BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LOREN SCOTT,

Claimant,

vs.

ALPHA EXPRESS,

Employer,
Defendant.

File No. 5058448

ARBITRATION

DECISION

Head Notes: 1100, 1108, 1800, 1801.1, 1803, 2500, 2501, 4000

STATEMENT OF THE CASE

Claimant Loren Scott, filed a petition in arbitration seeking workers' compensation benefits from Alpha Express, an uninsured employer, defendant, for an alleged injury arising out of an alleged work incident of August 3, 2015.

The case was heard on April 26, 2018, in Waterloo, Iowa, and considered fully submitted on May 17, 2018, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-9, Claimant's Exhibits 1-10, and Defendant's Exhibit A, and testimony from the claimant, Ricco Cooper, and LeVorn Robinson.

ISSUES

1. Whether an employer-employee relationship existed at the time of the alleged injury;

2. Whether claimant sustained an injury on August 3, 2015, which arose out of and in the course of employment;

3. Whether the alleged injury is a cause of temporary disability and, if so, the extent;

4. Whether the alleged injury is a cause of permanent disability and, if so,;

5. Whether the alleged disability is a scheduled member disability or an unscheduled disability;

6. The extent of claimant's scheduled member/industrial disability;

7. Whether there is a causal connection between claimant's injury and the medical expenses claimed by claimant;

8. Whether claimant is entitled to penalty benefits under Iowa Code section 86.13 and, if so, how much.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The parties stipulate claimant was an employee of the defendant at all times material hereto.

The parties agree claimant was off work from March 29, 2017, through April 10, 2017, but the parties disagree as to claimant's entitlement to benefits during this period of time.

The parties further agree that the injury suffered by claimant is industrial in nature and that commencement date for PPD benefits, if any are awarded, is August 3, 2015.

At the time of the alleged injury, claimant's gross earnings were $559.65 per week. He was single and entitled to one exemption. Based on the foregoing, claimant's weekly benefit rate is $350.74.

FINDINGS OF FACT

Claimant was a 46-year-old person at the time of the hearing. He graduated from high school and took classes at Hawkeye Community College and Kirkwood Community College. No degrees were obtained.

Prior to the alleged injury date, he was in generally good health, but he did have past injuries involving his shoulder and arms.

In 2012, he was hit by a forklift resulting in an injury to the left side of his neck. He underwent a month of physical therapy and returned to work with no restrictions. In August 2013, claimant began to experience left shoulder pain after lifting a heavy bucket. He received another course of physical therapy and returned to work. His medical records showed full range of motion of the left shoulder in August and September 2013. A medical examination report of February 24, 2015, indicated that he had right shoulder strain in 2013 and hernia surgery in 2014. (JE 1) In the driver examination report, there were no limitations imposed due to claimant's shoulders but rather a qualified one-year certification due to claimant's hypertension. (JE 1:3)

At the time of the injury, claimant was taking high blood pressure medication.

On March 3, 2009, claimant began working for defendant employer, an industrial maintenance company. He initially was hired to do lawn care, and when that work eliminated, he asked to be moved to the core room at the John Deere Foundry.

As an industrial cleaner, he would be responsible for detailing the machines. This entailed blowing the sand off the machinery with a vibrating air wand, shoveling the sand away from underneath the machines and depositing the sand into a bin.

In 2013, he had a slight change to his job duties. He was required to sweep seven decks before the workers would arrive and ready ten machines for operations. John Deere was requiring the line workers to come in sooner which meant claimant needed to work faster. After prepping the machines and removing the sand, he would then clean the machines.

In order to complete his job duties, he would climb inside the machine and unbolt a ring that has a tube in it. He would reach overhead and with his left hand and pull down a tube. He cleaned the tube with a wire brush, still holding the tube above his head with his left hand. Once the tube was cleaned, he would hammer the tube into place and re-bolt it.

After re-bolting the ring, he would exit the machine and climb on top to scrub and clean an area exposed to sand. Then he would air hose the entire thing.

