessed.

FINDINGS OF FACT

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

Zachary Scott-Gray began his employment with Buresh in 2013. (Defendants' Exhibit I, page 4) Mr. Scott-Gray worked as a millwright for Buresh and was tasked with building towers, bridges, legs and other items for grain bins. (Transcript, pp. 26-29) His job required him to travel and work on-site where a grain bin was being erected.

Claimant asserts that he sustained injury to his thoracic and lumbar spine as a result of work-related incidents that occurred on September 1, 2015. He had been assigned to a location in Illinois for one to two months before the alleged injury occurred. Specifically, Mr. Scott-Gray asserts that he was carrying a piece of metal with a co-worker. The co-worker dropped his end of the metal and claimant testified it "jerked" his back. Claimant felt a strain in his back but continued working in spite of this incident.

Near the end of the day on September 1, 2015, claimant testified that he experienced a second incident that injured his back. Mr. Scott-Gray testified that a co-worker was attempting to manipulate and move an angle iron, which was 15 to 20 feet long and weighed between 50 and 150 pounds. Claimant testified that he was bent over putting together some bolts in a bucket when the co-worker maneuvered the angle iron and struck claimant in the mid to low back region. Again, claimant testified that he felt immediate pain but was able to complete his shift.

Claimant testified that he returned to his hotel after work the evening of September 1, 2015 and did not engage in any other significant activities. He testified that he woke up on September 2, 2015 with back soreness but reported to work anyway. At about 8:30 a.m. on September 2, 2015, claimant was attempting to lift a nylon choker onto a forklift's forks. He had to lift the 15 to 20-pound item overhead and experienced stabbing pain in his back. He testified that he experienced pain ranging from a 5 to a 6 on a 10-point pain scale at that time.

He attempted to continue working, but could not. He called his supervisor and was transported to a medical facility, Carrollton Rural Health Clinic. (Joint Ex. 1)

Claimant testified that he had never previously sought medical treatment for his mid or low back. Claimant's mother, Amanda Scott, confirmed that claimant had not previously been treated or evaluated for back pain. (Tr., p. 160) Review of the medical records in this case demonstrates that claimant had significant medical treatment prior to September 1, 2015. However, none of those medical records indicate that claimant had a history of mid or low back problems. I find that claimant did not have mid or low back difficulties prior to September 1, 2015.

Defendants denied the alleged work injury. Defendants contend that claimant provided varying information to their insurance adjuster. Defendants contend that the injury did not occur as claimant alleged. Defendants produced written statements from the adjuster with purported notes from conversations with claimant.

The adjuster's notes record a conversation in which the adjuster and claimant discussed both the incident when the metal was dropped and the incident in which claimant was struck in the back. Claimant purportedly testified the incident in which he was struck was the incident causing injury. It is implicit in the adjuster's statement that claimant denied injury or denied the incident when the metal was dropped. (Defendants' Ex. C)

In addition, the adjuster's notes indicate that claimant proclaimed on September 23, 2015 that the injury to his back occurred on the same day that he was taken to the hospital for medical care. (Defendants' Ex. C) Obviously, that would be inaccurate based upon claimant's testimony at trial.

Interestingly, the adjuster's notes reveal another conversation on October 5, 2015. At that point, claimant purportedly indicated that the work injury occurred the day before he went for treatment, which is consistent with claimant's testimony at trial. The only other discussion noted in adjuster notes was on October 23, 2015 when the adjuster called claimant to notify him that the carrier was denying the claim. The adjuster's notes indicate that the denial is "based on witness statements and the medical records showing he didn't have pain the day he said it happened and then he went to the ER the next morning." (Defendants' Ex. C, p. 2)

The written witness statements referred to by the adjuster are presumably the statements from claimant's supervisor and co-worker. (Defendants' Ex. B) The statement provided by claimant's supervisor, Mac McMahon indicates that claimant reported an injury to him that occurred on September 1, 2015. Claimant reported that injury on September 2, 2015. (Defendants' Ex. B, p. 1) Mr. McMahon describes the incident of injury as the incident when claimant's co-worker dropped his end of a metal piece. Mr. McMahon's statement provides no mention of the incident in which claimant was struck in the back on September 1, 2015. (Defendants' Ex. B, p. 1) At trial, Mr. McMahon denied that claimant ever reported the incident when he was struck in the back with metal on September 1, 2015. (Transcript, p. 142)

Claimant's co-worker provided a statement in which he confirmed the incident occurred when he dropped his end of an angle iron. Again, this statement provides no mention of the incident in which claimant was struck in the back. (Defendants' Ex. B, p. 2)

Defendants' statements confirm that at least one incident occurred on September 1, 2015. Specifically, the statements confirm that there was an incident in which claimant's co-worker dropped his end of an angle iron. Although these statements do not specifically mention the incident in which claimant was struck in the back, these statements tend to support at least one of claimant's alleged theories of injury on September 1, 2015. Yet, somehow, the defendants take these statements to be a basis for denial of the claim.

