BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

COLE CHIHAK,	:	
Claimant,	:	
vs.	:	File No. 5064435
O'NEAL INDUSTRIES, INC. (A/K/A IOWA LASER),	:	
Employer,	:	A R B I T R A T I O N
and	:	D E C I S I O N
ACE AMERICAN INSURANCE CO.,	:	
Insurance Carrier, Defendants.	:	Head Notes: 1108.50, 1402.20, 1402.40, 1802, 1803, 2602

STATEMENT OF THE CASE

Cole Chihak, claimant, filed a petition in arbitration seeking workers' compensation benefits from O'Neal Industries, employer and Ace American Insurance Company, insurance carrier as defendants. Hearing was held on December 9, 2019 in Des Moines, Iowa.

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

Cole Chihak and James Mattson were the only witnesses to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE5, claimant's exhibits 1-4, and defendants' exhibits A-F. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on January 20, 2020, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury that arose out of and in the course of his employment on September 28, 2016.
2. Whether claimant sustained permanent disability as a result of the work injury. If so, the extent of permanent disability claimant sustained.
3. The appropriate commencement date for any permanency benefits.
4. Whether claimant is entitled to healing period benefits from November 6, 2016 through May 1, 2017.
5. Whether defendants are responsible for past medical expenses.
6. Assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Claimant, Cole Chihak, alleges he injured his right shoulder on September 28, 2016, while working at O'Neal Industries, Inc. Defendants deny his right shoulder injury is related to his employment. Cole was seen at the emergency room that day for a right shoulder dislocation. Defendants argue that a prior 2015 right shoulder injury caused Cole to be predisposed for future right shoulder dislocations; therefore, the September 28, 2016 right shoulder dislocation is not related to his employment at O'Neal.

The 2015 right shoulder injury is not a work injury. On Friday, November 20, 2015, Cole was at his home when he injured his right shoulder in an altercation. On that same date, he was seen at Allen Emergency Department. Cole reported that he grabbed a guy by the shirt as he was going around the corner and then he felt his right shoulder pop out of place. Cole thought he popped his shoulder back in, but he still had pain. X-rays were taken and showed no evidence of fracture or dislocation. The diagnosis was a right shoulder strain. Cole returned to his job at O'Neal on Monday, November 23, 2015. He did not miss any time from work due to the 2015 shoulder incident. He worked full-duty, without any problems from November 23, 2015 until September 28, 2016. During this timeframe, he was also very active outside of work. He played basketball and football. He would also wrestle with his young son. (Transcript pages 23-25; JE4, pp. 43-47)

On September 28, 2016, Cole was working at O'Neal in his position as a metal finisher. He was grabbing a part with the forklift and the part dropped onto a rack. He climbed up the rack to grab the part. Cole climbed back down the rack. When he was approximately five feet above the ground, he decided to jump the rest of the way down.

He testified that when he jumped to the ground and went to push himself up with his right hand, he was unable to do so. He had to push himself up with his left hand. There is video footage of the incident from a motion activated camera. The video submitted by the defendants does not show Cole climbing up the rack; it begins when Cole is already on the rack. At the 9:34:14 mark in the video Cole jumps to the ground. The video, without explanation, skips to the 9:34:29 mark. At this point, Cole can be seen clutching his right shoulder to his body and appears to be in pain. Cole believes it was during this approximately15-second time gap that he pushed himself up. The video then shows him walking, holding his right shoulder, and not using his right arm at all. (Def. Ex. A1) Cole testified that after he fell, he felt immediate pain in his right shoulder. He went to look for the nearest co-worker or supervisor. He eventually found a gentleman by the name of Dennis who called over Jim Mattson. Jim and Dennis made a makeshift sling for Cole's right arm. Jim drove Cole to Allen Occupational Health. (Tr. pp. 25-28)

He was diagnosed with anterior shoulder dislocation, no evidence of fracture. However, Allen Occupational was not able to put his shoulder back into place. He was sent to the emergency department of Allen Hospital. At the emergency room, they sedated Cole and put his shoulder back in the socket. He was off work for a period of time, during which he was treating with Lloyd Luke, M.D. (Tr. pp. 28-30; JE2, pp. 30-35)

Unfortunately, Cole dislocated his shoulder again on November 6, 2016. He had just recently gotten out of his immobilizer and was beginning to regain some motion, when he yawned, both hands went up and popped his right shoulder out of the socket. He went back to the emergency department at Allen Hospital. He was diagnosed with an anterior dislocation of the right shoulder. The note indicates that there was a successful reduction of the anterior dislocation. (Tr. 31-32; JE1, pp. 10-15; JE2, p.37)

