BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

HILDA A. HERNANDEZ,

Claimant,

vs.

ALLSTEEL, INC.,

Employer,

and

ACE INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5044748

ARBITRATION DECISION

Head Note Nos.: 1802; 1803; 1804; 2500

STATEMENT OF THE CASE

Hilda Hernandez, claimant, filed a petition in arbitration seeking workers' compensation benefits from Allsteel, Inc. (hereinafter Allsteel) and its insurer, Ace American Insurance Company, as a result of an alleged injury she sustained on September 9, 2011, that allegedly arose out of and in the course of her employment. This case was heard in Des Moines Iowa and fully submitted on August 6, 2015. The evidence in this case consists of the testimony of claimant and Alicia Castillo and claimant's exhibits 1 through 14 and defendants' exhibits A through H and J through L.

Both parties submitted briefs, which were considered along with the evidence and testimony.

ISSUES

Whether claimant sustained an injury on September 9, 2011, or alternatively May 17, 2013, which arose out of and in the course of employment;

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

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

The extent of claimant's disability;

Whether claimant is entitled to payment of medical expenses;

Whether a penalty should be assessed in this case; and

Assessment of costs.

The stipulations contained in the hearing report are accepted and incorporated into this decision as if fully set forth. The parties are bound by the stipulation contained in the hearing report. The parties agree that claimant's weekly rate is $403.97 per week. The parties also agree that defendants are entitled to a credit of $22,262.60 for short and long term disability benefits they have paid.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Hilda Hernandez was 41 years old at the time of the hearing. She graduated from high school. She has no additional formal education. Claimant said she worked for a couple of months at Heinz and left for family reasons. She worked at CorrFlex, packaging small bottles of shampoo and worked for West Liberty Foods packaging lunch meats. In 2005, she started her work with Allsteel. Claimant was a work cell operator at Allsteel. At the time, she was hired and for about a year and one-half the work was assigned to two persons. Claimant's job involved repetitive lifting, bending and reaching. Claimant would work on desks that weighed up to 75 pounds. Claimant testified that she had requested a transfer to different work at Allsteel, but was told by her supervisor that he liked the work she did and did not want to transfer her to another position.

On September 9, 2011, claimant was turning a table and felt a sharp pain in her low back. She informed her supervisor. She went to her primary care physician, Eleanor Gomez, M.D. Dr. Gomez prescribed pain medication and took her off work and ordered x-rays and then recommended an MRI. Claimant testified that she had a lot of lower back and leg pain after her injury. After her MRI, claimant had her first epidural steroid injection in October 2011 and second in November 2011. Claimant did not obtain relief.

Claimant had a discectomy on May 17, 2013. Claimant had a second back surgery on July 18, 2013. The claimant had complications from her second surgery and had to go to the emergency room.

Claimant had a trial implantation of a spinal cord stimulator (SCS). On July 1, 2014 claimant had a permanent implant of a SCS. This device needs to be surgically replaced every nine years.

Claimant enjoyed her work for Allsteel. Her last day at work was April 30, 2013. She was terminated on April 30, 2014. (Exhibit 12, page 13) Before September 9, 2011, claimant was able to function on her job and regular activities at home and with her family. Claimant is now significantly limited in her abilities to function. Her ability to shop, cook, clean, walk and leave the home for activities is limited. She will use her SCS to increase her tolerance for up to four hours at a time. She is only allowed to use it eight hours a day and she uses it four hours to help her sleep.

Claimant was considered an employee with health benefits until April 2012. At that time, her health benefits stopped and she obtained Title XIX Medicaid. Claimant received both short term and long term disability benefits from Allsteel.

Claimant admitted that in her deposition she stated that before September 9, 2011 she did not have any back problems and did not visit a chiropractor. (Ex. L, p.10) She admitted upon cross-examination that she had seen a chiropractor before September 9, 2011 and saw Dr. Gomez in May 2010 about her back. Claimant admitted that the medical records show treatment for her back before September 9, 2011. Claimant admitted in her testimony that she had seen a doctor for her back, but stated that her back problems before September 9, 2011 did not make her stop working.

Claimant has not applied for any jobs since her injury nor has she requested assistance for the Iowa Department of Vocational Rehabilitation. Claimant had her driver's license suspended. She said that it could be restored if she had the financial means to do so.