As noted previously, claimant was taken to Carrollton Rural Health Clinic on September 2, 2015. At this initial evaluation, Mr. Scott-Gray reported back pain that started the day before when he "got hit with a big piece of iron." (Joint Ex. 1, p. 1) Claimant was taken off work for a couple of days and placed on light duty restrictions for a week after that. (Joint Ex. 1, p. 4)

The injury occurred shortly before the Labor Day holiday. Therefore, claimant returned to Iowa instead of recuperating in a hotel in Illinois. There is dispute about

whether claimant turned in medical documentation to his employer in Iowa. However, claimant never returned to the jobsite and did not request further assignment. He was terminated by Buresh. (Defendants' Ex. E)

On September 10, 2015, claimant sought medical care through his personal physician, Tyler C. Thoen, M.D. Dr. Thoen recorded a history in which claimant reported being bit with a 300-pound piece of metal. (Joint Ex. 2, p. 1) Dr. Thoen prescribed a muscle relaxer and took claimant off work for a week. (Joint Ex. 2, p. 1)

Claimant returned for follow-up on September 18, 2015. Dr. Thoen recommended an MRI of claimant's back. Defendants subsequently denied the injury and claimant did not receive the MRI at that time. (Defendants' Ex. D) Claimant spoke with a nurse practitioner at McFarland Clinic again on October 27, 2015, but did not receive any additional treatment between September 18, 2015 and November 11, 2015. (Joint Ex. 2, pp. 11-14)

On November 12, 2015, claimant was involved in a motor vehicle accident. He was struck on the driver's side of his vehicle. Claimant was transported to the emergency room via ambulance on November 12, 2015 and evaluated at Mary Greeley Hospital. X-rays were performed of claimant's cervical, thoracic and lumbar spine. All imaging was read as negative. (Joint Ex. 3, p. 4)

The emergency room physician released claimant, noting that he had exacerbated his back pain in the motor vehicle accident, but only recommended outpatient follow-up. (Joint Ex. 3, p. 4) The emergency room physician noted that the claimant "sprang out of bed" and that he observed "exaggerated movement with breath holding" upon being discharged. (Joint Ex. 3, p. 4)

Claimant was evaluated by Brenda Burrough, M.D. at McFarland Clinic on November 16, 2015. Claimant presented for this evaluation with back pain and described muscle spasms. Mr. Scott-Gray relayed that his hydrocodone, prescribed in the emergency room, was not helping his pain. (Joint Ex. 2, p. 19) Dr. Burrough noted that claimant "writhes and flinches to even light touch globally on his back from approximately mid thoracic area to upper lumbar area." She recommended a referral to a physiatrist and claimant agreed to such a referral. (Joint Ex. 2, p. 19)

Mr. Scott-Gray returned to the emergency room on November 20, 2015. He complained of severe pain, numbness and tingling in his lower extremities, as well as back pain. The attending nurse practitioner noted that claimant's "history and symptoms really do not match the injury pattern." (Joint Ex. 3, p. 12) She noted claimant would scream, moan, hold his breath and shake when she would gently lift his shirt to assess his back. (Joint Ex. 3, p. 22) The nurse practitioner also noted that claimant was "acting like he is unresponsive" at times during the evaluation, but assessed claimant as "fully intact neurologically." (Joint Ex. 3, p. 12) Claimant was discharged from the emergency room on November 20, 2015 with a diagnosis of a low

back strain. He was given Haldol, Benadryl, and Toradol for his pain in the emergency room and discharged.

On November 24, 2015, claimant returned for care at McFarland Clinic and was evaluated by Grant D. Doolittle, D.O. Dr. Doolittle noted that claimant had the unusual presentation at the emergency room. He attempted to discuss that emergency room visit with claimant and his mother. Claimant took offense and became belligerent with the physician, according to the office note. The physician noted profanity-laden responses from claimant and eventually asked claimant to leave the clinic.