He did these tasks every day and felt that they were repetitive. In 2016 or 2017, he received a promotion to lead person.

He testified that he began experiencing symptoms in July 2015. He noticed tingling in both wrists. They were hot to the touch. He also began having left shoulder symptoms.

On August 2, 2015, he was at a family picnic and his left wrist gave out when trying to move something. He called the operations manager, Reshonda Young, who authorized a visit to the emergency room. He went to the ER that night. (JE 2) X-rays were taken which showed no acute injuries. (JE 2) Claimant was discharged and advised to follow up with his own physician. (JE 2:3)

The following day, claimant presented to UnityPoint Health at Allen Hospital for bilateral wrist complaints. (JE 3) He explained that the onset of pain was gradual and he ascribed the injuries to his work. (JE 3) The pain diagram shows that the pain was in the right shoulder, but claimant testified that he filled this out in error. (JE 3:3) He never experienced right shoulder pain. It was always in the left. He was given Naprosyn and an MRI was ordered.

Claimant testified that he believed the employer had authorized his care. The emails from his counsel to Michelle Pearson, the defendant employer's human

resources manager, corroborated this belief. At no time did Ms. Pearson or anyone from the company indicate that his care was not authorized. (CE 5) For instance, on November 10, 2015, Ms. Pearson wrote that she was waiting to hear back from Dr. Luke for a referral and that an orthopedic injection had been recommended by CVM Therapy. (Ex. 5:3)

On May 4, 2016, Ms. Pearson authorized a visit on May 18, 2016, for ADI. (Ex. 5:8)

On August 13, 2015, he began physical therapy at the recommendation of Dr. Jabbari. (JE 4) To the therapist, claimant reported constant pain in the left lateral shoulder and left wrist. (JE 4:1) He had pain with range of motion and limited ability to resist and hold. (JE 4:2) The therapist diagnosed claimant with left shoulder bursitis and/or tendonitis and left wrist tendonitis from overuse. (JE 4:2) Claimant went to a few therapy visits but the pain began to intensify. On August 21, 2015, claimant canceled his remaining PT visits wanting to have an MRI. (JE 4:5)

The MRI of the left upper extremity was conducted on August 27, 2015. (JE 5) The MRI revealed a partial tear of the triangular fibrocartilage and a small amount of fluid in the joints. (JE 5:1)

After the MRI, he was seen by Robert Bartelt, M.D. (JE 6) Claimant was unsure how he was sent to Dr. Bartelt but believed he was a doctor authorized by Ms. Pearson. Dr. Bartelt felt that the location of the claimant's subjective pain did not match the MRI results. (JE 6:2) Dr. Bartelt speculated that claimant might have some element of carpal tunnel syndrome and ordered an EMG. (JE 6:2) The EMG showed no evidence of CTS. Dr. Bartelt continued claimant on light duty but ordered him to progress to full duty as tolerated. During the October 6, 2015, visit, claimant reported decreasing pain. (JE 6:4)

Claimant underwent a course of PT in November 2015. During one visit on November 12, 2105, he explained that his pain symptoms decreased following treatment but returned with work activities. (JE 4:7)

Claimant's condition did not improve. On January 6, 2016, Ms. Pearson wrote an email to claimant's attorney regarding the authorization for a second opinion with Arnold Delbridge, M.D. (Ex. 5:5)

On January 28, 2016, claimant was seen by Dr. Delbridge. (JE 7) In a letter dated February 22, 2016, Dr. Delbridge recommended claimant undergo an arthrogram of the left wrist and another MRI. (JE 7:3) He did not believe claimant was a surgical candidate at this time, but did suggest that an injection of Marcaine or lidocaine could be administered to see if the medication would provide insight as to the origin of the pain.