Alicia Castillo, the claimant's mother, testified. She was employed by Hon/Allsteel for 27 years and was retired. Ms. Castillo has and currently provides Spanish interpretation in the courts in Muscatine County, Iowa. Ms. Castillo said that before September 9, 2011 her daughter was able to function normally, that she was not disabled in anyway. After September 9, 2011, she said her daughter could not go for walks or do much standing and walking.

Claimant's back history is relevant to her claim. On May 12, 2010, claimant was complaining of back spasms on the right side and pain down her legs. Dianna Sprague, PA-C's assessment was "Acute low back pain with spasm." (Ex. B, p. 1) On May 11, 2010, Jeffery Shay, D.C. examined claimant for constant dull pain in the low back. (Ex. F, p. 2) Dr. Shay, on May 18, 2010, opined the claimant "[I]s in a repair/relief phase of care and has a good prognosis." (Ex. F, p. 2) On September 6, 2011, claimant saw Dr. Shay, reporting a decrease in frequency of the left low back pain from frequent to intermittent and now reporting a dull pain in the left low back. (Ex. F, p. 3) This was three days before her reported work injury of September 9, 2011.

On September 9, 2011, claimant was seen by Eleanor Lavadie-Gomez, M.D. for back pain she had for about two weeks. Claimant reported to Dr. Lavadie-Gomez that she works up to ten hours a day with many repetitive movements. (Ex. B, p. 3) Her

assessment was lumbago. (Ex. B, p. 3) Claimant was granted FMLA leave from September 8 through September 18, 2011. (Ex. 12, p. 1) On October 4, 2011, Dr. Lavadie-Gomez listed claimant's active problems to be, degeneration/lumbosacral, pain in lower back and spinal stenosis–Lumbar region–mild. (Ex, B, p. 4) On November 1, 2011, Dr. Lavadie-Gomez referred claimant for back injections. (Ex. 5, p. 94) On January 23, 2013, Dr. Lavadie-Gomez strongly recommended claimant obtain an MRI due to her worsening back symptoms. (Ex. 5, p. 26)

On October 31, 2011, Benjamin MacLennan, M.D. saw the claimant for her low back pain. He noted that the symptoms started about two months ago with no dramatic incident. (Ex. 6, p. 1; Ex. A, p. 1) His impression was,

1) Mild degenerative disk disease L3-4, L4-5, L5-S1.

2) L4-5 mild central protrusion annular tear, no severe stenosis.

3) Low back pain.

(Ex.6, p. 2) Dr. MacLennan informed claimant that she had a small disk bulge and a little bit of a tear. He informed her that given these findings, surgery would not likely be helpful. He noted that claimant's job was strenuous and that at present she would not be able to perform her work. (Ex. 6, p. 2) On November 20, 2011, Dr. MacLennan noted claimant was still having the same symptoms after a second epidural steroid injection (ESI). He recommended continued physical therapy and a new MRI and had her on light duty. (Ex. 6, p. 7) He provided a lifting limitation of no more than 20 pounds and allowed her to work overtime as of December 2, 2011. (Ex. A, p. 6) On February 13, 2012, Dr. MacLennan wrote defendants' counsel and confirmed that when he first examined claimant on October 31, 2011, claimant informed him that her symptoms started two months ago and that he did not believe she was a surgical candidate. (Ex. A, p. 9)

On January 23, 2013, claimant was having bilateral leg pain in addition to low back pain. Dr. MacLennan noted claimant's condition was worsening. His impression was,

1) Lumbar spine mild degenerative disk disease, L3-4, L4-5, L5-S1.

2) L4-5 mild central disk protrusion with annular tear, no severe stenosis.

3) Low back pain, worsening.

(Ex. 7, p. 17; Ex. A, p. 10) He noted claimant was struggling severely with the pain. He took claimant off work for a week. (Ex. 6, pp. 12, 13) An MRI of March 21, 2013, showed, "Broad-based L4-5 disc protrusion with a new right paracentral extruded component that extends below level of the disc space and contacts the descending

portion of the right L5 nerve root." (Ex. 9, p. 4) On May 1, 2013, Dr. MacLennan stated that claimant had exhausted non-operative options and recommended a right L4-5 discectomy. (Ex. 6, p. 24; Ex. A, p. 14) On May 7, 2013, Dr. MacLennan performed a right L4-5 hemilaminotomy and excision of herniated disk. His postoperative diagnosis was,

1. L4-L5 degenerative disc disease.
2. L4-L5 right disc herniation with lateral recess stenosis.
3. Right leg radiculitis.
4. Low back pain.