When he returned to Allen Occupational he was informed that workers' compensation would no longer pay for treatment. (Tr. p. 32)

On January 21, 2017, Cole was changing the oil in his girlfriend's car and his right shoulder popped out of the socket again. This time when he went to the emergency room at the hospital they were unable to put his shoulder back into place. A surgeon had to be called in to treat Cole. Arnold E. Delbridge, M.D., took Cole to the operating room where he was relaxed. Dr. Delbridge was able to get the shoulder back into place. He recommended that Cole undergo surgery as quickly as possible. (Tr. p. 33; JE1, pp. 17-24)

Dr. Delbridge performed a diagnostic scope and repair of a Bankhart lesion and SLAP on February 24, 2017. Physical therapy was recommended. Cole attended three to five sessions, but due to financial concerns he had to stop therapy. (Tr. pp. 33-34; JE 1, pp. 25-29; JE3)

On February 12, 2018, at the request of his attorney, claimant underwent an independent medical examination (IME) with David S. Tearse, M.D. In addition to examining Cole, Dr. Tearse also reviewed the records provided to him. At the time of the IME, Cole was working as a fork-lift driver. He reported no difficulties with shoulder

instability and no further dislocations since his surgery. He had continued pain and took Percocet at night and ibuprofen during the day. Dr. Tearse's diagnosis for Cole was one-year status post arthroscopic anterior and superior labral repairs. He opined that Cole's right shoulder condition and the need for surgery was directly related to the September 28, 2016 work injury. Dr. Tearse noted that prior to the September 28, 2016 injury Cole had a prior episode which felt like his shoulder may have popped out, but there was no documented dislocation. He had an excellent functional outcome and returned to work only a day or so after the injury. There were no reports of recurrent instability until September 28, 2016. Dr. Tearse opined that "the dislocation that occurred at work caused the damage that resulted in recurrent dislocations and ultimately in his need for surgery." (Cl. Ex. 1, p. 4) Dr. Tearse further opined that the subsequent dislocations on November 7, 2016 and January 21, 2017 occurred as a result of the damage caused by the September 28, 2016 dislocation. Dr. Tearse explained that it was well recognized that a young man who sustained an anterior shoulder dislocation was at significant risk of recurrent dislocations, due to the labral and/or capsular injury. He did not anticipate that Cole would require any further surgical treatment for his right shoulder. He felt he might require some non-steroidal anti-inflammatory medication, a corticosteroid injection, or a short course of physical therapy if symptoms warranted. He recommended that Cole avoid repetitive over-shoulder lifting or heavy over-shoulder lifting. He felt the restrictions were directly related to the work injury. Dr. Tearse assigned five percent whole person impairment as the result of the work injury. (Cl. Ex. 1)

On October 30, 2018, defendants sent a letter to Sarvenaz Jabbari, M.D., to follow-up on a discussion that defense counsel had with the doctor. The letter set forth the defense attorney's understanding of the doctor's opinions and asked the doctor to check if the understanding was correct or incorrect. On November 2, 2018, Dr. Sarvenaz replied to the letter. Dr. Sarvenaz opined that the November 27, 2015 injury resulted in Cole having a predisposition for future right shoulder dislocations, including the September 28, 2016 dislocation. In the response to the defendants, the doctor stated:

> Per Dr. Luke's clinical note dated 9/28/16, Mr. Chihak had multiple shoulder dislocations in the past, not just one as delineated in your summary dated 10/30/2018. Also, per the medical record composed by Dr. Luke on 9/28/16, Mr. Chihak had no trauma to the shoulder on that day, prior to experiencing shoulder pain and dislocation. Instead, it was noted that he jumped down 5 feet, landing on his feet.
>
> Based on the above, I do not believe that Mr. Chihak's work injury on September 28, 2016 was a substantial factor in causing, aggravating, or accelerating his shoulder dislocations on November 7, 2016 or January 21, 2017.

(JE5, p. 52)

Dr. Jabbari opined that Mr. Chihak did not require any permanent restrictions, nor did he sustain any permanent disability as the result of the September 28, 2016 work injury. (JE5)

On April 10, 2019, at the request of the defendants, Cole underwent an IME with Thomas S. Gorsche, M.D. In addition to the examination, Dr. Gorsche also reviewed the documents provided to him. Dr. Gorsche was aware of the 2015 shoulder incident. He stated:

> From reviewing the medical records and talking with Mr. Chihak, I doubt that he had a true shoulder dislocation with this injury in 2015. As a general rule, first-time dislocators are unable to relocate the shoulder themselves. Also if he had a shoulder dislocation, I would not anticipate that his symptoms would be resolved in one to two days and that he would be able to return to his regular job the following day.