The next day, claimant presented to a different hospital for evaluation in the emergency room. Specifically, on November 25, 2015, claimant presented to the emergency room at Mercy Medical Center. Claimant reported worsening of his symptoms since the November 12, 2015 motor vehicle accident, reporting 9 out of 10 pain levels. (Joint Ex. 6, p. 1) However, at this emergency room visit, claimant was noted to be alert and oriented but anxious at this visit. (Joint Ex. 6, p. 3) Claimant was discharged with prescription medications. The physician doubted that claimant was having any seizure activity but a neurology consult was recommended. (Joint Ex. 6, p. 5)

Then, on the evening of November 25, 2015, claimant presented to the emergency room at Hansen Hospital in Iowa Falls with a potential overdose. (Joint Ex. 7) The facts or reasons for admission are not entirely clear in this record. Claimant, at points, concedes that he took additional medications. There is also a version of events in the medical documentation in which claimant consumed street drugs, consumed alcohol, and one in which he tried to commit suicide due to a domestic incident with his girlfriend.

It is not entirely clear why or how this overdose situation came about and it probably is not necessary to decide for purposes of this decision. However, the emergency room in Iowa Falls obtained a drug screening on claimant, which demonstrated that he had consumed alcohol, amphetamines, opiates, methamphetamines, muscle relaxers, and oxycodone. Claimant was involuntarily transferred to the University of Iowa Hospitals and Clinics. By the time of his discharge from the University of Iowa Hospitals and Clinics on November 29, 2015, claimant reported that his back pain was much better and that he was ready to go back to work. (Joint Ex. 8, pp. 6, 22)

On December 8, 2015, claimant presented for re-evaluation by Dr. Thoen. Dr. Thoen continued claimant's medication regimen. On January 8, 2016 and January 20, 2016, Dr. Thoen again evaluated claimant with continued medication management. (Joint Ex. 2, pp. 38-47)

Mr. Scott-Gray presented for a neurologic consultation at McFarland Clinic on April 12, 2016. Claimant reported at this visit that the car accident in November 2015

worsened his symptoms and that his symptoms continued to worsen over time. (Joint Ex. 2, p. 57) Claimant accepted, or conceded, this history during his trial testimony. (Tr., p. 118)

A pain clinic evaluation was scheduled and occurred on July 19, 2016. Arnold R. Parenteau, M.D. evaluated claimant and noted that even during light palpitation of claimant's back, claimant would briskly pull away. (Joint Ex. 4, p. 1) Dr. Parenteau noted a negative straight leg raise bilaterally, intact strength and reflexes. Dr. Parenteau noted, "I do have some great concerns regarding pain behaviors with this patient as well as secondary gain issues based on what I have seen during the exam room today. Also have concern regarding his current illicit use of opiate analgesics." (Joint Ex. 4, p. 2) Dr. Parenteau recommended return evaluation in four weeks. Claimant never presented for evaluation by Dr. Parenteau again.

On September 8, 2016, claimant returned to Dr. Thoen for evaluation. Dr. Thoen noted that claimant had recently started a new job and "that the pain has returned." (Joint Ex. 2, p. 62) The implicit assumption or statement made in this record is that the pain had resolved and resumed again after claimant began working again. On September 12 or 13, claimant's allergist noted that claimant "continues to work in welding and working in the outdoor area." The physician noted that claimant has to "travel out of state with his work." (Joint Ex. 2, p. 66) However, at trial, claimant denied that he was working at the time. (Tr., pp. 122-124) No additional significant medical care related to claimant's back injury is identified in this evidentiary record after September 13, 2016.

Claimant attempts to explain away some of the bizarre actions and reports in his medical records by calling his mother on rebuttal. Amanda Scott is claimant's mother. She is a pediatric nurse at McFarland Clinic. She testified that she attended quite a few of the medical appointments and she believes claimant was in pain at all times reported in the medical records. Ms. Scott also testified that she believes some of the bizarre behaviors were caused by claimant's post-concussive syndrome after the November motor vehicle accident. (Tr., p. 159)

I do not accept this testimony as accurate or convincing. Ms. Scott is admittedly a registered nurse with training and experience with evaluating patients. However, I find the reports of multiple other, uninterested, medical professionals to be more convincing in this scenario. Ms. Scott is not a neurologist capable of diagnosing post-concussive syndrome. Claimant was evaluated at a neurology clinic. Ultimately, I believe there were some voluntary bizarre behaviors exhibited by claimant at various medical facilities. I do not have a great explanation for those behaviors, other than they appear to worsen when claimant was not receiving the treatment or attention he desired. Perhaps there is an underlying anxiety causing these. Perhaps it is secondary gain. Perhaps there is an unexpressed issue. Regardless, these behaviors began to occur after defendants denied the claim and after the motor vehicle accident.

Mr. Scott-Gray asserts that he sustained a permanent injury to his mid and low back regions as a result of the injuries sustained on September 1, 2015. In support of this contention, claimant offers the opinion of Robin L. Sassman, M.D. Dr. Sassman performed an independent medical evaluation on January 9, 2018 and authored a report dated April 2, 2018.

