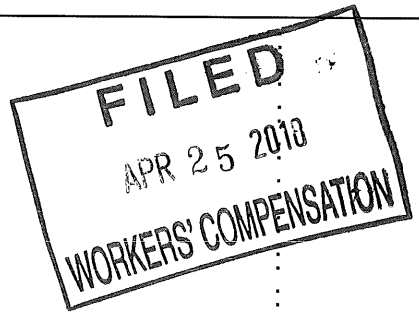
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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| JOSEPH JONG,<br><br>Claimant,<br><br>vs.<br><br>FARMLAND FOODS,<br><br>Employer,<br><br>and<br><br>SAFETY NATIONAL,<br><br>Insurance Carrier,<br>Defendants. | File Nos. 5055809, 5062083<br><br>ARBITRATION<br><br>DECISION<br><br>Head Note Nos.: 1803, 2507, 3000, 3002 |

STATEMENT OF THE CASE

These are proceedings in arbitration. The contested cases were initiated when claimant, Joseph Jong, filed his original notices and petitions with the Iowa Division of Workers' Compensation. The petitions were filed on July 12, 2016. Claimant alleged he sustained two work-related injuries. Claimant alleged he sustained a cumulative injury to his right arm and wrist on November 17, 2014. Later the date was amended to October 30, 2014. (Original notice and petition in File No. 5055809) Claimant alleged he sustained a cumulative injury to his back, right shoulder, right hip, and to his body as a whole as a result of an injury on February 10, 2015. The injury was later amended to August 17, 2015. (Original notice and petition in File No. 5062083)

For purposes of workers' compensation, Farmland Foods is insured by Safety National Insurance Company. Defendants filed their answers on August 3, 2016. The defendants admitted the occurrence of the work injury in File No. 5055809. They denied the occurrence of a work injury in File No. 5062083.

The hearing administrator scheduled the case for hearing on July 27, 2017. The hearing took place in Sioux City, Iowa at the Iowa Workforce Center. The undersigned appointed Ms. Carin Eckhoff, as the certified shorthand reporter. She is the official custodian of the records and notes. Mr. Mowat Mayen acted as the official interpreter.

Claimant testified on his own behalf. Defendants called Mr. Bill Mischnick, Safety Manager, at Smithfield in Denison, Iowa to testify at the hearing. Joint Exhibits 1

through 14 were admitted. Claimant offered Exhibits 1 through 6. Defendants' Exhibits A through C were admitted. The parties also submitted post-hearing briefs on September 13, 2017. The case was deemed fully submitted on that date.

**File No. 5055809**

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury;
2. Claimant sustained an injury on October 30, 2014 which arose out of and in the course of his employment;
3. The alleged injury is a cause of temporary disability;
4. Healing period benefits are no longer an issue;
5. If permanency is found; the injury is a scheduled member disability;
6. If permanency is found, the commencement date is September 9, 2016;
7. The parties agree any weekly benefit rate should be paid at $391.15 per week;
8. Defendants waive any affirmative defenses they may have had available to them;
9. Defendants state they will or already have paid the bill for the independent medical examination by Irving Wolfe, D.O.;
10. Any credit against any award is not in dispute; and
11. The parties agree claimant has paid the costs listed in his attachment.

**File No. 5055809**

ISSUES

The issues presented are:

1. Whether the injury on October 30, 2014 resulted in a permanent disability;
2. If so, the extent of the permanent disability; and

3. Whether defendants are liable for various medical bills detailed in Claimant's Exhibit 6.

**File No. 5062083**

STIPULATIONS

1. There was the existence of an employer-employee relationship at the time of the alleged injury;
2. Claimant sustained an injury on August 17, 2015;
3. The alleged injury is a cause of temporary disability during a period of recovery;
4. Temporary or healing period benefits are no longer in dispute;
5. If permanent disability is found, the disability is an industrial disability;
6. If permanent disability is found, the commencement date is April 13, 2016;
7. The parties believe the weekly benefit rate is $496.25 per week;
8. Defendants have withdrawn any affirmative defenses they may have had available to them;
9. Defendants have or will pay the independent medical examination performed by Dr. Wolfe;
10. There is no dispute about any credit against the award; and
11. The parties agree the costs attached to the report have been paid by claimant.

**File No. 5062083**

ISSUES

1. Whether the injury on August 17, 2015 is the cause of any permanent disability;
2. Whether claimant is entitled to permanent partial disability benefits;
3. If so, the extent of permanent partial disability benefits to which claimant is entitled; and
4. Whether defendants are liable for medical expenses pursuant to Iowa Code section 85.27.

## FINDINGS OF FACT

This deputy, after listening to the testimony of claimant and Mr. Bill Mischnick at hearing, and after judging the credibility of each witness, plus after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Claimant is 37 years old and married, with one child. His spouse and child presently live in Uganda. Claimant has lived a very sad and tragic life. He was born in the southern part of Sudan. That part of the Sudan is now a separate country. It is called South Sudan. Claimant grew up speaking the Dinka language. Due to civil war in Sudan, claimant was forced to flee to Ethiopia when he was approximately six years old. His village was under attack and conditions were chaotic. Claimant lived in Ethiopia for approximately four years.

