BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ENOCH HEILIG, Claimant, vs. PLIBRICO COMPANY LLC, Employer, and STARR INDEMNITY AND LIABILITY, Insurance Carrier, Defendants.	:	File No. 21006044.02 ARBITRATION DECISION Head Note Nos.: 1100, 1108, 1803

STATEMENT OF THE CASE

The claimant, Enoch Heilig, filed a petition for arbitration and seeks workers' compensation benefits from Plibrico Company, employer, and Starr Indemnity and Liability, insurance carrier. The claimant was represented by Walter Thomas. The defendants were represented by Jessica Voelker.

The matter came on for hearing on August 15, 2021, before Deputy Workers' Compensation Commissioner Joe Walsh in Des Moines, Iowa via Court Call videoconferencing system. The record in the case consists of Joint Exhibits 1 through 3; Claimant's Exhibits 1 through 11; and Defense Exhibits A through N. The claimant testified at hearing, in addition to Steve Barry. In addition, the testimony of three witness (Williams Jones, Brad Hagerman and Ron Heilig) were taken via deposition and submitted into evidence as Claimant's Exhibits 2, 3, and 4. Debra Hoadley was appointed the official reporter. The matter was fully submitted on September 20, 2021 after helpful briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant sustained an injury which arose out of and in the course of his employment on December 18, 2019.

2. Whether the claimant provided timely notice for his alleged injury under Iowa Code section 85.23.

3. Whether the alleged injury is a cause of any temporary or permanent disability.

4. Whether claimant is entitled to healing period benefits from January 6, 2020, through November 25, 2020.

5. Whether the claimant is entitled to permanent disability benefits, and if so, the extent of the disability.

6. Whether the claimant is entitled to medical expenses set forth in Claimant's Exhibit 6.

7. Whether claimant is entitled to costs.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship.

2. The parties stipulate that claimant was off work during the period of time claimant claims entitlement to healing period benefits.

3. The commencement date for any permanent disability benefits, if any, is November 25, 2020.

4. The weekly rate of compensation is $1,108.17.

5. Credit is not in dispute.

6. Affirmative defenses have been waived other than timely notice.

FINDINGS OF FACT

Claimant Enoch "Nick" Heilig was 49 years old as of the date of hearing. He testified live and under oath at the video hearing. The claimant's testimony regarding his injury is a key issue in the case. I find that Mr. Heilig is a credible witness. His answers were short and concise. His testimony is generally consistent with the other credible evidence in the record, including medical notes. There was nothing about his demeanor which caused any concern about his truthfulness.

Mr. Heilig did not finish high school. He never obtained a GED. He has primarily performed refractory work since the time he left high school. Refractory is a type of lining material used on the internal walls of boilers and furnaces. While Mr. Heilig has worked for different employers, he worked, on and off, for Plibrico for approximately 19 years. Most recently, he began in 2009. (Transcript, page 16) Mr. Heilig was in a supervisory or semi-supervisory role for Plibrico in 2019. He would "run jobs", which included functionally managing other employees and working to attain new customers

since 2009. He was a working foreman. A business known as POET in Emmetsburg, Iowa, manufactures biofuel and was a regular assignment of Mr. Heilig since 2009. He reported to Steve Barry.

Mr. Heilig and Mr. Barry did not trust one another. Mr. Heilig testified that, in approximately 2017, he negotiated additional compensation and perks directly with a higher level manager at Plibrico named Larry Simonds. He testified that because of his work finding jobs, he was able to negotiate an additional $10.00 per hour, as well as a company truck, phone and credit card for expenses. (Tr., pp. 18-19) He testified that he did this because he believed Mr. Barry was not giving him credit for his efforts in lining up new customers. This dispute intensified in 2019, around the same time the claimant alleges he sustained a work injury.