(Ex. 6, p. 27) The results of the surgery were initially good; however, on June 19, 2013, claimant returned to Dr. MacLennan with radiating right buttock, lateral leg to ankle, L5 distribution. (Ex. 6, p. 32) On July 16, 2013, Dr. MacLennan performed a right L4-L5 redo hemilaninotomy and excision of recurrent disc herniation. His postoperative diagnosis was,

1. L4-L5 degenerative disc disease.
2. L4-L5 right recurrent disc herniation and stenosis.
3. Right leg radiculopathy.
4. Low back pain.

(Ex. 6, p. 40) On November 22, 2013, Dr. MacLennan noted claimant continued to have severe pain, worsening. (Ex. 6, p. 5)

On January 17, 2014, Fred Dery, M.D. performed a L3-L4 and L4 – L5 provocative discography. The discogram was non-conclusive and Dr. Dery provided information to claimant about a spinal cord stimulator. (Ex. 2, p. 7) On February 11, 2014, Dr. Dery recommended that claimant consider a spinal cord stimulator (SCS). (Ex. 2, p. 11) On May 16, 2014, claimant had a trial placement of the SCS. (Ex. 2, p. 21) The results were good, so a decision was made to put in a permanent SCS. (Ex. A, p. 42)

On June 17, 2014, Chandan Reddy, M.D. performed a pre-operative evaluation before the placement of a permanent SCS. His assessment was failed back syndrome. (Ex. 10, p. 4) On July 17, 2014, Dr. Reddy performed surgery to implant the SCS. (Ex. 10, pp. 12, 94)

On September 25, 2014, claimant reported to Dr. Dery that she felt really good after the permanent SCS was implanted. (Ex. 2, p. 27) Claimant related that when she

has the SCS on, she feels good and she feels sore when she turns it off. On September 25, 2014, Dr. Dery provided a 13 percent impairment rating. (Ex. 2, p. 29)

On September 19, 2014, claimant returned to Dr. MacLennan after she had a spinal cord stimulator (SCS) implanted. He noted that she was improving after the SCS was implanted. (Ex. 6, p. 68; Ex. A, p. 44) On September 21, 2014, Dr. MacLennan wrote to claimant's attorney. He stated.

> We discussed her work injury. She stated to me she did not have any radicular leg pain prior to her work injury of lifting heavy pallets repetitively. She also stated that she did not have severe low back pain prior to her injury as well.
>
> I do think this injury was more likely than not related to her employment lifting heavy objects and equipment.

(Ex. 6, p. 69)

On February 17, 2012, Theron Jameson, D.O. performed an independent medical examination (IME). (Ex. C, pp. 1 – 4) Dr. Jameson noted, "Hilda's job involves inspecting, packing, removing, and using pallet [*sic*] for 10 hours per day, making many repetitive movements while working for HON Industries. There was no specific accident or injury that occurred at work that this back pain can be attributed to." (Ex. C, pp. 1, 2) In responding to a question from defendants' counsel Dr. Jameson wrote,

> I feel that since she has no specific incident related to her complaints other than repetitive work, she does not have a work related injury related to her work activities at Hon Industries.

(Ex. C, p. 4) Dr. Jameson did not recommend further treatment or permanent restrictions and provided a zero percent impairment rating. (Ex. C, p. 4)

On December 19, 2012, Ray Miller, M.D. performed an IME. (Ex. 8, pp. 1 - 6) Dr. Miller's impression was,

> Mechanical low back pain with degenerative disc disease evidenced by MRI at L3-L4, L4-L5, and L5-S1. There is no evidence of neurologic deficit and no definite evidence of nerve root impingement.

