BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSE L. TORRES, Claimant, vs. LECLAIRE MANUFACTURING CO., Employer, and NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, and SECOND INJURY FUND OF IOWA, Defendants.	File Nos. 5050690, 5050691 A R B I T R A T I O N D E C I S I O N Head Notes: 1803, 3200
JOSE L. TORRES, Claimant, vs. LECLAIRE MANUFACTURING CO., Employer, and GREAT AMERICAN INSURANCE GROUP, Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 5057031 A R B I T R A T I O N D E C I S I O N Head Notes: 1100, 1803, 3200

STATEMENT OF THE CASE

Jose L. Torres, claimant, filed three separate petitions in arbitration seeking workers' compensation benefits from defendant employer, LeClaire Manufacturing Co. A fourth claim, File number 5056735, was dismissed by claimant at the outset of the hearing and is not dealt with in this decision.

File numbers 5050690 and 5050691 allege claims against defendants LeClaire Manufacturing, the employer and National Union Fire Insurance, the insurance carrier. File number 5057031 alleges claims against the same employer and a different insurance carrier, Great American Insurance Group. All three petitions allege claims against the Second injury Fund of Iowa. The combined files proceeded to hearing on July 20, 2017. The parties submitted post-hearing briefs, and the matters were considered fully submitted on August 17, 2017.

The evidentiary record includes: Joint Medical Exhibits JE 1 through JE 9; Defendant employer and Great American Insurance Group Exhibits AA through FF; and the Second Injury Fund of Iowa's Exhibit AAA.

At hearing, claimant, Jose Torres provided testimony.

The parties filed a separate hearing report for each of the three petitions at the commencement of the arbitration hearing. On the hearing reports, 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 in this decision. The parties are now bound by their stipulations.

ISSUES

The parties submitted the following disputed issues for resolution:

File No. 5050690, Date of Injury: March 18, 2014

1. The extent of permanent partial disability.

2. Whether claimant is entitled to alternate care at the University of Iowa Hand Clinic, as recommended by Richard Kreiter, M.D., concerning his left index finger and left carpal tunnel.

3. Whether the Second Injury Compensation Act is applicable to the March 18, 2014 injury.

4. Costs

File No. 5050691, Date of Injury: June 15, 2014

1. The extent of permanent partial disability.

2. Whether claimant is entitled to alternate care at the University of Iowa Hand Clinic, as recommended by Dr. Kreiter concerning his left index finger and left carpal tunnel.

3. Whether the Second Injury Compensation Act is applicable to the June 15, 2014 injury.

4. Costs

File No. 5057031, Date of Injury: July 15, 2016

1. Whether claimant sustained an injury that arose out of and in the course of his employment on July 15, 2016.

2. Whether claimant's alleged July 15, 2016 work injury was the cause of permanent disability, and if so the extent thereof.

3. Whether the Second Injury Compensation Act is applicable to the July 15, 2016 injury.

4. Commencement date of permanency benefits, if any.

5. Whether claimant is entitled to alternate care at the University of Iowa Hand Clinic, as recommended by Dr. Kreiter concerning his left index finger and left carpal tunnel.

6. Costs.

FINDINGS OF FACT

After a review of the evidence presented, I find as follows:

General:

In each of claimant's petitions, he asserts a claim against the Second Injury Fund of Iowa, and each claim relies on the same alleged first injury of June 15, 2009, involving the left arm.

At the time of the hearing Jose Torres, the claimant, was 48 years old. (Transcript page 18) His highest level of education is the 9th grade. Id.

Work History:

Prior to working for the defendant employer, claimant worked in construction including: framing; roofing; and, installing windows, siding and flooring. (Tr. p. 19; Ex. AAA, p. 3) Claimant did this type of work for Fowler Building and Construction in 2008 and again in 2013. (Ex. AAA, pp. 3, 5) Claimant testified that this work required him to lift around 150 pounds and use both hands. (Tr. p. 19) Claimant also worked in building maintenance for Eagle Crest Apartments and the Hotel Blackhawk from 2011 through 2013. This work included repairing heating and cooling units, plumbing, and other general maintenance. (Ex. AAA, p. 4) Claimant worked at P & R Manufacturing from 2008 to 2010 where he maintained and repaired machinery, organized and prepared pallets of materials to be shipped, and operated a forklift. (Ex. AAA, p. 5) Claimant has also worked on a road maintenance and repair crew, which included job tasks from directing traffic to operating heavy equipment. (Ex. AAA, p. 6) Claimant also worked for Paragon installing and removing office cubicles and furniture. (Id.)

Claimant started working for the defendant employer, LeClaire Manufacturing on or about March 10, 2014. (Tr. p. 25; Ex. AAA, p. 8) LeClaire Manufacturing makes metal castings. (Tr. p. 25) Claimant was hired to work as a mold operator, which required him to pour molten metal into a mold.

While working at LeClaire Manufacturing, claimant injured his left index finger on March 18, 2014. Thereafter, he returned to work on light duty for about two to three months. After light duty, he returned to the mold operator position, but testified that he "wasn't able to do that" job. (Tr. p. 28) He then moved to a job using air powered tools to grind parts weighing between 5 to 75 pounds. (Tr. pp. 28-29) He did this job until his right forearm surgery on June 15, 2014. (Tr. p. 29; Ex. JE2-59) After this surgery claimant was off work for a month or two and returned to work in a job called Brinelling, which involved using a press to make an indention in a part. The parts weighed between 5 and 150 pounds. (Tr. pp. 33-34) Claimant was later diagnosed with bilateral carpal tunnel syndrome. He had left carpal tunnel release surgery on October 8, 2015. (Tr. p. 37; Ex. JE 6, p. 101) He testified that he was off work for a month or so following surgery and returned to work in the Quality Department and did paperwork. (Tr. p. 37) He was later placed on the Puck Machine, which compresses shavings from a CNC machine into small pucks. (Tr. p. 38) This job is significantly automated and primarily involves driving a forklift.