Mr. Heilig testified that he first injured his left shoulder the week before Labor Day in 2019. (Tr., pp. 21-24) At hearing, he did not offer a specific date. He described the mechanism of the injury in detail at hearing. This alleged injury is not part of this claim. Mr. Heilig contends that this occurred at the POET plant in Emmetsburg. He further testified that his co-worker, Brad Hagerman was there at the time of the injury and was aware of it. Mr. Heilig testified that he "mentioned" this occurrence to his general manager, Steve Barry. Mr. Heilig testified that while his left shoulder never truly returned to normal, the symptoms were not severe enough to seek medical attention specifically for the problem. Therefore, there are no medical records contemporaneously documenting this incident. The only medical notes in the record between August and December 18, 2019, are unrelated to the alleged shoulder injury. (Jt. Ex. 1, pp. 6-8; Jt. Ex. 2, pp. 19-20) He testified that he felt like he pulled something. (Tr., p. 25)

The employer also submitted evidence regarding this alleged incident, focusing on the date September 1, 2019. Plibrico contends this was a Sunday and there is no evidence that Mr. Heilig worked on this date. (Def. Ex. I) Plibrico also contends that, since Mr. Heilig was the superintendent on this job, it was his duty to prepare and file an injury report. (Def. Ex. N, Heilig Depo, p. 10) Mr. Barry testified that Mr. Heilig never told him about this alleged incident and never filed any injury report.

In any event, Mr. Heilig continued working for Plibrico after the above-described alleged work injury. He testified he sustained a second work injury for Plibrico on or about December 18, 2019, also while working at POET. He testified that he was gunning the interior of a boiler. The hose became clogged. It seized up and stopped blowing. When it finally unclogged and blew out it jerked him suddenly. The hose was draped over his left shoulder. (Tr., p. 27) Mr. Heilig immediately could tell this incident was more serious than his previous injury. (Tr., p. 20) His sworn hearing testimony was consistent with his sworn deposition testimony. (Def. Ex. N, Heilig Depo, p. 36) Mr. Heilig testified that he was able to finish gunning the remaining product on that day, but was unable to perform this work the following day. (Tr., p. 33)

The defendants assert that Mr. Heilig could not have been gunning on December 18, 2019, because the Foreman's Daily Report for that date showed that no gunite was

used that day. (Def. Ex. J, p. 31) Furthermore, the gunite material claimant would have used was not delivered to that worksite until after the work injury occurred, according to records produced by the employer. (Def. Ex. G, pp. 21-22; Def. Ex. H, p. 23)

Mr. Heilig explained this at hearing. He testified that the refractory procedure requires both an insulating liner and a hard-surface liner. He testified that on December 18, 2019, the product needed had not yet arrived. He testified that he and his team located insulating liner product that day, which had been stored at the POET location from work on a previous occasion. (Tr., p. 30-31) He testified this is confirmed in the employer's own records produced. "Plant had insulation on site that we used." (Def. Ex. J, p. 31)

Two of Mr. Heilig's workers, his brother Ron Heilig and Brad Hagerman testified under oath via deposition. Both confirmed Mr. Heilig's explanation of the gunning the insulation material found at the site. (Cl. Ex. 3, Hagerman Depo, pp. 17-18; Cl. Ex. 4, Ron Heilig Depo, pp. 16, 23-27) Both also confirmed the fact that they were present and were aware when Mr. Heilig was injured on that date. (Cl. Ex. 3, Hagerman Depo, pp. 11-16); Cl. Ex. 4, Ron Heilig Depo, pp. 19-22)

Mr. Heilig testified that he called Steve Barry about this incident while he was in his truck traveling to the hotel that same day after work. "I told him that I injured my shoulder again, it's worse this time than the first and I'm going to see a doctor when I get back." (Tr., p. 31) He testified that his brother Ron Heilig was in the truck with him during the call. He further testified that he told Mr. Barry again when they returned to the Plibrico office when the POET job was completed. Ron Heilig confirmed this testimony. (Cl. Ex 4; Ron Heilig Depo, pp. 28-31) For his part, Mr. Barry denied either of these conversations took place.