(Ex.8, p. 4) He did not believe that claimant was a surgical candidate. Dr. Miller stated "Ms. Hernandez has primarily a problem of mechanical low back pain that developed secondary to her work activities." (Ex. 8, p. 5) He also stated "It should be noted that Ms. Hernandez's low back pain started while being employed at Allsteel and became progressively worse related to heavy lifting, bending, and twisting. This is therefore felt to be a work-related low back pain." (Ex. 8, pp. 5, 6)

On February 5, 2014, Barbara Laughlin, M.A. performed an employability assessment. Her assessment was that claimant had a loss of 54.9 percent of general transferable occupations and she had a 49.4 percent loss of unskilled occupations. (Ex. 4, p. 5)

On December 16, 2014, James Carroll, M.Ed., C.R.C., C.C.M., performed a vocational assessment. (Ex. J, pp. 1 – 12) He found claimant's work history was entry level unskilled employment in the light to medium physical demands. (Ex. J, p. 11) According to Mr. Carroll, Dr. Reddy assigned claimant restrictions in December 2014. Those restriction are, "no lifting of more than 25 lbs, no repetitive bending below the waistline (repetitive defined as no more than 10 times per hour) and no twisting more than 45 degrees." (Ex. J, p. 12) Mr. Carroll found claimant had a 25 percent loss of access to the labor market and a loss of employability of 35 percent. He also found claimant had a loss of earning capacity of 22 percent. (Ex. J, p. 12)

I find the restrictions suggested by Dr. Reddy to be claimant's restrictions. These restrictions were from Dr. Reddy, the last surgeon who operated on her back and who was in the best position to provide restrictions.

I find that on or about September 9, 2011, claimant suffered a work injury which arose out of and in the course of her employment. This injury arose from repetitive work activity that aggravated her lower back. Claimant had back issues cause by work before that date, but the cumulative trauma manifested in her back on September 9, 2011.

The work injury of September 9, 2015 is a cause of a 50 percent loss of earning capacity. It is clear that given the physical requirements of the job she held at Allsteel, she could not return to that job with Dr. Reddy's restrictions. I do not agree that claimant is totally disabled. The SCS has restored her ability to tolerate some types of work. She is able to perform sedentary and some light work. Her work experience is unskilled and entry level. Claimant has no post-high school education.

Claimant was terminated from Allsteel as she was absent for a considerable time and her restrictions would not let her perform her job. The evidence shows that she is physically unable to perform all of the required tasks of the jobs she held at Allsteel.

REASONING AND 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 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.

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 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 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 do not adopt the conclusions of Dr. Jameson as to causation of claimant's injury. He opined that since there was no specific incident, claimant does not have a work injury. Dr. Jameson also opined that claimant needed no additional medical treatment. Dr. Jameson's opinion is at odds with cumulative trauma as a cause of work injuries. Iowa law recognizes cumulative trauma as causing temporary and permanent injuries.

The medical evidence is consistent with cumulative trauma. Claimant's testimony was generally credible as to her injury. I find the opinions of Dr. Miller and Dr. MacLennan to be the most convincing on causation. Dr. MacLennan treated claimant for a number of years and was very involved with her back care.

Claimant alleged that her injury was caused by repetitive activities at work, a cumulative trauma claim. As such, the fact that she saw medical providers for her back before September 9, 2011 is not surprising or unexpected. Claimant's denial that she had seen a chiropractor in her deposition does diminish some of her credibility.

I do not specifically adopt either vocational report in this case, I find Mr. Carroll's assessments closer to claimant's abilities than Ms. Laughlin's. Claimant's ability to function in a work setting was enhanced when the permanent SCS was implanted. While the SCS certainly has not cured claimant, if has restored some function for the claimant. Ms. Laughlin did not properly account for some of claimant's abilities.

Claimant argued entitlement to benefits under the odd-lot doctrine. The hearing report does not identify odd-lot as an issue in this case. The colloquy between the undersigned and the attorneys at the beginning of the hearing did not identify odd-lot as an issue to be decided. The attorneys were informed that all issues in dispute needed to be identified in the hearing report or no decision would be issued on an issue not identified as in dispute in the Hearing Report. (Transcript, p. 4) Odd-lot shifts the burden of proof to the defendants after an employee has made a prima facie case. As such, identification of odd-lot is required in the hearing report to put the defendants on notice that at the hearing odd-lot will be asserted. I make no finding in this decision as to whether claimant is an odd-lot employee. In Michael Eberhart Const. v. Curtin, 674 N.W.2d 123 (Iowa 2004), the Iowa Supreme Court ruled that allowing the commissioner odd-lot doctrine as an issue after the evidence was closed was an abusive discretion. Curtin at page 128. While the petition filed by the claimant listed odd-lot as an issue, the hearing report did not. Because the claimant failed to properly raise the issue in the hearing report, it will not be considered in this case. Had I analyzed the claim under the odd-lot doctrine, I would not have found defendants rebutted claimant's prima facie case based upon Mr. Carroll's vocational assessment.