Current Work Status:

At the time of the hearing, claimant continued to work at LeClaire Manufacturing on the Puck Machine job and his primary responsibility is operating a forklift. (Tr. p. 40; Ex. AAA, p. 8) He has not had any wage reduction as a result of any of the work injuries and he continued to work full-time. (Tr. p. 60)

Alleged First Injury concerning Second Injury Fund claims:

Each of the three pending petitions alleges a claim against the Second Injury Fund of Iowa, and each petition relies on the same alleged first injury to claimant's left arm. This alleged first injury is stated to have occurred on June 15, 2009, and involves claimant's left arm and a diagnosis of compartment syndrome and resulting fasciotomy.

In June, 2009, claimant was working at P & R Manufacturing, doing heavy repetitive lifting. (Ex. JE 1-2; Ex. AAA-5) At about midnight on June 15, 2009, claimant was awakened from sleep with pain in his left forearm. He sought medical treatment in the morning hours of June 16, 2009. He was diagnosed with acute left dorsal forearm compartment syndrome. He immediately proceeded to surgery and a left dorsal forearm fasciotomy was performed by Charles Cassel, M.D. (Ex. JE 1, pp. 1-2)

On July 20, 2009, claimant was seen by Dr. Cassel, who stated that the incision was well healed and that claimant had good range of motion and no pain or tenderness. Claimant was returned to work and he was told to call Dr. Cassel's office if he experienced any difficulties. (Ex. JE 1, p. 3(A)) There were no permanent restrictions assigned and no permanent impairment identified. (Tr. p. 24) In addition, there were no records of claimant having any additional difficulties or contacting Dr. Cassel or any other medical provider in the years immediately following his return to work. Claimant agreed that he did not have any permanent restrictions as a result of the compartment syndrome or surgery. (Tr. p. 24)

However, claimant stated that when he was returned to work by Dr. Cassel, he did not feel he was 100 percent. (Id.) Claimant responded to leading questions on direct examination at hearing, agreeing that he had ongoing pain after being released from the doctor. (Tr. p. 24) When he was asked to "characterize that pain," he stated, "[i]t hurt." (Id.) The following questions and answers then followed:

Q. Did it keep you from doing any jobs?

A. Not really.

Q. Okay. We've ran through a – - your work history. Some of those jobs came after P&R Manufacturing. Did that left arm injury in 2009 prevent you from doing any aspects of your job?

A. No.

Q. Okay. Jobs at the employers who came after that treatment?

A. The jobs that came after?

Q. After.

A. No.

(Tr. pp. 24-25) Claimant confirmed by his testimony that his June 2009 compartment syndrome and resulting fasciotomy did not keep him from doing any aspect of any job after he was returned to work in July, 2009, by Dr. Cassel.

It was not until eight (8) years after the surgery that Dr. Kreiter opined that the 2009 fasciotomy may involve some impairment. However, although Dr. Kreiter discussed possible impairment related to the 2009 left arm fasciotomy, he only did so vaguely and in conjunction with other concerns. He stated that:

> The forearm fasciotomies done in 2009 and the right in 2014, have some impairment secondary to the scars and the residual tenderness and pain with forced gripping, arising from the lateral aspect of the forearm just below the elbow. Until other issues are resolved, one is unable to accurately provide impairment rating for the fasciotomy issues, but there is impairment, but not more than an estimated 5% upper extremity impairment, and this only provisional.

(Ex. JE 9, p. 109) The above is not clear concerning the specific symptoms and amount of permanency that Dr. Kreiter believes may apply to the left forearm specifically concerning the 2009 surgery and fasciotomy. I note that although the AMA Guides provide for the possibility of a permanent impairment rating based on scarring, Dr. Kreiter does not specify any portion of the AMA Guides that he relies upon or any particular findings regarding the scar that would support a rating. The AMA Guides discuss things such as, but not limited to, the dimensions of a scar, the shape, color, depression or elevation of a scar, whether it is pliable or inflexible, thick or thin or smooth or rough. Also, the Guides consider whether the scar is attached to any underlying muscles, bones or joints, etc. (AMA Guides, p. 176) I also note that Dr. Kreiter does not discuss the 2009 fasciotomy standing alone. He only discusses it in conjunction with the 2014 fasciotomy, thereby making it very difficult to extract a particular permanent impairment opinion specifically related to the 2009 incident. Also, by his own admission he stated that he is unable to accurately provide an impairment rating and that any such impairment rating is merely provisional because he believes that claimant must first address other issues which would impact the final rating. (Id.) The "other issues" described by Dr. Kreiter, involve treatment recommendations for: the left index finger injury; a second opinion at a hand clinic to "reevaluate the carpal tunnel syndrome on the left," and "re-exploration of the median nerve, and release of the ring finger trigger digit." (Ex. JE 9, p. 108) Dr. Kreiter's recommendation for additional treatment does not appear related to the left arm compartment syndrome or resulting fasciotomy or scar from 2009.