Dr. Sassman evaluated claimant only one time for purposes of this litigation. Review of Dr. Sassman's report gives me concern about the history she was provided and relied upon in formulating her opinion. Mr. Scott-Gray reportedly told Dr. Sassman that "his low back symptoms returned to their baseline level a few months after the accident." (Claimant's Ex. 2, p. 10) Dr. Sassman accepts this verbal history from claimant as supporting her conclusion that the September 1, 2015 work injury caused a permanent disability while the November 2015 motor vehicle accident caused only a temporary aggravation of back symptoms that returned to baseline within a couple of months. She specifically notes, "When the motor vehicle accident happened, Mr. Scott-Gray indicated that the pain in his low back and thoracic spine was the same pain he had before, it was just worsened temporarily by the motor vehicle accident. This is consistent with the records as well." (Claimant's Ex. 2, pp. 9-10)

In her history section, Dr. Sassman recounted a thorough summary of the medical care claimant has received with one glaring exception. Dr. Sassman's medical history does not include reference to a medical record from the neurology department at McFarland Clinic dated April 12, 2016. The history recorded from claimant at the April 2016 evaluation includes reference to the September 2015 injury and the November 2015 motor vehicle accident. Claimant noted that the car accident "worsened things." He also noted that "[t]here was no improvement in the low back pain before the car accident 11/12/15, this has continued to worsen over time." (Joint Ex. 2, p. 57)

The April 12, 2016 medical record clearly demonstrates that claimant's symptoms did not calm down, or resolve to baseline, within a few months after the motor vehicle accident. Rather, nearly five months after the motor vehicle accident, claimant reported that the accident worsened his symptoms and that his symptoms had continued to worsen over time. Certainly, this one medical record could be in error, but it is difficult to understand why Dr. Sassman was either not provided this medical record or chose not to mention it in her review. The April 12, 2016 medical record clearly contradicts Dr. Sassman's analysis and conclusion that the November 2015 motor vehicle accident caused only a temporary aggravation that resolved within a few months.

Therefore, it is necessary to attempt to rectify this record with Dr. Sassman's opinions or to confirm the accuracy of the April 12, 2016 medical record. A piece of evidence that carries throughout the medical records that is not discussed by any of the medical providers appears illuminating on this subject.

Following the September 1, 2015 work injury, claimant was prescribed five milligrams of cyclobenzaprine to be taken two times daily for muscle spasms. (Joint Ex.

2, p. 7) Claimant's continued use of five milligrams of cyclobenzaprine twice daily is documented in a medical record dated October 27, 2015. (Joint Ex. 2, p. 11) Drug screening performed after the November 2015 motor vehicle accident did not detect usage of any medications, suggesting that clamant had quit using the cyclobenzaprine before November 12, 2015. (Joint Ex. 3, p. 5)

Regardless, even if claimant continued using the muscle relaxer at the same dosage prescribed shortly after his September 1, 2015 work accident, it is quite apparent that his dosage was significantly increased after the November 2015 motor vehicle accident and never returned to its pre-November 2015 baseline. As noted, prior to the motor vehicle accident, claimant was taking five milligrams of cyclobenzaprine twice daily. (Joint Ex. 2, pp. 7, 11)

After the motor vehicle accident on November 12, 2015, claimant was prescribed five milligrams of cyclobenzaprine to be taken twice daily (his prior dosage). However, an additional 10 milligrams of cyclobenzaprine was added to his medication regimen to be taken three times per day. In addition, claimant was prescribed hydrocodone after the motor vehicle accident, a medication he was not previously using between the date of the work injury and the motor vehicle accident. (Joint Ex. 3, p. 3)

Unlike the drug screening that occurred immediately after the November 12, 2015 motor vehicle accident, the drug screening on November 25, 2015, clearly demonstrated that claimant was taking cyclobenzaprine, as well as methamphetamine, an opiate, and amphetamines. (Joint Ex. 7, p. 5) In fact, review of the medical records subsequent to the motor vehicle accident demonstrate that claimant continued to require significantly more medication after the motor vehicle accident to manage symptoms than he did between September 1, 2015 and November 11, 2015. Claimant's cyclobenzaprine dosage was reduced November 23, 2015, but he still required a higher and more frequent dosage than he required before the November 2015 motor vehicle accident. (Joint Ex. 2, p. 24) Moreover, when this reduction in the cyclobenzaprine dosage occurs, another medication, diclofenac, was added to claimant's medication regimen. (Joint Ex. 2, p. 24)

On December 8, 2015, Neurontin was added to claimant's medication regimen. (Joint Ex. 2, p. 33) On January 8, 2016, it is documented that claimant continued to require a higher dosage of cyclobenzaprine than he took before the November 2015 motor vehicle accident. (Joint Ex. 2, p. 39) As of January 20, 2016, more than two months after the motor vehicle accident, claimant still required a higher dosage of cyclobenzaprine than he did prior to the motor vehicle accident. (Joint Ex. 2, p. 44) He clearly had not returned to a "baseline" by January 20, 2016.