His diagnosis included the following:

> My diagnoses of Mr. Loren Scott are: 1) degenerative arthritis rather severe of his left shoulder which has been materially aggravated since 2013. He is markedly weaker since this last injury that occurred in August 2015 than he was in 2013. 2) He has wrist pain and pain on range of motion particularly on the left side and has a markedly decreased grip on the left side. Part of that decreased grip could be on the basis of his shoulder issues, but a good portion of it is probably due to his wrist injury. It is not clear that his wrist injury requires surgical intervention, but as mentioned, I would suggest that a diagnostic injection be done to determine if there is relief of pain with local anesthetic in the area of the distal radioulnar joint.

(JE 7:4)

Dr. Delbridge said that claimant could return to work but it must be with restrictions. (JE 7:4) Claimant would not be able to repetitively reach or lift above shoulder level with his left upper extremity and he would not be capable of hard gripping on a repetitive basis with his left upper extremity. (JE 7:4) Dr. Delbridge did not believe that physical therapy would be useful. (JE 7:4)

An injection was ultimately done on May 18, 2016, but it provided little relief. (JE 7:5)

At some point, claimant was told by Ms. Pearson health insurance would pay for the medical expenses and that he would be reimbursed any co-pay. Claimant testified that his co-pays have been covered by the employer.

Claimant's work restrictions were accommodated but claimant admitted that he violated them from time to time to ensure that the work that needed to be accomplished was completed.

Frustrated with the lack of improvement, claimant sought out care from a hand specialist. He testified that he discussed this with Ms. Pearson and testified that she authorized the visit. His first consult with Peter Pardubsky, M.D. occurred on June 10, 2016. (JE 9) Claimant reported bilateral wrist pain, greater on the left with numbness and aching. (JE 9:1) Dr. Pardubsky's evaluation showed tenderness on palpation of the dorsal aspect on the right, tenderness on palpation of the radial aspect and dorsal aspect and pain upon motion. (JE 9:2) Dr. Pardubsky agreed that the clinical examination did not match the MRI findings. Dr. Pardubsky wondered if his family history of rheumatoid arthritis (RA) could be contributing. (JE 9:3) Claimant was tested for RA and the test results were negative.

The MRI arthrogram recommended by Dr. Delbridge was completed on September 27, 2016. The results showed the following:

CONCLUSION:

1. Complex loculated extensor tenosynovitis at the wrist subjacent to the region marked. Moderate extensor carpi radialis brevis tendinosis and partial-thickness tearing of the dorsal surface. Mild extensor carpi radialis brevis tendinosis and interstitial tearing.

2. Full-thickness radial-sided TFC disc tear measuring 3mm.

3. Lunate capitate abutment/impingement.

4. SL ligament degeneration and partial tearing with mild arthropathy at the proximal pole of the scaphoid.

(JE 8:2)

On October 10, 2016, claimant underwent an injection to the second dorsal compartment of the left wrist to reduce a cyst in the wrist. (JE 9:5) Claimant reported moderate improvement, but when he resumed activities, the pain returned. (JE 9:7)

An October 31, 2016, MRI of the left shoulder revealed a large SLAP tear, degenerative changes of the inferior aspect of the glenohumeral joint, tendinopathy of the infraspinatus and supraspinatus, and degenerative changes of the AC joint. (JE 8:3)

Meanwhile, on November 7, 2016, Dr. Delbridge wrote a letter to Ms. Pearson concluding claimant's injuries were the result of his work. (JE 7:8)

> Loren Scott was seen. He had has [sic] an aggravation of his previously compromised shoulder as a result of his work injury. His pain complaint is considered as a result of that aggravation. I find when I look over my initial report in February, he has motion of abduction of about 110 degrees. Flexion he is up to about 120. Internal rotation is all right and external rotation has no loss. He continues to have weakness in his shoulder as demonstrated on his CRT isokinetic test and also on my examination. His wrist has been shown to have tenosynovitis, TFCC and those kinds of things. He does lifting and shoveling at work.
>
> My conclusion is that his shoulder and his wrist are work related as stated in my previous letter of February 22, 2016. As you will recall, I proposed possibility of further studies of both his shoulder and his wrist. His shoulder has been proven to have the arthritis that I described and an additional large SLAP tear that does not show on plain x-ray. The injury he had to his shoulder aggravated the pre-existing arthritis and perhaps the previously existing SLAP tear as well. The bottom line is that my conclusion is that his shoulder and wrist are work related.