I note that after the 2009 fasciotomy, claimant worked in physical labor positions as described above and by his own testimony he was not impeded in any way concerning the performance of any job due to the 2009 injury. (Tr. pp. 24-25)

Considering the record as a whole, and including, among other things, that Dr. Cassel stated on July 20, 2009, that the incision was well healed, and claimant had no pain or tenderness and released him with no restrictions and did not assign any permanent impairment rating, combined with claimant's testimony that following the June, 2009, surgery, he returned to work without any impact on his ability to perform any subsequent job, and the fact that he did not return for any follow-up treatment specific to the 2009 incident, and in view of Dr. Kreiter's opinion, which does not specify impairment specifically related to the June 15, 2009 injury alone, combined with Dr. Kreiter's admission that any such rating would not necessarily be accurate, I find from the evidence presented that claimant failed to carry his burden of proof that he sustained permanent impairment from the June 15, 2009 date of injury.

Second Injuries and Subsequent Medical Treatment:

Claimant testified that when he started working at LeClaire Manufacturing on or about March 10, 2014, his general health was good and he had no permanent restrictions. (Tr. p. 25)

On **March 18, 2014**, (file no. 5050690) claimant was working for the defendant employer as a mold operator. A casting would not release from the mold. Claimant put his hand in the machine when a co-worker pushed the button to close the mold, which crushed a portion of claimant's left index finger. (Tr. p. 27) He was taken to Genesis Medical Center, diagnosed with traumatic amputation and burns to the left index finger and taken to surgery where Andrew Bries, M.D. performed irrigation, debridement and a revision amputation of the left index finger. (Ex. JE 2, p. 56) Claimant's amputation was at the PIP joint. (Ex. JE 1, p. 52)

Claimant continued to have follow-up care at ORA Orthopedics and in mid-April, 2014, although he was on a work restriction of no use of his left hand, claimant reported that he used his left hand at work. He also indicated that he was not really having much pain, and that the pain occurred only if he bumped it. (Ex. JE 1, pp. 7-8)

On April 18, 2014, claimant reported spasms in his hands which caused him to leave work. (Ex. JE 1, p. 10) He was given a work restriction of "absolutely no use of left hand." (Ex. JE 1, p. 11) He was instructed to continue with physical therapy and work on range of motion of the MP joint. (Ex. JE 1, p. 10)

On May 14, 2014, claimant reported "doing great," and that his pain was "well controlled." (Ex. JE 1, p. 14) He reported only minor tenderness. (Id.) He was released to "advance to full duty as tolerated." (Ex JE 1, p. 15)

On **June 15, 2014**, (file no. 5050691) claimant was seen at Genesis Medical Center and reported intense pain in his right forearm and he was diagnosed with right arm compartment syndrome. He was taken for emergency surgery and Myles Luszczyk, D.O. performed a fascial release. (Ex. JE2 pp. 57-62) He was taken off work and continued physical therapy was recommended. (Ex. JE 1, pp. 18-19)

On June 18, 2014, concerning the left index finger amputation, it is recorded that claimant had been back to work with no restrictions "without any difficulties." (Ex. JE 1, p. 16) It was also noted that he had full extension and flexion to 70 degrees of the MP joint, with normal light touch sensation in the radial and ulnar nerve distributions. He was placed at MMI and released with "no restrictions" by Peter Merrell, PA-C. (Ex. JE 1, p. 16)

On October 29, 2014, claimant was seen by Rick Garrels, M.D. who diagnosed claimant with trigger finger in his left third and fourth fingers, along with bilateral arm paresthesia. (Ex. JE 3, p. 69) He assigned restrictions of no lifting over 10 pounds occasionally, pushing/pulling 20 pounds occasionally and avoid forceful gripping, grasping and pinching with either hand, and no use of vibratory tools or equipment.

On November 12, 2014, claimant was seen again by Dr. Garrels at Genesis Occupational Health and complained that his left hand was getting worse. He was told to continue on light duty and he received an injection for trigger finger on the left. He was then seen again for an unscheduled appointment on the following day on November 13, 2014, by Cheryl Benson, PA-C, reporting uncontrolled pain, apparently related more to the amputated portion of the index finger than the trigger finger and he was placed on restriction of no use of the left hand, until he has a follow-up with Dr. Garrels. (Ex. JE 3, pp. 71-72)

On November 26, 2014, claimant was seen by Dr. Bries at ORA and reported "pain and streaking, with a change in color of the stump of his finger." (Ex. JE 1, p. 24) Dr. Bries noted hypersensitivity of the stump of his index finger, which was otherwise well healed. He also noted triggering and significant paresthesia. He was referred to James Lyles, M.D. for evaluation. (Ex. JE 1, p. 24)

On December 15, 2014, claimant was seen by Dr. Lyles at ORA. (Ex. JE 1, pp. 26-27) His assessment was "a hypersensitive left index finger stump and a left hand ring finger trigger at the 1st annular pulley." (Ex. JE 1, p. 27)

From December, 2014 through February, 2015, claimant reported sensitivity at the tip of the amputated finger stump, ring finger triggering and paresthesias in his hands. He was assessed with median neuritis and eventually, carpal tunnel syndrome. (Ex. JE 3, p. 74, 77)

On January 16, 2015, Dr. Garrels referred to "recent nerve testing [that] came back showing bilateral carpal tunnel syndrome," and noted that claimant was going to be seen by Dr. Lyles on February 6, 2015. (Ex. JE3, p. 75)

On February 6, 2015, Dr. Lyles noted that an EMG, which was performed on January 7, 2015, "confirmed the presence of compressive neuropathy of bilateral upper extremities," and that this may explain some of the hypersensitivity. (Ex. JE 1, p. 28; JE 4, p. 95) Claimant was then referred to a neurologist. (Ex. JE 1, p. 28)