In fact, at the January 20, 2016 evaluation, it is noted that claimant continued to use hydrocodone and gabapentin, both medications he did not require before the motor vehicle accident. (Joint Ex. 2, p. 44) Claimant's continued use of an increased dosage of cyclobenzaprine, hydrocodone and gabapentin is documented on February 8, 2016. (Joint Ex. 2, p. 49)

Although Dr. Sassman either did not have or did not comment on the April 12, 2016 neurology office note, that record again documents that claimant continued to use a dosage of cyclobenzaprine that exceeded anything he took before the motor vehicle accident in November 2015. (Joint Ex. 2, p. 59) The April 12, 2016 note documented that claimant was able to discontinue gabapentin, but was started on Neurontin. (Joint Ex. 2, p. 59) Claimant clearly had not returned to a pre-November 2015 baseline.

On September 8, 2016, claimant was again requiring the use of gabapentin, he continued to take the increased dosage of cyclobenzaprine, and clonidine was added to his medication management at that time. (Joint Ex. 2, p. 63) More than a year later, on October 26, 2017, medical records continued to document that claimant was taking the higher dosage of cyclobenzaprine and still using hydrocodone, a medication not required prior to the November 2015 motor vehicle accident. (Joint Ex. 5, p. 1)

In her own independent medical evaluation, Dr. Sassman documented that claimant was taking gabapentin, cyclobenzaprine, and using clonidine patches for the mid and low back symptoms. (Claimant's Ex. 2, p. 8) Yet, Dr. Sassman makes no mention of and provides no analysis of the fact that Mr. Scott-Gray did not require gabapentin or clonidine prior to the November 2015 motor vehicle accident. Dr. Sassman did not document the dosage or frequency at which claimant was taking cyclobenzaprine or discuss the fact that claimant's use of this muscle relaxer was increased after the November 2015 motor vehicle accident and was ongoing for a period of two years, if not longer.

Given that claimant's dosage and frequency of use of a muscle relaxer increased after the November 2015 motor vehicle accident and remained at the elevated dosage and frequency for two years thereafter, I have a difficult time finding that the November 2015 motor vehicle accident was merely a temporary aggravation and that claimant's symptoms resolved to a pre-November 2015 baseline. Similarly, given that claimant required ongoing use of hydrocodone, gabapentin, Neurontin, and/or clonidine after the November 2015 motor vehicle accident, and that he did not require any of these medications between September 1, 2015 and the date of the motor vehicle accident, I have a difficult time finding that claimant sustained only a temporary aggravation as a result of the November 2015 motor vehicle accident.

Defendants introduced an independent medical evaluation of their own, performed by William R. Boulden, M.D. (Defendants' Ex. A) Dr. Boulden disagrees with Dr. Sassman's evaluation, noting that claimant had only symptoms in his lumbar spine and did not report any symptoms in the thoracic spine at the time of his evaluation. Dr. Boulden noted that all of claimant's symptoms are subjective.

Dr. Boulden diagnosed claimant with myofascial pain in the lumbar spine with only mild degenerative changes but no neural entrapment. Dr. Boulden opined that there was not a material or substantial work injury. He states, "I do not find anything pathological or objective that we can state was caused by an alleged injury. His symptoms are strictly subjective in nature." (Defendants' Ex. A, p. 10) Dr. Boulden

opines that claimant does not require any permanent work restrictions and does not qualify for any permanent impairment as a result of an alleged work injury on September 1, 2015. (Defendants' Exhibit A, pp. 10-11)

I accept Dr. Boulden's description that claimant's injury resulted in only subjective complaints. However, I do not accept Dr. Boulden's assessment that these subjective symptoms rule out any type of injury occurred at work. Ultimately, I do not find Dr. Boulden's opinion to be entirely convincing in this situation either.

This brings me back to claimant's evidence to determine what he has proven. Contrary to Dr. Sassman's acceptance of claimant's statement that the motor vehicle accident only temporarily aggravated claimant's symptoms and that this "is consistent with the records," I find that claimant's symptoms were aggravated after the November 2015 motor vehicle accident and that claimant required ongoing medication usage that was not required before the motor vehicle accident. I find that claimant has not proven that the September 1, 2015 work injuries caused permanent disability or that the November 2015 motor vehicle accident was only a temporary aggravation.