(JE 7:8)

During the December 19, 2016, examination, he exhibited swelling over the dorsal aspect and it was decided that he would need to have the cyst removed surgically. (JE 9:8) He reported this to Ms. Pearson. Initially, he was told that they would authorize it. However, Ms. Pearson backtracked and told him to use his health insurance.

After some delay due to unrelated health issues, surgery took place on March 29, 2017. (JE 9:11) Dr. Pardubsky performed a left second dorsal compartment extensor tenosynovectomy with debridement of ruptured extensor pollicis longus. (JE 9:11) Claimant was off work through March 10, 2017.

Defendant argues that claimant was paid a wage during this period of time but there are no records corroborating this. Claimant testified he was not paid. Based on the lack of wage records, claimant's testimony is adopted and it is found that claimant was not paid wages while he was off work from March 29, 2017, through April 10, 2017.

Claimant testified that he did improve following surgery and the subsequent physical therapy. However, Dr. Pardubsky opined that claimant should consider an EIP to EPL tendon transfer if the pain were to continue. (JE 9:25)

On September 18, 2017, Dr. Pardubsky instituted a permanent restriction of no use of heavy holding of air hoses with his symptomatic left arm. (JE 9:25) Dr. Pardubsky also opined that the etiology for claimant's recurrent wrist pain was heavy repetitive use of his hands.

Claimant has undergone no further treatment for his left hand and wrist and no treatment to the right.

He continues to complain of pain in the left wrist although it does abate with rest. On average, he places his pain as 6-7 on a 10 scale located primarily on the top of his wrist and around the wrist. On the right, he complains of some decreased range of motion and weakness. His left shoulder is constantly painful. He cannot reach too high or outward. If he overextends his arm, pain increases.

He still works for defendant employer with the sole restriction of no use of the air wand. He self-limits with pain. He is able to carry out most all of his job duties as lead person. He performs inspections, keeps track of attendance and does light detailing work. However, when they have been short workers, he has done work in excess of his restrictions. His supervisor, Ricco Cooper, was aware of this although the owner, LeVorn Robinson was not.

To the extent that this fact is in dispute, it is explicitly found that claimant did some work beyond his restrictions from time to time including using the air wand and sweeping with his left arm.

Claimant does not participate in any sporting activities. He walks for exercise.

Claimant underwent an IME with Farid Manshadi, M.D., on February 20, 2018. (Ex. 1:3) At the time of the examination, claimant reported pain on the right and left wrists, with more pain and lack of function on the left. Dr. Manshadi took the following measurements of claimant's wrist range of motion:

> Using a Goniometer, left wrist active range of motion was as follows:
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> Left wrist extension was 45 degrees.
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> Left wrist flexion was 45 degrees.
>
> Left wrist radial deviation was 20 degrees.
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> Left wrist ulnar deviation was 26 degrees.
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> On the right side:
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> Right wrist extension was 45 degrees.
>
> Right wrist flexion was 55 degrees.
>
> Right wrist radiation was 22 degrees.
>
> Right wrist ulnar deviation was 40 degrees.

(Ex. 1:3) As for the left shoulder, claimant had tenderness to palpation over the left upper trapezius but no atrophy and normal reflexes and sensation. (Ex. 1:4) He exhibited the following range of motion:

> Left shoulder forward flexion was 130 degrees.
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> Left shoulder abduction was 110 degrees.
>
> Left shoulder extension was 50 degrees.
>
> Left shoulder external rotation was 70 degrees.
>
> Left shoulder internal rotation was 75 degrees.
>
> Left shoulder adduction was 45 degrees.