On February 24, 2015, claimant was seen again by Dr. Garrels for chronic finger pain management related to the index finger amputation. (Ex. JE 3, p. 77)

On April 27, 2015, claimant was seen by Irena Charysz Birski, M.D. for a neurological consultation. (Ex. JE 5, p. 98) Dr. Birski diagnosed claimant with neurologic pain, carpal tunnel syndrome and traumatic finger amputation. (Ex. JE 5, p. 98) Dr. Birski noted that claimant reported that Dr. Lyles was contemplating revision surgery of the left finger amputation. (Ex. JE 5, p. 100)

On May 8, 2015, Dr. Lyles stated that he was willing to explore "the left index finger for a neuroma to improve the patient's overall condition," along with a left carpal tunnel release. (Ex. JE 1, p. 29)

On September 25, 2015, claimant was seen by Tobias Mann, M.D., of ORA Orthopedics. (Ex. JE 1, p. 32) At that time, claimant was noted to have ongoing hypersensitivity in the left index finger stump with inadequate relief with non-operative treatments and left hand numbness. (Id.) Surgery was recommended. (Ex. JE 1, p. 33)

On October 8, 2015, claimant underwent surgery with Dr. Mann, at Crow Valley Surgery Center, in Bettendorf, Iowa. At that time, in addition to a left carpal tunnel release, Dr. Mann performed a left index finger neuroma excision and amputation revision. (Ex. JE 6, p. 101) There was no indication that the surgery was intended to address or revise any portion of the 2009 fasciotomy.

On October 28, 2015, claimant returned to Dr. Mann and reported that he was still having numbness in the thumb, index finger, and middle finger, although with some improvement. His index finger stump was still sensitive, but was improving compared to before surgery. (Ex. JE 1, p. 34) He was placed on a five (5) pound weight limit for his left hand. (Id.)

On November 17, 2015, Dr. Mann noted that claimant's "nerve pain in his index finger stump has almost completely resolved." (Ex. JE 1, p. 35) His left hand weight limit was increased to twenty five (25) pounds. (Id.) Claimant indicated that he wanted to wait until the end of the year to have his right side carpal tunnel release done. (Id.)

On January 5, 2016, claimant reported reduced sensitivity in the injured index finger. He also stated that the numbness and tingling in the left hand had resolved, and he denied any numbness or tingling in the right upper extremity. He did, however, have triggering in the left ring finger. Dr. Mann noted that he had no clinical findings of carpal tunnel syndrome on the right and stated that he is therefore not a good candidate for right side carpal tunnel release. (Ex. JE 1, p. 37) It is also recorded that claimant was back to work without restrictions. (Ex. JE 1, p. 36)

Claimant did not seek any additional treatment for about six months.

Claimant testified that there was no specific incident that brought about his claimed injury of **July 15, 2016** (file no. 5057031). Rather, this is the day he reported to his employer that he was getting worse. He was not sent for a medical appointment immediately. (Tr. p. 41)

On July 18, 2016, claimant was seen at the Genesis West Emergency Department complaining of pain in his left hand, wrist, index and ring fingers. He also noted left ring trigger finger. (Ex. JE 2, p. 66)

On August 2, 2016, claimant returned to see Dr. Mann complaining that the numbness and tingling in both hands had returned and he reported an increased hypersensitivity in his index finger. (Ex. JE 1, p. 40) It is recorded that claimant felt "all of his symptoms have returned." (Ex. JE 1, p. 41) Claimant received injections for bilateral carpal tunnel and left ring trigger finger. Dr. Mann recommended therapy for desensitization exercises for his index finger and a finger-tip protection splint. He was to wear the protection splint at work, "but otherwise he can work without restrictions." (Id.)

On September 13, 2016, Dr. Mann noted that the desensitization therapy had not yet been approved by the defendant insurance carrier and he was noted to have "done well with regard to the injection for the trigger finger," but considering the carpal tunnel syndrome, "he had no relief at all with the steroid injection." (Ex. JE 1, p. 42) The desensitization therapy was again recommended. (Id.)

On October 20, 2016, claimant returned to see Dr. Garrels, who diagnosed: 1) left carpal tunnel syndrome; 2) partial traumatic transphalangeal amputation of left index finger; 3) neuroma of amputation stump; 4) left middle trigger finger; and 5) left ring trigger finger. (Ex. JE 3, p. 78) Dr. Garrels recommended permanent restrictions for the left hand of avoiding direct pressure to the tip of the amputated finger stump, occasional light gripping/grasping with the left hand and no lifting beyond one pound occasionally with the left hand. (Ex. JE 3, p. 79)

On November 10, 2016, claimant reported to Dr. Garrels that he had continued pain in his left arm during the day and night, which he rated at 5/10 during the day and 10/10 at night. (Ex. JE 3, p. 80) Dr. Garrels continued claimant on the same permanent work restrictions and added the restriction of limiting his work hours to 40 hours per week. (Ex. JE 3, p. 81) I note that at this visit, Dr. Garrels added to his October 20, 2016 diagnoses by including: "[i]njury of median nerve at upper arm level, right arm, subsequent encounter." (Ex. JE 3, p. 80)

On November 15, 2016, claimant returned to see Dr. Mann who stated that although surgery was an option for the trigger finger there was no guarantee that it would be fixed. Claimant did not want to proceed with surgery for his finger. Dr. Mann had no other surgery suggestions and recommended a functional capacity evaluation (FCE). (Ex. JE 1, p. 47)

On November 23, 2016, claimant returned to see Dr. Garrels for follow-up of "his left hand issues" and he reported "no change in symptoms." (Ex. JE 3, p. 82)

On November 30, 2016, claimant underwent an FCE at Rock Valley P.T., which was noted to be "not functionally valid." (Ex. JE 8, p. 106) It is noted that after "early exposure in the FCE to use of the left hand for gripping and lifting, he declined further attempts due to report of elevated symptoms." (Id.)