Next, claimant was sent to a refugee camp in Kenya. He was living under the protection of the United Nations. Claimant did not have the benefit of his parents to guide him. They were not in the camp. Claimant attended school while he was in Kenya. He completed the twelfth grade. Claimant studied English, Swahili, and math. Swahili is the language spoken in Kenya. He had never been employed while he resided on the African continent.

On June 13, 2001, claimant arrived in the United States. He settled in Grand Rapids, Michigan. Claimant took English as a Second Language (ESL) classes in Michigan. He secured a position with GMC in Michigan in March of 2002. He was hired to inspect parts for quality assurance. Claimant remained employed at GMC until November of 2007. He returned to South Sudan in an attempt to locate his parents and siblings. He was unsuccessful in finding his family members. When claimant returned to Michigan he no longer had a job at GMC.

Claimant did not work until he came to Iowa in 2011. He commenced employment at the Burke Company in Ames, Iowa. Claimant was employed as a sanitation worker during the night shift. He operated high pressure water hoses and cleaned the equipment within the plant. Claimant worked at Burke until May of 2013. He took a leave of absence in order to care for his wife who was extremely ill. She and the child lived in Kenya. However, claimant brought his wife and child to Uganda to live. Claimant returned to Iowa in October of 2013. Management officials at the Burke Company no longer had a job opening for claimant.

Claimant now resides in Denison, Iowa. He lives with his male cousin, Samuel. Denison has approximately 8,300 residents. It is the county seat for Crawford County. Smithfield is a major employer in that geographical region of the state. The company is engaged in processing pork.

Claimant commenced his employment with Farmland Foods, n/k/a Smithfield on June 10, 2014. Claimant's primary full-time job at Farmland Foods was to lift and carry boxes of meat. (Transcript, page 16) He also had to pick up scraps of meat and place the scraps into a separate bucket and then transport the bucket to another area. The boxes and buckets weighed from 45 to 65 pounds each. Claimant testified he is right-hand dominant.

The parties stipulated claimant sustained an injury to his right arm on October 30, 2014. Todd Woollen, M.D., was authorized to examine claimant for right wrist/thumb pain. Dr. Woolen opined claimant's wrist pain was consistent with de Quervain's tendonitis. (Joint Exhibit 1, page 1) Dr. Woollen prescribed a thumb spica splint for the right hand and Naproxen 500 mg to be taken twice per day. (Jt. Ex. 1, p. 2)

According to the AMA Guides to the Evaluation of Disease and Injury Causation, (2008) at pages 162-163, de Quervain's disease is discussed. The authors state:

> de Quervain disease is generally defined as stenosing tenosynovitis of the abductor pollicis longus and extensor pollicis brevis tendons at the first extensor (dorsal) compartment of the wrist. However, the original description by de Quervain was of tenovaginitis, a thickening of the extensor retinaculum, not tenosynovitis. There has also been controversy concerning the implication of inflammation in the disorder. Hence, for these reasons, use of the eponym, de Quervain disease, may be preferable.

Id. at 162

Claimant returned to Dr. Woollen on November 7, 2014. The physician restricted claimant from using his right hand at work. (Jt. Ex. 1, p. 4) On December 4, 2014, Dr. Woollen injected claimant's right wrist with 10 mg of Kenalog and 1.5 cc of 1% Lidocaine without epinephrine. (Jt. Ex. 1, p. 6) Claimant tolerated the procedure without complications. (Jt. Ex. 1, p. 6) Dr. Woollen also ordered formalized physical therapy for the right arm. (Jt. Ex. 1, p. 7)

X-rays of the right wrist were ordered. Jon J. Bleicher, M.D., interpreted the x-rays as:

> **IMPRESSION:**
>
> 1) No acute bony abnormality.

2) Minor degenerative change.

3) Suspect coalition of the triquetrum and lunate.

(Jt. Ex. 1, p. 8)

On December 17, 2014, claimant returned to Dr. Woollen. Claimant informed the physician if he flexed or extended his thumb at the MCP joint he experienced pain. (Jt. Ex. 1, p. 9) Claimant also indicated the pain was worse at night and he had difficulties when he attempted to grasp objects. (Jt. Ex. 1, p. 9) Dr. Woollen diagnosed claimant with hand pain, especially pain at the right first CMC joint. (Jt. Ex. 1, p. 9) Additional physical therapy was ordered. (Jt. Ex. 1, p. 10)

Claimant commenced occupational therapy at the Crawford County Memorial Hospital on December 19, 2014. (Jt. Ex. 2) The focus was the wrist, hand, and especially the right thumb. (Jt. Ex. 2) Lisa Weber, OTR, determined no additional occupational therapy was needed effective January 8, 2015.

On February 10, 2015, claimant presented to Mackenzi Smith PA-C, with a new complaint. Claimant reported back pain, with right-sided pain from the shoulder down to the hip. Claimant attributed the pain to his job duties, especially carrying buckets of meat weighing approximately 40 pounds. (Jt. Ex. 1, p. 11)

Dr. Woollen conducted a physical examination of claimant's spine and down the right side. The physician observed:

**Msk:**

He has some mild tenderness to palpation of the lumbar spine and down the right side the gluteus area. He is able to flex and extend with some mild discomfort. Normal rotation. Negative straight leg test on the right and the left.

**Pulses:**

radial pulses are palpable and equal bilaterally. Dorsalis pedis pulses are palpable and equal bilaterally.