Mr. Barry testified live and under oath at the hearing. He was the general manager for Plibrico from 2007 until he retired in 2020. He testified that in November 2019, the company's sales were very slow. The president of the company contacted him and told him that they could no longer guarantee 40 hours per week to any employees and the company would be discontinuing this practice. (Tr., p. 81) He testified that Mr. Heilig was affected by this. In other words, Mr. Heilig was one of the employees who had been guaranteed payment of 40 hours per week, even if he worked less than that. Mr. Barry testified that he informed Mr. Heilig on December 6, 2019, that he would no longer be guaranteed 40 hours per week. (Tr., p. 81) He testified that Mr. Heilig was upset about this.

Mr. Barry then testified specifically about the work performed on December 18, 2019. He testified that no material was gunned in to the area on that date. Specifically, he stated:

> The area that was being repaired was prepped for the material replacement. It was - - had the backup lining, the insulating lining gunned in. And when the specific product for that area, which is a thermal shop mix, was ordered out of our factory and shipped, it was supposed to be

> there on Thursday morning [Dec. 18] and then the shipping company got ahold of me and said they shipped it to the wrong plant and they were going to do everything in their power to get it there by 11:30 that night.
>
> That was the only thing left to do on that project was to gun in that pallet of material, and so the crew kind of filled their day with - - an eight-hour day, and they did some insulation for expansion joints and waited on the material.

(Tr., pp. 86-87) It appears from the record that Mr. Barry was getting his information from the Foreman's Daily Reports which were filled out by Mr. Heilig. Mr. Barry's focus was on the fact that no gunning was mentioned in the materials or equipment used section of the December 18, 2019 report. (Def. Ex. J, p. 31) He testified that Mr. Heilig then filled out an injury report in early January 2020. (Def. Ex. C, pp. 4-5) Witness statements and other reports accompanied this report. (Def. Exs. D, pp. 6-8)

Mr. Heilig testified that the insulation which was used had been found on site. As a result, it was not listed under the materials used because it had already been purchased. (Tr., pp. 102-104) It was gunned in insulation, rather than the material liner. Again, this testimony was confirmed by witnesses Ron Heilig and Brad Hagerman. (Cl. Ex. 3, Hagerman Depo, pp. 17-18; Cl. Ex. 4, Ron Heilig Depo, pp. 16, 23-27)

Mr. Barry generally denied that Mr. Heilig told him about a December 18, 2019, work injury. He testified that he learned about the alleged work injury in early January 2020, when Mr. Heilig came to his office and insisted upon the 40 hour guarantee. "He said that he needed his 40 hours back. And I told him there was nothing I could do, it wasn't my decision, …" (Tr., p. 83) He testified that after he told Mr. Heilig this, he "said that he was going to have to file a workmen's compen - - comp case." (Tr., pp. 83-84) Mr. Heilig filled out an injury report which is dated January 2, 2020, but signed on January 7, 2020. (Def. Ex. C) In this report, he listed the date of injury as December 18, 2019, however, provided very few details about this specific incident. This is well within the 90 day notice period. Mr. Heilig, Mr. Haggerman and Mr. Barry all provided witness statements. (Def. Ex. D, pp. 6-8)

Mr. Heilig saw his family doctor on January 6, 2020. His work injuries are documented therein. (Jt. Ex. 2, p. 21) He was first examined by an orthopedic surgeon on January 29, 2020, at Ortho Nebraska, by Mark Goebel, M.D. The following is documented:

> The patient is pleasant, active and 47-years-of-age. He has been a patient of mine in the past. Back on 11/1/2017 I performed a left total hip replacement on his behalf. He has done well with regards to his left hip replacement. He now presents for my thoughts regarding his left shoulder and his left knee. He states that he is employed by Plibrico. He started working for them around 2009 or so. He is right hand-dominant. He was in his normal state of good health until September 1, 2019. At that point in time he was at work and he was pulling a gun hose that was hanging over

> his left shoulder area. The patient states that it caught and jerked his left shoulder. He felt like he pulled something within his shoulder. It never returned to normality. He ended up with a similar repeat episode about three months later. He denies any previous trouble with his left shoulder at all.