On December 14, 2016, Dr. Mann commented that the FCE was not valid and he requested a second FCE and advised claimant that if the second FCE was also deemed invalid, he would have no objective data from which to assign an impairment rating and that he would be returned to work with no restrictions and no impairment rating would be assigned, except for the amputation of the finger. (Ex. JE 1, pp. 48-49)

On January 19, 2017, Dr. Garrels responded to a letter drafted by defense counsel wherein he placed a checkmark next to "Agree" indicating his opinion that he treated claimant's bilateral hands, arms and left index and ring fingers and that claimant's complaints are not a new work injury or an aggravation or exacerbation of a prior injury, but are merely a continuation of the March 18, 2014 traumatic index finger amputation injury and that any need for additional medical care would be caused by the March 18, 2014 work injury. (Ex. JE 3, pp. 84-86) I note that there is no discussion of any particular medical support for these conclusions.

On January 25, 2017, Dr. Mann saw the patient after a valid second FCE, and he stated that claimant had reached MMI. Dr. Mann stated this second FCE would be used to assign impairment for his left upper extremity. (Ex. JE 1, p. 50) The second FCE apparently occurred in Iowa City. (Ex. JE 3, p 90) Claimant was released with restrictions of working light duty, with a lifting/carrying restriction of 10 pounds. (Ex. JE 1, p. 51)

Claimant continued to treat with Dr. Garrels and noted on February 20, 2017, that the "4th finger triggering has improved," and his range of motion in the finger is "full," although he had a positive Tinel exercise. (Ex. JE 3, p. 89)

On March 20, 2017, claimant returned to see Dr. Garrels advising that his pain was worse due to a job change of driving a forklift, which is described as a job that does not involve the need to meet a prescribed production rate. Claimant rated his pain at this visit at 8-9/10. (Ex. JE 3, p. 91) He again had full range of motion in his finger, but with positive Tinel's and some continuing triggering in the ring finger. (Id.)

On April 27, 2017, claimant was seen by Dr. Garrels. Claimant reported his pain as 7-8/10. (Ex JE 3, p. 93) This is the last record of claimant seeing Dr. Garrels. At this visit, Dr. Garrels confirmed his assignment of permanent restrictions for the left hand of: avoid direct pressure to tip of the amputated left index finger; grip/grasp occasionally; and limit lifting to one (1) pound. (Ex. JE 3, p. 94) It is noted that he is

not able to tolerate the pain without the use of pain medication and a sleep aid and claimant's medications were refilled. (Id.)

Opinions Regarding Permanency:

There is no opinion assigning permanent impairment or restrictions concerning the left forearm compartment syndrome or fasciotomy injury of June 15, 2009 at or near the time of claimant's return to regular full-time work following the surgery.

On June 18, 2014, concerning the left index finger amputation, claimant was placed at MMI and released with "no restrictions" by Peter Merrell, PA-C. (Ex. JE 1, p. 16)

On September 8, 2015, Dr. Luszczyk, stated in regards to the right forearm compartment syndrome and subsequent fasciotomy, that claimant sustained no permanent impairment (0%). Dr. Luszczyk stated that claimant was able to regain full strength, range of motion and had no neurologic deficits and went back to work full-duty without restrictions. (Ex. JE 1, p. 31)

On January 20, 2016, Dr. Mann, authored a letter stating that claimant still had some hypersensitivity in the tip of his left index finger, but that he anticipated this would continue to improve with time. If hypersensitivity worsened to the point that claimant wanted additional treatment, the next step would be another revision amputation. (Ex. JE 1, p. 38) At that time, Dr. Mann assigned 55 percent permanent impairment, which he converted to 11 percent of the hand, 10 percent of the upper extremity, and 6 percent of the whole person. (Ex. JE 1, p. 38)

On March 18, 2016, Dr. Mann provided a supplemental opinion to address permanent impairment associated with the left carpal tunnel syndrome. (Ex. JE 1, p. 39) Dr. Mann stated that he last saw claimant on January 5, 2016 and at that time, claimant had "a full uneventful recovery from his left carpal tunnel release," and opined that claimant sustained no permanent impairment based on his understanding that "all the symptoms have resolved." (Id.)

On September 26, 2016, Dr. Mann confirmed his opinion that the index finger injury, revision amputation, subsequent neuroma excision surgery and continued pain at the tip of his finger "is a work-related injury." (Ex. JE 1, p. 45) He also stated his opinion "that his left carpal tunnel syndrome, right carpal tunnel syndrome, and left ring trigger fingers are related to his work." (Ex. JE 1, p. 45)

On January 19, 2017, Dr. Garrels responded to a letter drafted by defense counsel and indicated with a check mark that he agreed that the bilateral hands, arms and index and ring fingers are not a new injury, but are "a continuation of his prior injury date of March 18, 2014," and that his current complaints 'have their origins in that previous date of injury," and do not constitute a substantial aggravation or exacerbation

of his prior injuries. (Ex. JE 3, pp. 85-86) He further agreed that any further medical care would be related to the March 18, 2014 date of injury. (Ex. JE 3, p. 85)

On January 25, 2017, Dr. Mann placed claimant at MMI, indicating that he should continue to work within his restrictions. (Ex. JE 1, pp. 50-51) Claimant's restrictions were to return to work on light duty, with no lifting, carrying, grasping, or pushing in excess of 10 pounds. (Id.)