**Extremities:**

No pain of the right hip to palpation and normal range of motion of the right hip. Normal left hip. No edema noted and no bruising noted.

(Jt. Ex. 1, p. 13)

The physician's assistant ordered a Medrol Dosepak and Cyclobenzaprine for pain relief. (Jt. Ex. 1, p. 13) X-rays of the lumbar spine were also ordered. (Jt. Ex. 1, p. 15)

Dr. Bleicher interpreted the spinal x-rays as:

> **IMPRESSION:**
>
> 1) Negative exam.
>
> 2) Mild age appropriate degenerate [sic] change.

(Jt. Ex. 1, p. 15)

Claimant saw John Ingram, M.D., on August 28, 2015 for back and right-sided pain. Dr. Ingram opined the injury was work related. (Jt. Ex. 1, p. 16) The physician imposed the following temporary restrictions:

> Limited bending, kneeling, squatting, and climbing.
>
> Occasional lifting 01-10 pounds.
>
> Limited lifting 11-20 pounds; 21-50 pounds; and 51-70 pounds.
>
> Working hours limited to 9 per day.

(Jt. Ex. 1, p. 16)

Claimant returned to Dr. Ingram on September 14, 2015. (Jt. Ex. 1, p. 20) Claimant reported minimal improvement with his back troubles. He was experiencing a difficult time sleeping. Dr. Ingram opined claimant needed to sit at least one hour per day while he was at work. (Jt. Ex. 1, p. 20)

On September 28, 2015, claimant complained to his medical providers his symptoms were worse than on prior occasions. He was having pain in his lower back with radiation around to his groin and hip. He also reported weakness in his right knee. (Jt. Ex. 1, p. 23) MRI testing was ordered. (Jt. Ex. 1, p. 25)

Craig W. Walker, M.D., interpreted the results from MRI testing that was conducted on October 7, 2015. Dr. Walker opined:

> Impression:
>
> 1. Mild multilevel degenerative changes of the lumbar spine as described superimposed on mild congenital lumbar canal stenosis.
>
> 2. Prominent caudal epidural fat concentrically narrows the L5-S1 thecal sac.

3. Mild bilateral L3-4 neural foraminal narrowing.

(Jt. Ex. 10, p. 1)

On October 28, 2015, claimant underwent an epidural steroid injection. (Jt. Ex. 1, p. 33) He tolerated the procedure. After a short waiting period, claimant was released home. (Jt. Ex. 1, p. 33) Claimant was placed on temporary restrictions. (Jt. Ex. 1, p. 36)

Claimant returned to the CCMH Medical Clinic on November 6, 2015. He reported an incident at work whereby he was required to reach above his shoulder on a repetitive basis. Claimant reported to his supervisors the repetitive reaching above his shoulder and head was exacerbating his right lower back pain and he was experiencing paraspinal muscle strain and spasms. (Jt. Ex. 1, p. 37) The treating physician found lumbar spasms. Claimant was excused from work for the period from November 7, 2015 through November 11, 2015. (Jt. Ex. 1, p. 39, 41)

Dr. Ingram examined claimant on November 11, 2015. The physician noted: "Right sided pain the paraspinous muscles, no specific radicular patern [sic] just generalized aching." (Jt. Ex. 1, p. 43) Dr. Ingram placed claimant on light duty work for three weeks. The physician also ordered two sessions of physical therapy per week for three weeks. (Jt. Ex. 1, p. 43)

Several days later, Dr. Ingram wrote in his clinical notes for November 16, 2015:

> **History of Present Illness:**
>
> 34 year old male here for workmans [sic] comp injury. States the pain is in rt groin up to under rib cage and rt hip.
>
> Patient continues to complain of pain over the right abdominal wall and onto his back. There is no evidence of any radicular pattern with this. He says that the last job that he did of scorching the hide of the pigs was very painful for him. He doesn't appear to be in any discomfort when he is sitting in the exam room. He doesn't feel like physical therapy has helped him at all.
>
> At this point I just don't find any specific abnormalities that would cause this kind of pain for him. He keeps having continued pain issues, without any objective evidence. His MRI is normal, he doesn't get better with physical therapy, is not really taking much for any medications right now. At this point were [sic] going to have to increase his work activity. He had been sitting, but were [sic] going to release him to standing for 5 hours a day, and walking for 5 hours a day. Farmland is well able to find a

> position where those restrictions are enforced. Please see our written note on his restrictions.

(Jt. Ex. 1, p. 49)

Claimant returned to the CCMH Medical Clinic on December 10, 2015. (Jt. Ex. 1, p. 53) Claimant reported back pain after standing for one hour. (Jt. Ex. 1, p. 53) Dr. Ingram recommended a referral to an orthopedic specialist.