Instead, I find that the evidence demonstrates a material and substantial change in claimant's symptoms after the November 2015 motor vehicle accident. The injuries resulting from the November 2015 motor vehicle accident required increases in claimant's cyclobenzaprine dosage and frequency, as well as the addition of other medications to control claimant's symptoms for a period extending at least two years after the November 2015 motor vehicle accident. I find that Dr. Sassman was not aware of, or did not factor into her analysis, the April 2016 medical treatment of claimant, which contradicts her conclusion.

I accept Dr. Sassman's opinion that the September 1, 2015 accidents at work caused an injury to claimant's thoracic and lumbar spine. This conclusion is consistent with claimant's testimony, Amanda Scott's testimony, concurrent and prior medical records, and is logical. However, I find that claimant did not prove that ongoing symptoms, medical treatment, or impairment after the November 12, 2015 motor vehicle accident are attributable to the work injuries on September 1, 2015. Therefore, I find that claimant has proven a temporary injury to his back occurred as a result of work activities on September 1, 2015.

Medical evidence establishes that claimant was medically restricted from working after being evaluated on the day after the injury. Specifically, the medical provider in Illinois took claimant off work on September 2, 2015 and September 3, 2015. The provider allowed light duty work from September 4, 2015 through September 10, 2015. (Joint Ex. 1, p. 4) The employer offered no light duty work during this period of time.

Claimant was evaluated by his personal physician in Iowa and taken off work from September 10, 2015 through September 17, 2015. (Joint Ex. 2, p. 1) On September 18, 2015, claimant was declared unable to work by his personal physician. (Joint Ex. 2, p. 6) The employer declined to provide any additional medical care,

including a request for an MRI, and claimant remained off work through the date of his motor vehicle accident on November 12, 2015.

As noted above, the post-accident drug screen on November 12, 2015, demonstrated no medications in claimant's system. I find that claimant was not requiring ongoing medication usage as of November 12, 2015. Additional treatment and medication usage after November 12, 2015 is causally related to that motor vehicle accident.

I find that claimant was not medically capable to work, or was not offered suitable light duty work between September 2, 2015 and November 11, 2015. I find that claimant was not at maximum medical improvement and was not medically capable of performing substantially similar employment during this period of time.

I reject Dr. Sassman's opinions about the September 1, 2015 work injury causing permanent impairment or permanent disability. Although I do not find Dr. Boulden's opinions to be persuasive on the causation issues, I find no other convincing evidence or medical opinions in this record to establish that claimant sustained permanent impairment, or permanent disability, as a result of the September 1, 2015 injury at work. Therefore, I find that claimant failed to prove he sustained a permanent injury, or permanent disability, as a result of the September 1, 2015 work injuries.

The parties disagree about the applicable gross weekly earnings and applicable weekly worker's compensation rate at which benefits should be paid. However, review of Claimant's Exhibit 6, page 1 and Defendants' Exhibit O, page 1 demonstrates that the parties do not have factual disputes about which weeks of wages should be included. Instead, there is a legal dispute about the applicable hourly rate at which the wages should be calculated.

Claimant contends that all wages should be calculated using the actual hours worked, multiplied by the hourly rate of $18.00 per hour. Claimant contends that the rate of $18.00 per hour should be used for all hours worked prior to the date of injury because claimant received an hourly rate raise the week before his injury. Indeed, the payroll records demonstrate that the final week before claimant's injury, ending September 4, 2015, was paid at $18.00 per hour. (Claimant's Ex. 6, p. 1) All hours worked before that pay period were paid at $16.00 per hour. (Claimant's Ex. 6, p. 1)

Defendants contend that the actual wages earned during the applicable weeks should be used in calculating the average gross weekly wage. Review of Defendants' Exhibit O demonstrates that defendants utilized the actual wages earned during the stipulated period of time. I find that claimant's average gross weekly earnings immediately prior to the date of injury were $841.15.

With respect to the medical expenses claimant submitted at Claimant's Exhibit 7, I find that the medical expenses at McFarland Clinic on September 10, 2015 and September 18, 2015 are causally related to the September 1, 2015 work injury.

Defendants provided no medical care after the initial evaluation in Illinois. The care provided at McFarland Clinic on these dates was reasonable and necessary medical care. The charges submitted for that care are reasonable. All other medical treatment, or charges, contained on Claimant's Exhibit 7 occurred after the November 12, 2015 motor vehicle accident and are not proven to be attributable to, or causally related to, the September 1, 2015 work injury.