On April 27, 2017, Dr. Garrels stated that claimant should have permanent restrictions for the left hand of: avoid direct pressure to tip of the amputated left index finger; occasionally grip/grasp; and limit lifting to one (1) pound. (Ex. JE 3, p. 94)

On April 28, 2017, Dr. Mann authored a letter to address permanency concerning the bilateral arms and hands. (Ex. JE 1, p. 52) He stated that he last saw claimant on January 25, 2017. He opined that, based on the AMA Guides, claimant sustained permanent impairment of the left upper extremity of 25 percent, which included the forearm and left finger amputation injury. He also assigned permanent impairment of the right upper extremity of 11 percent. He converted these ratings to 15 percent and 7 percent of the whole body respectively and combined them to arrive at an overall impairment of 21 percent of the whole body. (Ex. JE 1, pp. 53-54)

On June 13, 2017, Dr. Kreiter, issued a letter following an independent medical examination (IME) and stated that claimant was not at MMI and any impairment ratings would be provisional. He then opined concerning the amputated index finger that based on the AMA Guides, claimant would have an 80 percent permanent impairment of the finger, which he converted to 16 percent of the hand and 14 percent of the upper extremity and 8 percent of the whole person. (Ex. JE 9, p. 108) Dr. Kreiter then included a separate rating due to "sensory and pain deficit" and assigned an additional 9 percent to the upper extremity based on the radial palmar and ulnar palmar symptomology. (Id.) He appears to then combine the 14 percent stated above for the amputation and the 9 percent for sensory and pain deficits and arrived at 27 percent of the upper extremity. It is unclear how Dr. Kreiter arrived at this combined percentage. A review of the combined values chart on page 604 of the AMA Guides would indicate that 14 percent combined with 9 percent is 22 percent, not 27. Concerning the 2009 and 2014 forearm fasciotomies, Dr. Kreiter stated there would be some impairment due to scarring and "residual tenderness and pain with forced gripping," of "not more than an estimated 5% upper extremity impairment, and this only provisional," until claimant's other issues are resolved. (Ex. JE 9, p. 109) It is not clear to the undersigned how resolving any additional issues would impact impairment based on scarring. Dr. Kreiter recommended possible further amputation at the MP joint for the left index finger and a second opinion at a hand clinic to "reevaluate the carpal tunnel syndrome on the left," and "re-exploration of the median nerve, and release of the ring finger trigger digit." (Ex. JE 9, p. 108) He stated his opinion that if the additional treatment he suggested was provided that "the outcome would predictably be better than Jose's present condition." (Ex. JE 9, p. 108)

Current Condition/Symptoms

Claimant testified that his current symptoms include continued sensitivity in his left index finger at the tip of the finger stub, with occasional shooting pain going up his arm. (Tr. pp. 49-50) He also has locking of his left ring finger. (Tr. p. 53) Claimant indicated that he had numbness and tingling in his left hand, and pain in his left forearm. Concerning the right hand and forearm, claimant indicated that he has ongoing pain and some locking of his right ring finger. (Tr. pp. 51-52)

Additional Findings

Considering **file number 5050690** and the March 18, 2014 date of injury and the expert opinions concerning permanent impairment, I note that on January 20, 2016, Dr. Mann, assigned 55 percent permanent impairment to the left index finger injury, which he converted to 11 percent of the hand. (Ex. JE 1, p. 38) At that time he also stated, based on his understanding the claimant's left arm symptoms had resolved, that claimant had zero (0) impairment for his left arm.

However, on April 28, 2017, Dr. Mann opined based on a valid FCE and his examination of claimant and the AMA Guides that claimant had sustained permanent impairment of the left upper extremity of 25 percent, which now included both the forearm and left finger amputation injury. (Ex. JE 1, pp. 52-54)

On June 13, 2017, Dr. Kreiter opined that claimant was not at MMI and any impairment ratings would be provisional; he nevertheless assigned a 27 percent impairment rating to the left upper extremity. (Ex. JE 9, p. 108) In addition, Dr. Kreiter noted difficulty in assessing the left index finger amputation stating that "[i]t is extremely tender to any touch, and he pulls away when one tries to examine it." (Ex. JE 9, p. 111) It is not clear from Dr. Kreiter's report to what extent he was able to examine the index finger/hand, and what observations were made to support the rating he assigned.

I accept and rely upon the April 28, 2017 opinion of Dr. Mann and find his rating to be the most accurate, detailed and the most clearly supported by the medical findings. (Ex. JE 1, pp. 52-54) I find that claimant sustained a 25 percent permanent impairment to the left upper extremity as a result of the March 18, 2014 date of injury.

Concerning **file number 5050691** and the June 15, 2014 date of injury, I note that on September 8, 2015, Dr. Luszczyk, stated in regards to the right forearm compartment syndrome and subsequent fasciotomy, that claimant sustained no permanent impairment (0%). (Ex. JE 1, p. 31)

On January 5, 2016, claimant denied any numbness or tingling in the right upper extremity. Dr. Mann noted that due to having no clinical findings of carpal tunnel syndrome on the right that claimant is not a good candidate for right side carpal tunnel release. (Ex. JE 1, p. 37) It is also recorded that claimant was back to work without restrictions. (Ex. JE 1, p. 36)

As stated above, Dr. Mann opined on April 28, 2017 that claimant had sustained an 11 percent permanent impairment to the right upper extremity based upon the valid FCE results. (Ex. JE1, p. 53)

Again, Dr. Kreiter offered an impairment rating concerning the bilateral upper extremities that he identified as provisional and not necessarily accurate, and I therefore reject the same.