On December 22, 2015, claimant presented to Jeremiah P. Ladd, M.D., a physician at Nebraska Spine & Pain Center for an evaluation. (Jt. Ex. 5, p. 4) Claimant described his symptoms to Dr. Ladd. They were recorded as:

> **History of Present Illness**
>
> JOSEPH JONG is a 34 year old male.
>
> •Pain is burning • Pain is sharp • Pain is described as tingling • •Pain is described as pins/needles • Relieved by rest • Worse with lying down • Worse with standing • Worse with sitting • Worse with walking •Worse with bending • Worse with lifting •Worse with prolonged positions
>
> • Lower back pain • Right hip joint pain • Right leg pain
>
> • Limb weakness • No Urinary incontinence • No Fecal incontinence • No difficulty with balance • Good coordination • No numbness of the limbs
>
> • Current pain level 9 (0-10); Best pain level in last 7 days 6 (0-10) •Worst pain in last 7 days level 9 (0-10)

(Jt. Ex. 5 p.4)

Dr. Ladd made the following findings when he physically examined claimant's lumbar spine:

> General/bilateral • Lumbosacral spine exhibited tenderness on palpation over the paraspinal musculature. • Lumbosacral spine pain was elicited by flexion • Lumbosacral spine pain was elicited by extension • A Patrick-Fabere test was positive at the right side of the sacroiliac joint. •Lumbosacral spine motion was normal. • A straight-leg raising test of the right leg was negative. • A straight-leg raising test of the left leg was negative. • A Patrick-Fabere test was negative at the left side of the sacroiliac joint.

(Jt. Ex. 5, p. 6)

Dr. Ladd recommended an injection. He also advised claimant to return to work with the same restrictions. (Jt. Ex. 5, p. 7)

On January 22, 2016, claimant underwent a right L5-S1 facet joint injection. Claimant tolerated the procedure well. He reported a 60 percent improvement at the time of his discharge. (Jt. Ex. 5, p. 8) Dr. Ladd diagnosed claimant with the conditions:

- Right sacroiliitis
- Lumbago
- Lumbar disc degeneration
- Bulging lumbar disc
- Bulging disc (L5-S1) – mild
- Lumbar facet syndrome - L5-S1 Right

(Jt. Ex. 5, p. 13) Dr. Ladd imposed some temporary work restrictions for claimant. (Jt. Ex. 5, p. 13) The restrictions included:

> Occasional: bending, kneeling, squatting, climbing and lifting from 11 to 20 pounds.
>
> Limited: Lifting of 21 to 50 pounds.
>
> Frequent: Lifting of 01 to 10 pounds.
>
> Continuous: hand/wrist work, grasping, pushing/pulling, fine manipulation, and reaching.

(Jt. Ex. 5, p. 21)

On February 15, 2016, claimant presented to Michael Gainer, M.D., a specialist in orthopedics. Claimant complained about right wrist pain with range of motion and occasional popping. (Jt. Ex. 6, p. 1) Dr. Gainer diagnosed claimant with right wrist pain of unknown etiology. (Jt. Ex. 6, p. 1) Dr. Gainer opined:

> PLAN: I cannot reproduce his symptoms. Other than the patient's reported pain, he has no specific tenderness to palpation over his wrist. I think he can work full duties with no restrictions in regard to his wrist. Follow up as needed.

(Jt. Ex. 6, p. 1)

On March 30, 2016, claimant underwent a right L5-S1 facet injection. Claimant did not experience any significant relief following the injection. (Jt. Ex. 5, p. 26)

Pursuant to a request from claimant's former attorney, claimant visited Richard P. Murphy, M.D., for a second opinion. Dr. Murphy conducted a physical examination of claimant's right wrist. The orthopedist found:

> PHYSICAL EXAMINATION: Exquisite tenderness overlying the first dorsal compartment on the radial aspect of the right wrist. There is also a palpable and visible swelling overlying the area of tenderness. Patient has pain with extension, increased with extension against resistance and markedly positive Finkelstein's test. Sensation decreased in the radial nerve distribution on the dorsal aspect of the first web space.
>
> X-RAYS: AP and lateral of the right wrist and hand and AP and lateral of the right thumb were ordered, performed and interpreted by me today and show no acute bony changes. Do show a congenital lunotriquetral coalition.

(Jt. Ex. 7, pp. 1-2)

Dr. Murphy diagnosed claimant with the following conditions:

1. Extensor tendinitis first dorsal compartment on the right deQuervain's type.
2. Possible right radial nerve sensory branch compression at the wrist manifested by decreased sensation in the sensory branch radial nerve distribution on the dorsal aspect of the right first web space.
3. Congenital lunotriquetral coalition (asymptomatic).

(Jt. Ex. 7, p. 2)

Dr. Murphy also endorsed several recommendations for testing and treatment. They included EMG and nerve conduction testing, prescription medications, MRI testing of the right wrist, and the imposition of temporary restrictions. (Jt. Ex. 7, p. 2)

As of April 13, 2016, Dr. Ladd opined claimant should work through his pain and symptoms. The orthopedist did not have any other recommendations for claimant. (Jt. Ex. 5, p. 29) Dr. Ladd returned claimant to work with permanent restrictions pursuant to a valid functional capacity evaluation (FCE).