(Cl. Ex. 3, p. 30)

Dr. Gorsche noted the dislocations in September and November of 2016 and in January of 2017. He stated:

> Therefore, based on these facts, in my medical opinion, it is unlikely that his injury in 2015 was a true shoulder dislocation. The fact that he had no symptoms from that injury until his documented dislocation of September 28, 2016, points to the fact that it is unlikely that the injury of 2015 played any role in his subsequent dislocation.

(Cl. Ex. 3, p. 30)

Dr. Gorsche also noted that between the 2015 shoulder incident and the September 28, 2016 work injury there were no documented incidents of shoulder problems. Dr. Gorsche opined that the injury of 2015 played no role in Cole's subsequent dislocation in September of 2016. Dr. Gorsche pointed out that the x-rays in 2015 showed no Hill-Sachs deformity which is something one sees after a shoulder dislocation. The x-ray of September 28, 2016 did demonstrate a Hill-Sachs deformity. It is Dr. Gorsche's opinion that the September 28, 2016 dislocation played a role in his future dislocations and placed him at higher risk for future dislocations. He diagnosed Cole with multiple dislocations, right shoulder, with subsequent shoulder instability necessitating shoulder reconstruction. He felt that the September 28, 2016 jumping down five feet off a ledge and landing on his feet was a substantial factor in causing claimant's subsequent shoulder dislocations. He also believed Cole's activity on September 28, 2016 of jumping down five feet off a ledge and landing on his feet was a substantial factor in causing claimant's need for surgery with Dr. Delbridge. Dr. Gorsche did not agree with Dr. Jabbari's opinions that Cole did not require any permanent restrictions, nor that he did not sustain any permanent impairment as the result of the September 28, 2016 injury. (Cl. Ex. 3)

The central dispute in this case is whether Cole sustained a work injury on September 28, 2016. I find that claimant did sustain an injury to his right shoulder that arose out of and in the course of his employment on September 28, 2016. Cole worked in a physical job as a metal finisher. He worked at O'Neal through a temporary agency beginning in February of 2014 and was hired directly by O'Neal in May of 2014. His job involved grinding large welds to assemble product, including heavy product. At times he would have to flip heavy product. He also utilized a vibrating deburr which involved using huge handfuls of heavy parts. Cole testified that his job was very physical. He was able to perform his job without difficulty until September 28, 2016. Mr. Mattson did not dispute his testimony on these issues. The video in evidence shows Cole after he jumped down from a rack that he had just climbed up. While he is walking away, he held his right arm tight against his body. Furthermore, the greater weight of the expert opinion supports Cole's contention that he sustained a work injury on September 28, 2016.

Defendants argue that Cole is not a credible witness because he has a history of knowingly lying and providing false information to a number of employers. There are numerous examples in the record of Cole being less than forthcoming. Here is just one example, in his answers to interrogatories. Cole stated he was laid off from O'Neal. He told Dr. Jabbari that he was terminated from O'Neal due to his work injury and a mass layoff. However, Cole testified that the truth of the matter was that he was terminated because he tested positive for marijuana and violated his last chance agreement. At the time of the hearing, Cole admitted that he has falsified information and lied multiple times for financial gain. (Cl. Ex. 4, p. 34; JE2, p. 36, Tr. pp. 60-68) I find that Cole is not a credible witness and for that reason the undersigned relies heavily on the medical records and objective evidence in this case.

Defendants rely on the opinion of Dr. Jabbari, an occupational medicine physician. Dr. Jabbari feels that the November 2015 incident resulted in a shoulder dislocation and that 2015 dislocation made Cole more susceptible to future dislocations. In reaching her conclusion Dr. Jabbari relies on Cole's prior statements that he dislocated his right shoulder prior to September 28, 2016. However, as defendants have pointed out, Cole's credibility is questionable, at best. Dr. Gorsche relies on the objective evidence in reaching his conclusion that the 2015 event was a strain and not a dislocation. This is consistent with the treatment records from 2015. I do not find the opinions of Dr. Jabbari to be persuasive. I find the opinion of Dr. Gorsche, an orthopedic surgeon, to be more persuasive and to carry greater weight. Dr. Gorsche's opinion is well-reasoned and he was hired by the defendants, so it cannot be said that he is somehow biased against the defendants. Dr. Gorsche does not believe that Cole sustained a true shoulder dislocation in 2015. He sets forth his rationale for his opinions. Dr. Gorsche noted the lack of objective evidence of a 2015 dislocation. Furthermore, the November 2015 note diagnosed Cole with a sprain, not a dislocation. Additionally, Dr. Gorsche's opinion is consistent with the opinion of Dr. Tearse. Dr. Tearse also noted no documented dislocation and he also pointed to the lack of shoulder instability between 2015 and the September 28, 2016 dislocation. Likewise, Dr. Tearse causally connected claimant's need for surgery to the September 28, 2016