Mr. Scott-Gray also seeks reimbursement of Dr. Sassman's charges for his independent medical evaluation. I find that no physician authorized by defendants rendered a permanent impairment rating before Dr. Sassman evaluated claimant on January 9, 2018. Dr. Boulden ultimately offered an opinion on permanent impairment, but he did not evaluate claimant until May 10, 2018.

Claimant also asserts a claim for penalty benefits, asserting that defendants unreasonably denied both temporary and permanent disability benefits. Obviously, having found that claimant failed to prove permanent disability, I find that defendants had a reasonable basis to dispute benefits that are not owed.

With respect to the period of time for benefits denied between September 2, 2015 and November 11, 2015, I find that claimant reported a work injury to the employer the day after the injury occurred. The employer transported claimant to a medical facility and paid for the initial medical care. However, the employer provided no follow-up care after the initial medical care. The employer denied liability because the claimant's report of injury allegedly provided an inaccurate date of the injury. Defendants also assert that claimant only reported one of the two potential injuries occurring on September 1, 2015.

Certainly, if accepted, the defendants' evidence demonstrates that there may have been some confusion, or miscommunication, occurring as to the specific timing of the injury or the specific mechanism or mechanisms of injury. However, rather than conducting a full investigation, including collection of medical records and seeking a medical causation opinion, defendants elected to rely upon relatively technical grounds for a denial instead of seeking the truth about how, or if, an injury occurred.

Defendants elected to dispute the claim because claimant's date was off and because he reported one of two potential injuries. Yet, defendants did not seek timely medical evaluation of whether either, or both, alleged injuries could have caused claimant's condition. Defendants identified no alternate potential source of injury, nor any pre-existing conditions that may have explained the injury. Defendants failed to conduct a thorough, or meaningful, investigation to determine if claimant actually sustained an injury at work. They provided essentially no medical care and sought no timely medical opinions on causation.

I find that claimant has demonstrated a delay, or denial, of weekly benefits from September 2, 2015 through November 11, 2015. Defendants have not established a reasonable investigation or reasonable basis for denial occurred. They waited over a

month for a formal denial, without obtaining any medical evidence to support the denial. Therefore, I find that defendants did not contemporaneously convey the basis for their denial. Defendants failed to prove that they had a reasonable basis for denial of benefits from September 2, 2015 through November 11, 2015.

CONCLUSIONS OF LAW

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).

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

In this case, I found that claimant proved by a preponderance of the evidence that he sustained a back injury as a result of his work activities on September 1, 2015.

Therefore, I conclude that claimant has carried his burden of proof to establish he sustained an injury that arose out of and in the course of his employment on September 1, 2015. Claimant is entitled to benefits in some amount.

Mr. Scott-Gray asserts a claim for permanent disability. However, having found that claimant failed to prove the September 1, 2015 work injuries caused permanent impairment, or permanent disability, I conclude that claimant failed to prove entitlement to permanent disability benefits pursuant to Iowa Code section 85.34(2). The claim for permanent disability benefits is rejected.

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).

In this case, I found that claimant was under medical work restrictions, did not actually return to work, and was not capable of substantially similar work from September 2, 2015 through November 11, 2015. I further found that the employer did not offer suitable work during the one-week period when claimant was medically released to return to light duty. Therefore, I conclude that claimant has proven entitlement to temporary total disability benefits from September 2, 2015 through November 11, 2015, or 10.143 weeks of temporary total disability benefits. Iowa Code section 85.33(1).

The parties dispute the applicable weekly rate at which benefits should be paid. There is really no factual dispute regarding rate. The parties utilize the same pay dates and hours worked. The only difference in the parties' arguments is the hourly rate at which wages should be calculated. I accepted the weeks utilized by the parties.

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).

Iowa Code section 85.36(6) provides for the use of wages actually earned during the 13 weeks immediately preceding the date of injury. That statutory section does not

specifically contemplate or provide a mechanism for adjusting the actual wages earned if an employee receives a pay raise during the weeks immediately preceding the injury date. Arguable, claimant's wages "at the time of the injury" were earned at $18.00 per hour. See Iowa Code section 85.36. However, when the more specific statutory language of Iowa Code section 85.36(6) is utilized, I conclude that the actual wages earned are to be used. Defendants' calculations correspond directly with the statutory language of Iowa Code section 85.36(6). Therefore, I found that the applicable average gross weekly wages for claimant were $841.15.

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. The parties stipulated that claimant was single and entitled to one exemption on the date of injury. (Hearing Report) Having found that claimant's gross average weekly wage was $841.15, and using the Iowa Workers' Compensation Manual with effective dates of July 1, 2015 through June 30, 2016, I determine that the applicable weekly rate for temporary total disability (healing period) benefits is $511.70.

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.