The FCE occurred on April 19, 2016. The results of the test demonstrated claimant had the ability to perform work within the light physical demand category based on the definitions developed by the U.S. Department of Labor as outlined in the

Dictionary of Occupational Titles. Claimant was capable of full-time employment. (Jt. Ex. 12, p. 2)

Next, claimant presented to Michael D. Doarn, M.D., for a second opinion concerning the right wrist and hand. (Jt. Ex. 8, pp. 1-5) The initial examination occurred on April 21, 2016. Dr. Doarn evaluated the right upper extremity. The following is a rendition, the physician prepared for his clinical notes of the same date:

> **Musculoskeletal:** Evaluation of the right upper extremity shows no obvious deformities or atrophy. There is swelling in two areas of prominence that appear to be cysts on the radial aspect of his right wrist. The largest one is over the radial aspect of the radial styloid. These areas are tender and he has tenderness along the first dorsal compartment tendons. He does have pain with resisted thumb extension and has very positive Finkelstein's testing. There are no other areas of tenderness to palpation on examination. He has no tenderness to palpation at the intersection area or at the dorsal radial sensory nerve branch area coming from the brachioradialis tendon. His sensation is equal bilaterally in those distributions including dorsal radial sensory nerve distribution. He has no triggering of his thumb. No other obvious abnormalities on examination.

(Jt. Ex. 8, p. 3)

Dr. Doarn diagnosed claimant with recurrent de Quervain's tenosynovitis. The hand specialist related the condition to claimant's original work injury on October 30, 2014. Dr. Doarn also diagnosed claimant with ganglion cysts associated with the first dorsal compartment and his de Quervain's tenosynovitis. (Jt. Ex. 8, p. 4) Dr. Doarn did not find any pre-existing conditions or injuries. (Jt. Ex. 8, p. 4) The hand specialist recommended a surgical release of the first dorsal compartment tendons. (Jt. Ex. 8, p. 4)

On May 18, 2016, Dr. Doarn performed a right wrist de Quervain's first dorsal compartment release. (Jt. Ex. 8, p. 6) Subsequent to the surgery, claimant was transferred to the recovery room in stable condition. (Jt. Ex. 8, p. 7) He was discharged from the surgical center on the date of the surgical procedure. (Jt. Ex. 8, p. 7) Claimant was prescribed medication for pain and provided a brace.

On May 31, 2016, claimant returned to Dr. Doarn because of postoperative pain in his right hand and wrist. Claimant reported he had not been moving his thumb and fingers much. The hand surgeon advised claimant to move his thumb and fingers. Claimant refused gentle therapy. A brace was provided to claimant to wear throughout most of the day. (Jt. Ex. 8, p. 9)

Dr. Doarn restricted claimant from working until June 17, 2016. Claimant was advised to stand for four hours per day only, and not to use the right arm. Claimant was released to one-arm duty at work. (Jt. Ex. 8, p. 8)

Dr. Doarn explained claimant was experiencing pain because he was not moving his wrist and hand. As a consequence, claimant developed stiffness in his hand and fingers. Claimant finally acquiesced and agreed to engage in therapy. (Jt. Ex. 8, p. 12) Dr. Doarn recommended the following treatment modalities:

1. Ice.
2. Anti-Inflammatory Medication.
3. Physical Therapy.
4. Home Exercises.

(Jt. Ex. 8, p. 13)

The next appointment occurred on June 14, 2016. (Jt. Ex. 8, p. 12) Claimant had stiffness to the whole hand, but primarily in the thumb. (Jt. Ex. 8, p. 12) There was decreased swelling. Claimant did not want the hand surgeon to move the repaired hand. (Jt. Ex. 8, p. 12) Dr. Doarn encouraged less use of the brace and more use of the hand. (Jt. Ex. 8, p. 12) Claimant was restricted to one-handed work. (Jt. Ex. 8, p. 15)

By June 30, 2016, claimant was to use the brace only at night. (Jt. Ex. 8, p. 19) He informed Dr. Doarn that he had too much pain in the right hand to return to work. (Jt. Ex. 8, p. 20) Dr. Doarn conducted a physical exam of the right hand and wrist. He indicated:

> Musculoskeletal: More tenderness to palpation at the incision site and right radial wrist than would be expected at this time. When I try to move the hand, thumb, and wrist he puts his hands in the way to protect himself. He will not let me move him much, however, this is improved from last visit. He can make a full fist now, but still has limited thumb flexion due to the pain.

(Jt. Ex. 8, p. 20)

Dr. Doarn opined claimant's pain was attributable to his failure to move his wrist and hand. (Jt. Ex. 8, p. 20) Dr. Doarn encouraged claimant to engage in daily home therapy for the wrist, thumb and fingers. (Jt. Ex. 8, pp. 20, 22) The hand surgeon returned claimant to full duty with the left hand and wrist and to commence light duty with the right. Claimant refused light duty with the right wrist and hand. He felt he was in far too much pain to use his right hand. (Jt. Ex. 8, p. 20)

On July 14, 2016, claimant once again presented to Dr. Doarn. Claimant did not feel he had improved by any means. Claimant did not want to move his hand. However, he did admit to engaging in home therapy. (Jt. Ex. 8, p. 23)

Dr. Doarn informed claimant of the following information:

> **Plan:**
>
> **Plan (MCD)**
>
> I discussed with Joseph again that he is expected to have some soreness, but the pain that he states he has is not consistent with exam and is not expected at 2 months out from surgery. I believe some of this is from stiffness due to his hesitation to move the hand/wrist. He will continue with therapy and was again counseled on motion and use of the hand. He should not be wearing the brace anymore. All questions were answered today and the patient expressed a good understanding of the plan of care.