(Ex. 1:4) Dr. Manshadi concluded claimant suffered left-sided shoulder pain with reduced range of motion likely as a result of a large SLAP tear and degenerative changes in claimant's left shoulder. (Ex. 1:4) Dr. Manshadi also opined that he had evidence of bilateral wrist pain with reduced range of motion due to impingement, tenosynovitis, tendonitis, and ligament degeneration. (Ex. 1:4)

Dr. Manshadi attributed these conditions to the work claimant performed for defendant employer. (Ex. 1:4) He found that claimant was at maximum medical improvement (MMI) for the left wrist, but not on the right due to lack of treatment. (Ex. 1:5) He also felt claimant needed further treatment on the left shoulder. Id.

If pressed, Dr. Manshadi would assign a 7 percent left upper extremity impairment for the shoulder, 7 percent left upper extremity impairment for the left wrist, and 4 percent impairment for the right wrist. Id.

For restrictions, Dr. Manshadi recommended avoidance of any activity which required sustained gripping, repetitious reaching or shoulder height activities along with no use of vibratory tools. Id. He also advised no lifting of more than 10 to 20 pounds with the left upper extremity. Id.

On April 17, 2018, Dr. Manshadi wrote an addendum after a review of medical records from Dr. Pardubsky. (Ex. 1:6) Dr. Manshadi re-affirmed his opinion that the work activities caused significant aggravation of the underlying inflammation which necessitated Dr. Pardubsky's surgeries and treatment. (Ex. 1:6) Dr. Manshadi did concede that claimant may have other inflammatory conditions which could be causing claimant's current symptomatology. Id.

Dr. Delbridge agreed with Dr. Manshadi's opinions, restrictions and impairment rating in a letter dated April 4, 2018. (JE 7:9)

Claimant seeks an award of medical bills. Exhibit 7 contains a summary of the medical bills as well as copies of the bills with a total of $1832.05 either outstanding or paid by claimant. (Ex. 7) Exhibit 8 is a document from the health insurer seeking reimbursement in the amount of $6154.29. (CE 8: 3-4) To the extent that the summary prepared by the claimant's counsel differs from the actual bills, the actual bills represent the correct amount owed.

Exhibit 9 details the medical mileage for which claimant is seeking reimbursement in the amount of $812.35.

CONCLUSIONS OF LAW

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

The 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).

The undisputed medical evidence is that claimant's left wrist, right wrist, and left shoulder problems stem from repetitive work activities aggravating a pre-existing condition. Dr. Manshadi, claimant's IME, and Dr. Delbridge, claimant's treating physician both agreed to this conclusion.

Further, both experts agreed that the work restrictions recommended by Dr. Manshadi were appropriate as well as the permanent impairment rating.

Defendant argues that claimant's degenerative arthritis is the cause of claimant's current symptomatology and point to Dr. Delbridge's letter of February 22, 2016, in which Dr. Delbridge wrote that his diagnoses of claimant included degenerative arthritis materially aggravated since 2013. (JE 7:4) This letter was written after a single visit with claimant. Dr. Delbridge went on to treat claimant for approximately a year, and in November 2016, sent an updated letter which attributed that the causation of claimant's shoulder and wrist symptoms to his work.

Therefore, it is found, claimant sustained a material aggravation to a pre-existing condition in his left shoulder and bilateral wrists as a result of a work injury.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of the injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment.

Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

The manifestation date of claimant's injury was August 3, 2015, when he discovered that the work injury was serious enough to have a permanent and adverse impact on his employment.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

As stated above, the two medical experts in this case agreed that claimant's impairment rating was 7 percent of the left upper extremity due to decreased left wrist range of motion, 4 percent of the right upper extremity due to decreased right wrist range of motion and 7 percent of the let upper extremity due to decreased left shoulder range of motion. Both doctors agreed that claimant should avoid repetitious reaching or shoulder height activity, sustained gripping with his left hand; use of vibratory tools bilaterally, and no lifting greater than 20 pounds with the left upper extremity.