(Jt. Ex. 3, p. 25)

Mr. Heilig then underwent care over the next several months with Dr. Goebel who performed an MRI of the left shoulder and diagnosed a superior labral tear (SLAP type 2). (Jt. Ex. 3, pp. 28, 31) He performed an injection and then offered surgery. Mr. Heilig declined the surgery in February 2020. (Jt. Ex. 3, p. 33)

In March and November 2020, Dr. Goebel prepared reports which expressed his opinions regarding medical causation and permanent disability. (Jt. Ex. 3, pp. 36-38) He opined: "The MRI findings are consistent with his stated mechanism of injury. … it is my opinion expressed to a reasonable degree of medical certainty that this condition should fall under the realm of worker's comp." (Jt. Ex. 3, p. 37) He assigned an impairment rating of 13 percent of his left upper extremity. (Jt. Ex. 3, p. 37) He recommended Mr. Heilig limit throwing activities or heavy lifting away from his body. He indicated that surgery was still available to correct the condition. (Jt. Ex. 3, p. 38)

I find that the claimant has carried his burden of proof that he sustained an injury which arose out of and in the course of his employment on December 18, 2019. This is based upon the testimony of the claimant, Ron Heilig and Brad Hagerman. Mr. Heilig likely was angry that his 40-hour guarantee had been taken away. He may have even been planning to not pursue a workers' compensation claim if the 40-hour guarantee had not been revoked. There is some evidence in the record that Plibrico employees were encouraged to seek treatment under their own insurance rather than through workers' compensation. Mr. Heilig knew how to file an injury report and did not file such a report until after he was firmly told that his 40-hour guarantee was being revoked. However, if Mr. Heilig is lying about the December 18, 2019, work incident, then he would necessarily have to have convinced two other witnesses to lie about this incident under oath. While this theory is possible, the evidence does not support that this is the most likely scenario. It is most likely that Mr. Heilig actually injured his left shoulder on December 18, 2019, and then decided to pursue the claim after his employer removed certain benefits from him.

I further find that the injury is a cause of both temporary and permanent disability based upon the claimant's testimony and the medical opinion of Dr. Goebel. The defendants did have claimant evaluated by Ian Crabb, M.D. Dr. Crabb diagnosed mild impingement syndrome "with degenerative partial tearing of the supraspinatus and degenerative labral tearing." (Def. Ex. E, p. 13) He disagreed with Dr. Goebel that the mechanism of injury is consistent with the condition. (Def. Ex. E, p. 13) He assigned no impairment or restriction for his condition. (Def. Ex. E, p. 14) I find Dr. Goebel's report more convincing as Dr. Crabb did not use the correct legal standard for medical causation.

Furthermore, I find that Mr. Heilig provided notice of his work injury in January 2020, at the latest. In all likelihood, he provided the notice contemporaneously with the injury as he testified. In any event, the defendants admit they had notice in less than 30 days from the accident. (*See* Def. Ex. D, p. 8)

CONCLUSIONS OF LAW

The primary question submitted is whether the claimant sustained an injury which arose out of and in the course of his employment.

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" refer 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 Elec. 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.

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

For the reasons set forth in the findings of fact, I find that claimant has met his burden of proof. The greater weight of the evidence supports a finding that he sustained an injury to his left shoulder which arose out of and in the course of his employment on December 18, 2019.

The next issue is notice.

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).

I find that the claimant provided timely notice of his work injury. The employer conceded at hearing that it was aware Mr. Heilig was claiming a December 18, 2019, work injury in January 2020. (Def. Ex. C) A true notice defense applied only to the earlier alleged injury.

The next issue is medical causation.

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).

I find the greater weight of evidence supports a finding that the work injury is a cause of both temporary and permanent disability.