(Jt. Ex. 8, p. 23)

On July 28, 2018, claimant returned to Dr. Doarn for follow up care of the right wrist and hand. Claimant did not believe he was able to perform his work duties with his right hand. (Jt. Ex. 8, p. 26) Nevertheless, Dr. Doarn found claimant had improved with both active and passive ROM. (Jt. Ex. 8, p. 26) There was decreased swelling. There was less pain with Finkelstein's testing. The hand surgeon noted when he distracted claimant, the patient did not grimace with deep TTP to the radial wrist. Additionally, the surgeon could move the wrist more than on previous occasions without much irritation to claimant. (Jt. Ex. 8, p. 26)

Dr. Doarn, once again informed claimant he was expected to have some pain but not the intense pain claimant was describing after 2-½ months post-surgery. Again, Dr. Doarn, opined the level of pain was the result of claimant's reluctance to move his hand and wrist. In short, stiffness was settling into the hand and wrist area. (Jt. Ex. 8, p. 26) Dr. Doarn determined claimant could lift or carry 10 pounds at work and he could engage in frequent repetitions. (Jt. Ex. 8, pp. 26. 28)

On August 11, 2016, claimant complained to his hand surgeon; it was just too difficult to lift 10 pounds at work. (Jt. Ex. 8, p. 29) The hand surgeon questioned why claimant was experiencing such pain and the reason behind the patient feeling he was unable to perform his work duties. (Jt. Ex. 8, p. 29) Dr. Doarn opined claimant could lift up to 15 pounds on a frequent basis with the right hand. (Jt. Ex. 8, p. 31) Dr. Doarn also ordered work conditioning for claimant. (Jt. Ex. 8, p. 32) Claimant was provided with four weeks of work conditioning and with three sessions each week. (Jt. Ex. 8, p. 32)

On October 24, 2016, Dr. Doarn issued his final report regarding claimant's condition. The hand surgeon opined:

> Joseph Jong was initially seen on April 21, 2016 for evaluation of his right radial wrist pain. Patient had previously been seen by multiple

> physicians, diagnosed with deQuervains' tenosynovitis, treated conservatively with anti-inflammatories, physical therapy and injections with no improvements noted. On May 18, 2016 a right wrist deQuervain's first dorsal compartment release was performed. Patient received physical therapy, however, continued with complaints of pain and stiffness. An FCE was ordered and performed on September 8, 2016 by Excel Physical Therapy. When last seen on September 22, 2016, on exam the incision was fully healed, skin showed no wounds, skin color changes, no erythema and no increased warmth. The patient had stable sensory, musculoskeletal and motor exam. Patient was placed at MMI and permanent restrictions identified as per the FCE. Patient was recommended to continue desensitization as instructed. No further treatment was recommended.
>
> Using AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, Page 466-469, Section 16.4g-Wrist Motion Impairment, patient has 0% impairment of the right upper extremity.

(Ex. 8, p. 36)

Pursuant to Iowa Code section 85.39, claimant exercised his right to an independent medical examination. Through the efforts of claimant's counsel, claimant went to see Irving L. Wolfe, D.O., a neurologist at Central Iowa Neurology, P.C., in Des Moines, Iowa. Dr. Wolfe reviewed numerous medical records. The examination of claimant occurred on February 8, 2017. (Jt. Ex. 14, p. 1) An interpreter was present to enhance the communication between claimant and Dr. Wolfe. The independent medical examiner not only looked at claimant's right wrist, hand and thumb, but the physician also looked at claimant's lumbar spine. (Jt. Ex. 14, p. 19) Dr. Wolfe opined claimant had suffered a permanent functional impairment to the back as well as to the right wrist, (arm). (Jt. Ex. 14, p. 19)

Dr. Wolfe diagnosed claimant with right wrist de Quervain's tenosynovitis and an associated cyst. (Jt. Ex. 14, p. 19) The evaluating physician also diagnosed claimant with chronic low back pain with a radicular component to the right leg. (Jt. Ex. 14, p. 19)

Dr. Wolfe rated claimant as having a 3 percent impairment to the body as a whole as it relates to the right wrist, de Quervain's tenosynovitis. A 3 percent impairment to the body as a whole equates to a 5 percent impairment to the upper extremity (arm). In other words, pursuant to Iowa Code section, 85.24(2)(m), claimant would be entitled to 12.5 weeks of permanent partial disability benefits under Dr. Wolfe's impairment rating.

With respect to the lumbar spine, Dr. Wolfe rated claimant as having a permanent impairment in the amount of 5 percent to the body as a whole. Dr. Wolfe described how he arrived at the 5 percent impairment rating:

> As it relates to Mr. Jong's low back, chapter 15, The Spine, is looked to. More specifically, table 15-3, Criteria for Rating Impairment due to Lumbar Spine Injury, chapter 15.4, Diagnosis-Related Estimates Method (DRE) Lumbar Spine, pages 384-388 of the Guides, are utilized. DRE Lumbar Category II: 5%-8% impairment of the whole person. Clinical history and examination findings are compatible with a specific injury; findings may include specific muscle guarding or spasm observed at the time of the examination, asymmetric loss of range of motion, or unverifiable radicular complaints, defined as complaints of radicular pain without objective findings; no alteration of the structural integrity and no significant radiculopathy. Thus, 5% IMPAIRMENT OF THE WHOLE PERSON IS ASSIGNED TO MR. JONG AS IT RELATES TO THE IMPAIRMENT OF HIS LUMBAR SPINE.