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor

an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

Claimant has requested healing period benefits for the following time periods,

October 10, 2011 through October 21, 2011;

October 24, 2011 through October 28, 2011;

October 20, 2011 through November 1, 2011;

May 31, 2012 through June 27, 2011;

October 19, 2012

February 17, 2012;

January 17, 2013 through January 21, 2013;

January 25, 2013

February 19, 2013;

May 22, 2013 through June 19, 2013;

July 12, 2013 through August 30, 2013;

May 7, 2013; and

September 25, 2014.

(Hearing Report)

The claimant did not clearly identify exhibits that identify each time period for which claimant is requesting healing period benefits. Claimant's brief is not helpful on this issue and defendants did not address this issue.

Dr. Lavadie-Gomez excused claimant from work on October 10, 2011 through October 21, 2011. (Ex. 5, p. 71) This healing period is awarded. On October 20, 2011 Dr. Lavadie-Gomez extended claimant's time off work until October 28, 2011. (Ex. 5, p. 69) This healing period is awarded. Dr. MacLennan took claimant off work November 1, 2011 through November 30, 2011. (Ex, 6, p. 3) This healing period is awarded. Claimant was taken off work from April 29, 2013 through May 1, 2013 by Dr. MacLennan. I award this healing period. Claimant had her first back surgery on May 7, 2013 and another back surgery on July 18, 2013. I can determine that Dr. MacLennan kept her out of work from May 7, 2013 through September 24, 2014. (Ex. 6, pp. 29, 32, 36, 39, 42, 44, 59, 62, 66, 68; Ex. 2, p. 28) I award these dates. The

last visit of September 25, 2014 was the report from Dr. Derry that claimant was doing well after the permanent SCS was implanted. I do not award healing period benefits for September 25, 2014. (Ex. 2, p. 28)

Permanent partial benefits shall commence on September 25, 2014.

Claimant has requested defendants pay the medical expenses identified in Exhibit 13. This exhibit consists of an independent medical examination as well as medical expenses.

These medical expenses are related to claimant's work injury. I find the expenses reasonable. As defendants denied liability they are not allowed to assert an authorization defense. Defendants shall pay the medical expenses in Exhibit 13. Any out-of-pocket expenses claimant incurred, defendants shall reimburse claimant directly.

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).

If the employer fails to show reasonable cause or excuse for the delay or denial, the commissioner shall 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.

In this case the defendants had a reasonable cause or excuse not to pay benefits. The defendants relied upon the opinion of Dr. Jameson and conveyed the reason for the denial of benefits to claimant. I award no penalty.

The parties stated in the hearing report that they believed the claimant's weekly rate was $403.97 based upon the gross earnings of $580.51 and 3 exemptions. With the gross income of $580.51, the correct gross income to use in the rate book in effect at the time of injury is $581.00. Iowa Code section 85.34 requires rounding up. The claimant's correct weekly rate is $404.59. Defendants shall pay weekly benefits at $404.59 per week.

Claimant has requested costs of the filing fee. I find that claimant should be awarded the $100.00 filing fee.

ORDER

Defendants shall pay claimant two hundred fifty (250) weeks of permanent partial disability benefits at the weekly rate of four hundred four and 59/100 dollars ($404.59) commencing on September 25, 2015.

Defendants shall pay the healing period benefits as set forth in this decision at the weekly rate of four hundred four and 59/100 dollars ($404.59).

Defendants shall pay the medical expenses as set forth in this decision.

Defendants shall pay any past due amount in a lump sum with interest.

Defendants shall pay cost of one hundred and 00/100 dollars ($100.00).

Defendants are entitled to a credit of twenty-two thousand two hundred sixty-two and 60/100 dollars ($22,262.60) for disability benefits previously paid.

Signed and filed this 7th day of January, 2016.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.