Defendant argues that claimant is working a full-time position at higher pay and therefore is not entitled to a finding of industrial disability. However, claimant's post-injury employment is not the sole determining factor in awarding PPD benefits. Rather, the question is whether there is a reduction in earning capacity or a loss of access to the competitive job market. That he is currently working full-time despite his injuries is a testament to his motivation to return to work.

Claimant is 50 years old with limited post-secondary education. He has worked in industrial maintenance for most of the relevant past. He does not have many

transferable skills in the light to sedentary work category, office or sales clerk positions which may be best suited to his work restrictions.

Therefore, it is determined claimant has sustained a 40 percent loss of impairment due to his left shoulder and bilateral wrist injuries.[1]

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, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant was off work for surgery to his left wrist from March 29, 2017, through April 10, 2017. He was not paid his normal wages during this time and therefore is entitled to healing period benefits for that time period. The parties stipulated claimant was off work from March 29, 2017, through April 10, 2017.

Claimant also seeks an award of medical bills, mileage and IME.

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 1975).

Because it was determined that claimant's left shoulder and bilateral wrist symptoms and subsequent medical treatment was related to his work, claimant is entitled to a reimbursement of medical bills.

Defendant raised an authorization defense. Barnhart v. MAQ Incorporated, I Iowa Industrial Comm'r Report 16 (App. March 9, 1981). Michelle Pearson and Reshonda Young are individuals who held themselves out as responsible for directing care for the

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[1] Defendant argues that if there is a finding of permanency it should be limited to 4 percent on each wrist for a total of 14 weeks. However, benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s). The degree of disability is computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983). Further, defendant stipulated that the alleged injury was industrial in nature on the hearing report and cannot now change its argument after the close of evidence and argument. See hearing report.

defendant employer. Emails between the parties corroborate this, as do the medical records.

At all times material hereto, claimant believed he was seeing doctors authorized by the defendant employer. When claimant began to see Dr. Pardubsky, he was told it was authorized. The defendant backtracked and ordered claimant to pay with his health insurance. To the extent that defendant now claims they denied the claim, an authorization defense cannot be raised.

Claimant is entitled to reimbursement of the medical bills paid by the health care insurer, payment of outstanding bills, and mileage in the amount of $1543.76 in Exhibit 7, $6154.29 in Exhibit 8[2], and $812.35 in mileage. Claimant is not reimbursed any additional sums in the form of co-pays, as claimant testified at hearing that all co-pays had been paid for by defendant. (See Transcript, p. 56)

The next issue is whether the claimant is entitled to any penalty benefits pursuant to Iowa Code section 86.13.

If weekly compensation benefits are not fully paid when due, section 86.13 requires that additional benefits be awarded unless the employer shows reasonable cause or excuse for the delay or denial. Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996).

Delay attributable to the time required to perform a reasonable investigation is not unreasonable. Kiesecker v. Webster City Meats, Inc., 528 N.W.2d 109 (Iowa 1995).

It also is not unreasonable to deny a claim when a good faith issue of law or fact makes the employer's liability fairly debatable. An issue of law is fairly debatable if viable arguments exist in favor of each party. Covia v. Robinson, 507 N.W.2d 411 (Iowa 1993). An issue of fact is fairly debatable if substantial evidence exists which would support a finding favorable to the employer. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

An employer's bare assertion that a claim is fairly debatable is insufficient to avoid imposition of a penalty. The employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

The employer's failure to communicate the reason for the delay or denial to the employee contemporaneously with the delay or denial is not an independent ground for imposition of a penalty, however. Keystone Nursing Care Center v. Craddock, 705 N.W.2d 299 (Iowa 2005).

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[2] The claimant argues in the post-hearing brief that he is entitled to a reimbursement of $7306.04 for payments made by United Health Care and managed by Optum, but only $6154.29 is reflected in Exhibit 8. Any other amount not in evidence is not awarded.