I accept Dr. Mann's April 28, 2017 impairment rating of 11 percent impairment to the right upper extremity.

Concerning file number 5057031, and the date of injury of July 15, 2016, I find that no particular incident led to claimant's increase in symptoms and additional treatment and that claimant has failed to carry his burden of proof that he sustained a work injury that arose out of and in the course of his employment on July 15, 2016. I rely upon the lack of any medical opinion or record causally relating any increase in symptoms or permanent impairment to the alleged July 15, 2017 date of injury.

CONCLUSIONS OF LAW

Claimant and the Second Injury Fund of Iowa argue in their briefs that claimant is not yet at MMI and that no permanency can be assessed.

In all three of the hearing reports, the parties state that entitlement to temporary total disability/healing period is not in dispute.

While reviewing the first two hearing reports on the record, all parties clearly agreed that healing period was not in dispute concerning file numbers 5050690 and 5050691. (Tr. pp. 6, 8, 11)

In file number 5057031, upon review of the hearing report, I note that unlike the previous files, this file involves a dispute as to whether the alleged injury arose out of and in the course of employment and therefore causation for any and all weekly benefits is disputed. However, I further note that just like the other files, it is also stated that "TTD/HP Entitlement" is no longer in dispute. (Hearing Report, p. 1, File No. 5057031) Concerning this file, the parties were asked on the record by the undersigned whether there were "[a]ny other issues that need to be identified or anything that needs to be clarified on that [hearing] report." (Tr. p. 13) The parties did not indicate any additional issues or clarify any issue. The parties are bound by their stipulations on the hearing report including the indication that temporary total/healing period entitlement is not in dispute. Consequently, I cannot now consider an issue of entitlement to temporary benefits that was not properly raised at the time of the hearing.

In further support of the above conclusion, I found above that at the time of the hearing, claimant had returned to full-time work operating a forklift for the defendant employer. Therefore having returned to work, there could be no running award of healing period benefits pursuant to Iowa Code section 85.34(1).

The first issue that is properly presented is the extent of permanent partial disability. In order to consider this question, it must be determined whether the permanent partial disability in question is limited to a scheduled member or involves the body as a whole and consideration of industrial disability. Each of the three petitions asserts a claim against the Second injury Fund of Iowa and each claim relies on a first injury of June 15, 2009, involving claimant's left arm. This is the date of claimant's left forearm fasciotomy following a diagnosis of compartment syndrome.

Iowa Code section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

If the first injury of June 15, 2009, did not result in permanent disability, the Second Injury Fund is not liable for benefits and the claims are limited to scheduled members, not industrial disability.

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).

Only Dr. Kreiter discussed any permanent impairment related to the June 15, 2009 incident. However, I rejected the opinion of Dr. Kreiter concerning permanent impairment related to the June 15, 2009 injury. In support thereof, I reiterate as found above that after claimant's June 15, 2009, fasciotomy, on July 20, 2009, Dr. Cassel, the treating surgeon stated that the incision was well healed and he had good range of motion and no pain or tenderness. Dr. Cassel returned claimant to work with no restrictions and he did not assign any permanent impairment. (Ex. JE 1, p. 3(A); Tr. p.

24) Dr. Cassel told claimant to contact his office if there were any problems after his return to work and there is no record of claimant doing so. (Ex. JE1, p. 3(A)) Neither is there any record of claimant seeking any follow-up care specifically for the June 15, 2009 injury. Claimant returned to jobs involving physical labor and testified that the 2009 injury did not keep him from doing any aspect of any subsequent job. (Tr. pp. 24-25) For these reasons and those stated above I have found that claimant has failed to carry his burden of proof that he sustained permanent impairment concerning the June 15, 2009 injury.

Because claimant has failed to carry his burden of proof that he sustained permanent impairment regarding the first alleged injury as it relates to each of the three pending petitions, I conclude that the Second Injury Compensation Act is not applicable. Iowa Code section 85.64.

I therefore consider the claimed injuries in each of the pending three petitions as scheduled members.

File No. 5050690, Date of Injury: March 18, 2014

The first issue in this file is the extent of permanent partial disability, concerning the March 18, 2014 work injury.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Where an injury is limited to scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

Evidence considered in assessing the loss of use of a particular scheduled member may entail more than a medical rating pursuant to standardized guides for evaluating permanent impairment. A claimant's testimony and demonstration of difficulties incurred in using the injured member and medical evidence regarding general loss of use may be considered in determining the actual loss of use compensable. Soukup, 222 Iowa 272, 268 N.W. 598. Consideration is not given to what effect the scheduled loss has on claimant's earning capacity. The scheduled loss system created by the legislature is presumed to include compensation for reduced capacity to labor and to earn. Schell v. Central Engineering Co., 232 Iowa 421, 4 N.W.2d 339 (1942).

The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a-t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably the following language in the 66-year-old case of Soukup v. Shores Co., 222 Iowa 272, 277; 268 N.W. 598, 601 (1936):

> The legislature has definitely fixed the amount of compensation that shall be paid for specific injuries . . . and that, regardless of the education or qualifications or nature of the particular individual, or of his inability . . . to engage in employment . . . the compensation payable . . . is limited to the amount therein fixed.