The next issue is whether claimant is entitled to healing period benefits from January 6, 2020, through November 25, 2020.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

I find that claimant is entitled to healing period benefits from January 6, 2020, through February 27, 2020. His family physician took him off work effective January 6, 2020. (Jt. Ex. 2, p. 23) Dr. Goebel last saw him for treatment on February 27, 2020. (Jt. Ex. 3, p. 33) Dr. Goebel did place general restrictions on Mr. Heilig after that but Mr. Heilig never returned to Dr. Goebel for re-evaluation or further treatment. These restrictions appear to be more in the nature of permanent restrictions in light of this.

The next issue is whether claimant is entitled to permanent partial disability benefits, and if so, the extent of such benefits. The parties have stipulated that the disability is a scheduled disability to the left shoulder under section 85.34(2)(n).

Prior to July 1, 2017, injuries to the shoulder were considered proximal to the arm, extending beyond the arm, and compensated with industrial disability as an unscheduled injury pursuant to prior Iowa Code section 85.34(2)(u) (2016). See Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). The Iowa legislature enacted significant amendments to the Iowa workers' compensation laws, which took effect in July 2017. As part of those amendments, the legislature specified that injuries to the shoulder should be compensated as scheduled member injuries on a 400-week schedule. Iowa Code section 85.34(2)(n) (2017). It has long been understood that an injury must be compensated as a scheduled injury if the legislature saw fit to list the injured body part in Iowa Code section 85.34(2)(a)-(u). Williams v. Larsen Construction Co., 255 Iowa 1149, 125 N.W.2d 248 (1963).

Having concluded that the disability is a scheduled member evaluated under Section 85.34(2)(n), the next issue is to assess the degree of disability to each of the claimant's shoulders.

> x. In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment

> pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34(2)(x) (2019).

Thus, the law, as written, is not concerned with an injured worker's actual loss of use or functional disability as determined by the evidence, but rather the impairment rating as assigned by the adopted version of the AMA Guides to the Evaluation of Permanent Impairment. The only function of the agency is to determine which impairment rating should be utilized. While no explicit guidance is provided in the statute for this analysis, presumably the rating which most closely aligns with the worker's actual functional disability.

I find that claimant has sustained a 13 percent functional impairment to his left upper extremity based upon the rating from Dr. Goebel. I conclude that this entitles him to 52 weeks of compensation commencing on November 25, 2020, as stipulated by the parties.

The next issue is medical expenses.

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).

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

I find the claimant is entitled to the medical expenses set forth in Claimant's Exhibit 6. He is entitled to further care with Dr. Goebel should such care become necessary.

The final issue is expenses.

Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

I find the claimant is entitled to costs set forth in Claimant's Exhibit 7 with the exception of the second filing fee. Therefore, claimant is entitled to expenses in the amount of $1,499.90.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay all benefits at the stipulated rate of one thousand one hundred and eight and 17/100 ($1,108.17) per week.

Defendants shall pay healing period benefits from January 6, 2020, through February 27, 2020.

Defendants shall pay fifty-two (52) weeks of permanent partial disability benefits commencing on November 25, 2020.

Defendants shall pay accrued weekly benefits in a lump sum.

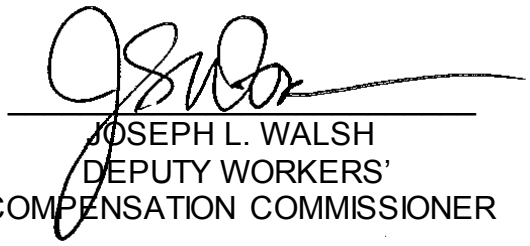
Defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendant shall reimburse medical expenses set forth in Claimant's Exhibit 6 in a manner consistent with this decision.

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 as set forth in Claimant's Exhibit 7, in the amount of one thousand four hundred ninety-nine and 90/100 dollars ($1,499.90).

Signed and filed this __25th__ day of February, 2022.



JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Walter Thomas (via WCES)

Jessica Voelker (via WCES)

Jill Hamer Conway (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.