(Jt. Ex. 14, p. 20)

Dr. Wolfe expressed his opinions relative to the type of restrictions claimant should follow. In the report of February 8, 2017, the evaluating physician wrote:

> Mr. Jong did undergo a valid Functional Capacity Evaluation performed at Excel Physical Therapy by Neal Wachholtz, P.T./D.P.T., on September 14, 2016. The results of the Functional Capacity Evaluation were felt to represent safe guidelines for work activities on a full-time basis for Mr. Jong. Mr. Jong demonstrated the ability to function at the medium physical demand level as defined by the Dictionary of Occupational Titles. Mr. Jong demonstrated lifting of objects to shoulder height restricted to 30 pounds on an occasional basis and 15 pounds on frequent basis. Overhead lifting was restricted to 20 pounds on an occasional basis and 10 pounds on a frequent basis. A restriction in prolonged or repetitive heavy grasping and gripping with the right hand was recommended. Lifting tolerance at waist height and below with the ability to lift and carry 40 pounds on an occasional basis and 20 pounds on a frequent basis as well as a restriction in prolonged forward bending. I would recommend limiting repetitive simultaneous right wrist flexion and ulnar deviation.
>
> I am of the opinion that Mr. Jong's continued pain in both his right wrist and low back may make work attendance and productivity inconsistence and variable as the result of his tolerance to pain while performing activities.

(Jt. Ex. 14, pp. 21-22)

On September 30, 2016, claimant, the union steward, and members of the medical team, signed a company drafted document, "PERMANENT RESTRICTIONS". (Ex. 2, p. 7) The document provided:

I understand the following permanent restrictions have been outlined for my condition relating to & are to be in effect at all times:

Permanent restrictions are:

Lifting of objects to shoulder level restricted to 7# on an occasional basis. Overhead lifting is restricted to 5# on an occasional. [sic] Bilateral lifting to 7# on an occasional basis. Bilateral carrying to 7# on an occasional basis. Pulling to 35# on an occasional basis. Walking, firm grasping, pinching, fine coordination occasionally. Reaching and above shoulder reaching constant basis. Bending, squatting kneeling frequently. Sitting and standing frequently. Avoid crawling.

I understand these restrictions are set by medical professionals in my best interest and will be honored by Smithfield Foods...I agree not to work outside of my restrictions at any time, at work or at home. I will notify my supervisor at once if I am asked to perform duties that are not in accordance with my restrictions, as this is not permitted.

Due to the permanency of the restrictions, I understand it is my responsibility to find a bid job that meets your restrictions.

- I will be allowed 60 days from today to find such a bid job. If at that time I have not found a job, the company will discontinue to "make work" for me. I understand that it is my sole responsibility to check job bids and contact my Human Resource Manager for any open positions.

- At the end of the 60 day period I will be placed on leave. I will need to contact Human Resources Department to determine my eligibility for FMLA or general leave of absence. During the time period I am on leave, it will be my responsibility to continue to check the job bids available to meet my particular restrictions.

- If at the end of my leave I have not found a job that meets my restrictions, my employment with Smithfield Foods may be terminated.

I understand that if at any time I have questions about a job meeting my restrictions, I should contact the medical management or safety department. I understand that the failure to follow any of the above instructions will subject me to disciplinary action, up to and including termination.

(Exhibit 2, page 7)

Claimant testified he last looked for a job at Smithfield/Farmland Foods, the Thursday prior to his arbitration hearing. He indicated he did not apply for any positions because there was not one position he could perform with his physical injuries and resultant pain. Claimant admitted no physician has told claimant he is unable to work.

During direct examination, claimant testified he can pick up and carry from 5 to 10 pounds with his right hand and arm. He stated it is difficult to make a fist and it is hard to move his thumb. He stated he is unable to sleep on his right side because of his right arm.

With respect to his back, claimant testified he cannot bend over or swivel. It is difficult for him to sit for two to four hours. He cannot find a comfortable spot to sit. He testified he cannot stand for long periods of time. He must alternate sitting and standing. Claimant testified it was not easy for him to travel from Denison, Iowa to Des Moines in order to attend the arbitration hearing.

Mr. Bill Mischnick, the safety manager at Smithfield/Farmland Foods, testified he is the manager over workers' compensation at the plant. The safety manager testified the nurse case managers report to him. Mr. Mischnick testified about Exhibit 2, page 7 which was duplicated earlier in the decision. Claimant's last day working within the plant was November 30, 2016. However, at the time of the arbitration hearing, claimant was still considered an employee for 18 months following his last day. Claimant was afforded the opportunity to bid on jobs that were within the permanent restrictions imposed by claimant's physicians.

Mr. Mischnick testified certain jobs were discussed with claimant. The positions included: Quality Assurance jobs, food safety positions, collecting paperwork, placing products on scales for weighing, trimming products, and inspecting products. Mr. Mischnick testified some of the positions had no real physical aspects to the required duties. Nevertheless, claimant was not interested in bidding on the jobs.

## RATIONALE 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 Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when

performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

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

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.