If the employer fails to show reasonable cause or excuse for the delay or denial, the commissioner must impose a penalty in an amount up to 50 percent of the amount unreasonably delayed or denied. Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996). The factors to be considered in determining the amount of the penalty include the length of the delay, the number of delays, the information available to the employer and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.

Defendant denied the claim formally on March 17, 2017. However, at hearing Mr. Robinson testified that the claim was denied by Ms. Pearson due to the letter of Dr. Delbridge in February 2016. This denial was flawed in two respects. First, Dr. Delbridge's February 2016, letter indicated that claimant's condition was materially aggravated since 2013. Second, Dr. Delbridge continued to treat claimant and ultimately he opined that claimant's work did cause claimant's symptomatology in the left shoulder, left wrist and right wrist.

Defendant has an ongoing obligation to investigate the claim. When Ms. Pearson was sent the letter of November 7, 2016, by Dr. Delbridge, defendant no longer had a good faith basis for denying the claim.

Defendant also admitted that it did no subsequent review after Dr. Delbridge's initial denial. (CE 2:4)

This claim was initially handled by an insurer, but it was later determined on September 3, 2015, that there was no coverage for this claim. (CE 4) Coverage had lapsed on May 15, 2015. (CE 4)

It appears that defendant was unfamiliar with the workers' compensation system, but that does not make the law inapplicable to defendant employer. Defendant did pay for some medical bills and some co-pays which mitigates the amount of the penalty to be applied. It is determined that the claimant is entitled to a penalty of 30 percent of the total temporary permanent partial disability benefits owed after November 7, 2016.

Finally, we turn to the issue of the IME. Pursuant to Iowa Code § 85.39 and as interpreted by DART v. Young, 867 N.W.2d 839 (Iowa 2015), claimant is entitled to a reimbursement of the examination costs. However, a triggering event must occur. Reimbursement is made only if an evaluation of permanent disability has been made by an employer-retained physician and the evaluation is too low in the opinion of the claimant. There was no such triggering event here. Dr. Delbridge opined that the claimant sustained a work-related injury but proffered no opinion as to what impairment until after claimant's IME was conducted. No specific impairment was rendered by Dr. Pardubsky either.

Therefore, since the triggering events did not occur, claimant is not entitled to a reimbursement of Dr. Manshadi's examination.

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

ORDER

THEREFORE, it is ordered:

That defendant is to pay unto claimant permanent total disability benefits at a rate of three hundred fifty and 74/100 dollars ($350.74) and commencing August 3, 2015.

That defendant is to pay unto claimant healing period benefits in the above stated amount from March 29, 2017, through April 10, 2017.

That defendant shall pay thirty (30) percent penalty benefits of the temporary PPD benefits owed after November 7, 2016.

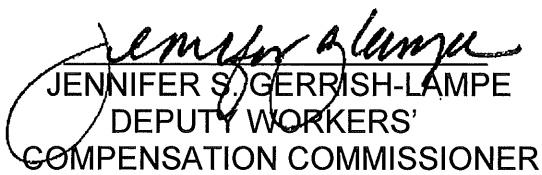
That defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) 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 (2) percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

That defendant shall pay medical bills and costs in the amount of one thousand five hundred forty-three and 76/100 dollars ($1543.76) as established in Exhibit 7, six thousand one hundred fifty-four and 29/100 dollars ($6154.29) as established in Exhibit 8, and eight hundred twelve and 35/100 dollars ($812.35) in mileage.

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33 except for the fees of Dr. Manshadi.

Signed and filed this 17th day of July, 2018.



JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Benjamin R. Roth
Attorney at Law
PO Box 2634
Waterloo, IA 50704
broth@fmalaw.net

Paul T. Shinkle
Attorney at Law
704 Main St.
PO Box 523
Cedar Falls, IA 50613-0027
pshinkle@cfu.net

JGL/sam

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.