In this case, the defendants stipulate that the medical providers would testify that their treatment and charges were reasonable and necessary. (Hearing Report) I found that the medical treatment provided at McFarland Clinic on September 10, 2015 and September 18, 2015 were causally related to claimant's work injury on September 1, 2015. However, all other medical charges submitted by claimant in Claimant's Exhibit 7 were found to be related to the subsequent November 12, 2015 motor vehicle accident and not proven to be causally related to the September 1, 2015 work injury.

Therefore, I conclude that claimant has established entitlement to an award of medical benefits pursuant to Iowa Code section 85.27 for the McFarland Clinic charges on September 10, 2015 and September 18, 2015. I conclude that claimant failed to prove entitlement to an award for the remainder of the medical charges claimed in Claimant's Exhibit 7.

Mr. Scott-Gray also seeks award of Dr. Sassman's independent medical evaluation charges 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).

Having found that Dr. Sassman performed her independent medical evaluation prior to any physician selected by defendants rendering a permanent impairment rating, I conclude that claimant failed to establish entitlement to reimbursement of Dr. Sassman's independent medical evaluation fees pursuant to Iowa Code section 85.39.

Claimant asserts that defendants failed to conduct a reasonable investigation and unreasonably denied weekly benefits in this case. Claimant asserts that defendants should be ordered to pay penalty benefits pursuant to Iowa Code section 86.13.

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).

I found that claimant has clearly proven a delay in weekly benefits in this case. Therefore, the burden of proof shifted to the defendants to establish the requirements of Iowa Code section 86.13(4)(c). Having found that the employer failed to conduct a reasonable investigation and having found that the employer failed to prove it had a reasonable basis for denying weekly benefits between September 2, 2015 and November 11, 2015, I conclude that the employer failed to carry its burden of proof to establish the requirements of Iowa Code section 86.13(4)(c). Therefore, I conclude that penalty benefits should be awarded in some amount for the period from September 2, 2015 through November 11, 2015.

Having concluded that claimant failed to prove entitlement to permanent disability benefits or weekly benefits after November 11, 2015, I conclude that no penalty benefits should be awarded for benefits denied after November 11, 2015. Iowa Code section 86.13.

The purpose of Iowa Code section 86.13 is punishment for unreasonable conduct but also deterrence for future cases. Id. at 237. In this regard, the Commission is given discretion to determine the amount of the penalty imposed with a maximum penalty of 50 percent of the amount of the delayed, or denied, benefits. Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 261 (Iowa 1996).

In exercising its discretion, the agency must consider factors such as the length of the delays, 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. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996).

In this case, the defendants failed to provide any treatment for claimant, did not seek any medical causation opinions, and offered technicalities for their denial. Defendants' conduct was not sufficient to constitute a reasonable investigation or basis for denial. No record of past penalties is in this evidentiary record. However, considering the evidence available to the defendants, the length of the delay, and the necessary factors and purposes of the penalty statute, I conclude that a penalty in the amount of $2,000.00 is appropriate under the facts and circumstances of this case.

Finally, claimant seeks an award of costs. Costs are awarded at the discretion of this agency. Iowa Code section 86.40. In this case, claimant has prevailed. I conclude that it is appropriate to assess costs in some amount against the employer and insurance carrier.

Claimant's filing fee of $100.00 is appropriate and is assessed pursuant to 876 IAC 4.33(7). Claimant also seeks assessment of the cost of obtaining a copy of his deposition transcript, or $167.70. Defendants introduced Mr. Scott-Gray's deposition into the record. Therefore, I conclude that it is appropriate to assess the deposition transcript fee pursuant to 876 IAC 4.33(2). No other costs are assessed in this case.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant temporary total disability benefits from September 2, 2015 through November 11, 2015.

All weekly benefits shall be paid at the rate of five hundred eleven and 70/100 dollars ($511.70).

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).

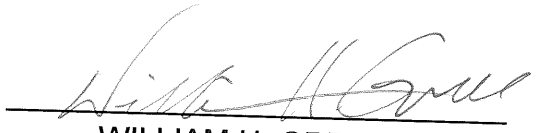
Defendants shall pay medical providers directly for any outstanding medical expenses, reimburse claimant for any out-of-pocket expenses paid, and otherwise hold claimant harmless for the medical expenses contained in Claimant's Exhibit 7 for care rendered at McFarland Clinic on September 10, 2015 and September 18, 2015.

Defendants shall pay claimant penalty benefits pursuant to Iowa Code section 86.13 in the amount of two thousand dollars ($2,000.00).

Defendants shall reimburse claimant's costs in the amount of two hundred sixty-seven and 70/100 dollars ($267.70).

Defendants 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 17th day of December, 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.