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 908, 76 N.W.2d 756, 760-61 (1956). It the claimant had a preexisting condition or disability that is materially, aggravated, accelerated, worsened or lighted up so that it results in disability, claimant

is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 135, 115 N.W.2d 812, 815 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 375, 112 N.W.2d 299, 302 (1961).

When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

The weight to be given an expert opinion may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. St. Luke's Hospital v. Gray, 604 N.W.2d 646 (Iowa 2000).

Expert testimony may be buttressed by supportive lay testimony. Bradshaw v. Iowa Methodist Hospital, 251 Iowa 375, 380; 101 N.W.2d 167, 170 (1960).

The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence. Together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

It is the determination of the undersigned deputy workers' compensation commissioner; claimant has successfully established he sustained permanent injuries to his right arm and to his lumbar spine. The right arm injury occurred on October 30, 2014. The low back injury occurred on August 17, 2015.

With respect to the right arm, permanent restrictions were imposed after claimant participated in a valid FCE. Dr. Doarn imposed permanent work restrictions. Those permanent restrictions were memorialized in Exhibit 2, page 7. Claimant was given 60 days to find another job that would be within the parameters of his work restrictions. Despite imposing permanent work restrictions, Dr. Doarn, found a zero percent permanent impairment. The finding of no permanent impairment seems unrealistic, given the numerous restrictions imposed on the right arm.

Dr. Wolfe found claimant had a 5 percent permanent impairment to the arm. Pursuant to Iowa Code section 85.34(2)(m) claimant would be entitled to 12.5 weeks of permanent partial disability benefits. Claimant testified credibly about the residuals he had following his right arm surgery. Dr. Wolfe's rating is more realistic when the restrictions are considered, coupled with claimant's credible testimony.

Therefore, in **File No.** 5055809, it is the determination of the undersigned; claimant has a 5 percent permanent disability to his right arm as a result of his work injury on October 14, 2014. Claimant is entitled to 12.5 weeks of permanent partial disability benefits commencing from September 9, 2016 and payable at the stipulated weekly benefit rate of $391.15 per week.

It is the determination of the undersigned; claimant sustained a permanent partial disability to his lumbar spine as a result of his work injury on August 17, 2015. Dr. Wolfe determined claimant had a 5 percent permanent impairment rating to the body as a whole. Claimant not only had chronic pain but he also had radicular symptoms as well. The evaluating physician also imposed various work restrictions based upon a valid FCE. The company incorporated those restrictions into Exhibit 2, page 7. Claimant was told he had to find a job within the confines of the restrictions or else he would no longer have employment. Claimant has a permanent disability to his lumbar spine. It is an injury to the body as a whole. Claimant has sustained an industrial disability in **File No. 5062083.**

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.

There is a dispute between claimant and defendants whether claimant is fully motivated to return to work at Smithfield/Farmland. He has made minimal attempts to seek a production job. He does not want to risk any arm or back pain in any proffered position. It is doubtful claimant will ever find a job where he will function without some level of pain. Smithfield has been encouraging claimant to try various production jobs. At the time of the arbitration hearing, there were numerous bid jobs. Mr. Mischnick testified about a number of jobs where there was very little physical activity involved. This deputy is convinced the company is committed to finding a position for claimant within his restrictions.

Claimant is a younger worker. He is only 37 years old. He attended school until the twelfth grade in Kenya. He speaks English, Swahili and Dinka. He is able to read and write some English. Claimant is an unskilled worker. Retraining is possible since claimant does have an understanding of the English language. Claimant resides in a geographical area where most of the job market centers around agriculture or meat

production. Claimant's most realistic hope in the local job market is to accept a position within the Smithfield plant that is within the confines of his work restrictions.

Therefore, after considering all of the factors involving industrial disability; it is the determination of the undersigned; claimant has a permanent partial disability in the amount of fifteen (15) percent. Defendants shall pay unto claimant seventy-five weeks of permanent partial disability benefits at the stipulated weekly benefit rate of $496.25 per week. The commencement date for the payment of permanency benefits was stipulated to be April 13, 2016.

Accrued benefits shall be paid in a lump sum, with interest paid according to law.

In arbitration proceedings, interest accrues on unpaid permanent disability benefits from the onset of permanent disability. Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174 (Iowa 1979); Benson v. Good Samaritan Ctr., File No. 765734 (Ruling on Rehearing, October 18, 1989).

The final issue is the matter of costs. 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).

Claimant is requesting certain costs as detailed in claimant's attachments to the hearing reports. Defendants are liable for those costs.

## ORDER

THEREFORE, IT IS ORDERED:

In File No. 5055809, defendants shall pay unto claimant twelve and a half (12.5) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of three hundred ninety-one and 15/100 dollars ($391.15) and commencing from September 9, 2016.

In File No. 5062083, defendants shall pay unto claimant seventy-five (75) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of four hundred ninety-six and 25/100 dollars ($496.25) and commencing from April 13, 2016.

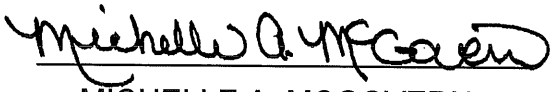
All past due benefits shall be paid in a lump sum, together with interest as allowed by law.

Defendants shall take credit for all benefits previously paid to claimant.

Defendants shall pay the costs as detailed in the decision.

Defendants shall file all reports as required by law.

Signed and filed this 25th day of April, 2018.



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