Our court has specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National Union C. M. Co., 194 Iowa 819, 184 N.W. 746 (1921). Pursuant to Iowa Code section 85.34(2)(u) the workers' compensation commissioner may equitably prorate compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

I have found above that claimant sustained a 25 percent impairment to the left upper extremity. Twenty-five percent of the upper extremity is 62.5 weeks (250 weeks multiplied by 25 percent = 62.5 weeks).

The next issue in this file is whether claimant is entitled to alternate care at the University of Iowa Hand Clinic as recommended by Dr. Kreiter concerning his left index finger, hand and upper extremity.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P 14(f)(5); Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long

v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

Claimant reported ongoing symptoms with his left index finger, hand and arm at hearing and defendants are obligated to provide reasonable medical care for the left upper extremity injury. I conclude that the evaluations and treatment recommendations identified by Dr. Kreiter in his IME report of June 13, 2017 concerning the left finger, hand and upper extremity are reasonable. I further conclude that defendants' failure to authorize such care is unreasonable.

File No. 5050691, Date of Injury: June 15, 2014

The first issue in this case is the extent of permanent partial disability. As determined above, claimant failed to carry his burden of proof concerning the triggering of Second Injury Fund benefits and therefore, this claim is evaluated as a scheduled member.

The above stated law applicable to this issue is not restated here. However, I now consider the above stated law, and applying the same to the facts presented, I conclude that claimant has sustained an 11 percent impairment to the right upper extremity, as previously found above. Eleven percent of the upper extremity is 27.5 weeks (250 weeks multiplied by 11 percent = 27.5 weeks).

The next issue in this file is whether claimant is entitled to alternate care at the University of Iowa Hand Clinic as recommended by Dr. Kreiter concerning his right upper extremity. Again, considering the above stated law and applying the same to the facts presented, including claimant's testimony of ongoing symptoms in his right upper extremity, I conclude that defendants are obligated to provide reasonable medical care for the right upper extremity injury, however I do not find that Dr. Kreiter made any specific recommendations for evaluation or treatment for the right upper extremity.

Therefore, I conclude that claimant has failed to carry his burden of proof as it relates to alternate care concerning the right upper extremity.

File No. 5057031, Date of Injury: July 15, 2016

The first issue in this file is whether claimant sustained an injury that arose out of and in the course of his employment on July 15, 2016.

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.

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

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

I have found above that claimant has failed to carry his burden of proof that he sustained an injury that arose out of and in the course of his employment on July 15, 2016. This is based upon the lack of any medical opinion causally relating claimant's increase in symptoms to this date of injury. I note that there was no particular incident or event related to this date. Claimant's notice to his employer of increased symptoms on July 15, 2016 and his receipt of medical on July 18, 2016, is more accurately stated as a continuation of his prior conditions and not a new injury based upon the lack of any medical record or testimony supporting the alleged causal connection.

Having found that claimant has failed to carry his burden of proof that he sustained an injury that arose out of and in the course of his employment on July 15, 2016, I find the remaining issues in this file to be moot.

The final issue is costs. Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Costs allowable under commissioner rule are as follows:

> 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 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.

876 IAC 4.33.

Iowa Code section 622.69, provides for witness fees of ten dollars for each full day's attendance, five dollars for a half day's attendance, plus mileage for witnesses at trial.

Iowa Code section 622.72, states that expert witnesses called to testify at trial shall receive additional compensation in an amount to be fixed by the court, not to exceed $150.00.

Assessment of costs is a discretionary function of this agency. I assess total costs of $100.00 against defendants for the filing fee identified in claimant's statement of costs concerning files numbers 5050690 and 5050691.

ORDER

IT IS THEREFORE ORDERED THAT:

File No. 5050690:

Defendants shall pay claimant sixty two and one-half (62 ½) weeks of permanent partial disability benefits commencing on the stipulated commencement date of October 28, 2015, until all benefits are paid in full.

Defendants shall be entitled to a credit for all weekly benefits paid to date.

All weekly benefits shall be paid at the stipulated rate of three hundred eighty and 24/100 dollars ($380.24) per week.

Accrued benefits, if any, shall be paid in a lump sum along with interest on said benefits pursuant to Iowa Code section 85.30.

Defendants shall promptly authorize the left upper extremity medical care described by Dr. Kreiter in his June 13, 2017 report.

File No. 5050691:

Defendants shall pay claimant twenty seven and one-half (27 ½) weeks of permanent partial disability benefits commencing on the stipulated commencement date of October 28, 2015, until all benefits are paid in full.

Defendants shall be entitled to a credit for all weekly benefits paid to date.

All weekly benefits shall be paid at the stipulated rate of three hundred eighty and 24/100 dollars ($380.24) per week.

Accrued benefits, if any, shall be paid in a lump sum along with interest on said benefits pursuant to Iowa Code section 85.30.

Additional:

The parties have stipulated in the hearing reports for file numbers 5050690 and 5050691 that the applicable credit to be applied to the above awards is ninety (90) weeks.

Defendants in file numbers 5050690 and 5050691 shall reimburse claimant for costs in the total amount of one hundred and 00/100 dollars ($100.00) pursuant to claimant's statement of costs attached to the hearing report.

File No. 5057031:

Claimant shall take nothing.

In this file only, each party shall pay their own costs.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 27th day of December, 2017.

TOBY J. GORDON
DEPUTY WORKERS'
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TJG/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.