work injury. I find that Cole sustained an injury to his right shoulder that arose out of and in the course of his employment on September 28, 2016.

We now turn to the issue of permanent disability. I find that Cole has sustained permanent disability as the result of the September 28, 2016 work injury. As previously noted, I do not find the opinions of Dr. Jabbari to be persuasive. With regard to permanent impairment, Dr. Tearse utilized figures 16-40, 16-43, and 16-46 of the AMA Guides and assigned five percent whole person impairment. Dr. Tearse recommended Cole avoid repetitive over-shoulder lifting or heavy over-shoulder lifting. Dr. Gorsche stated that he did not agree with Dr. Jabbari's opinions regarding permanent impairment and restrictions. He was not asked about Dr. Tearse's opinions. I find Cole has sustained five percent permanent functional impairment as the result of the work injury. I find that as the result of the work injury Cole has permanent restrictions as set forth by Dr. Tearse. However, I do not find that Cole admitted that he never provided a copy of those restrictions to any of his employers.

At the time of the hearing Cole was 26 years old. He testified that he attended school until the beginning of the 11th grade and does not have a GED. In the past he has represented to employers that he did graduate high school. (Def. Ex. D, p. 10; Def. Ex. E, pp. 17-18; Def. Ex. F, p. 38) He does not have any learning disabilities. He testified that he does have ADHD and ADD, but does not take any medications for these conditions.

Cole's work history includes working at O'Neal as a metal finishing operator. He was paid $13.75 per hour. His duties included positioning and fastening parts together, reading work orders, loading and unloading materials onto or from pallets, trays, racks, and forklifts. He also labeled, counted, and inspected products. His duties also included driving a forklift. Additionally, he was responsible for cleaning his work area and equipment. His job required frequent walking, occasional stooping, kneeling, crouching, or crawling. He was required to regularly lift or move up to 10 pounds, frequently up to 25 pounds, and occasionally up to 60 pounds. (Defendants' Exhibit B)

At the time of the hearing, Cole was no longer employed by O'Neal. However, I find that the work injury is not the reason he was terminated from O'Neal. Since working for O'Neal Cole has worked at Ryder System, Inc. as a fork lift driver. He started at $12.75 per hour and over a period of a few months received $3.00 in raises. By the time his employment with Ryder ended he was paid $15.75 per hour and worked 40-50 hours per week. He did not miss any time form that job due to his right shoulder injury.

He then worked for Allan Industrial Coatings from April 2, 2018 until May 29, 2018. His job involved hanging parts on a line to be painted. According to Allan Industrial Coatings, Cole's job required him to lift up to 50 pounds. Cole testified that he never lifted that much. He was paid approximately $520.00 per week. Cole failed to disclose this job to the defendants in his answers to interrogatories. He worked approximately 37.5 hours per week and was paid $10.00 per hour. (Cl. Ex. 4, p. 34)

Next, Cole worked at Centro, Inc. The job description Centro indicates is that Cole was required to continually lift and carry up to 50 pounds and continually reach above his shoulder level. According to Centro he was also required to lift up to 75 pounds as many times as twice a shift. Cole testified that if he was ever required to do any of those things he made another co-worker do it for him. The job description also indicated that the machine operator job required him to continuously reach above shoulder height, reach out, and stand for 6-12 hour shifts. He was paid $17.25 per hour and worked up to 57 hours per week. He was terminated from that position. (Def. Ex. E, p. 22)

He has also worked at Affordable Property Management, his brother's company. He worked as a grunt man, picking up the shop. Cole described himself as the housekeeper and organizer of the shop. He was paid $14.00 per hour and was part-time. That employment ended due to a family dispute. He worked there from March 3, 2019 through August 15, 2019.

On August 21, 2019 Cole started work at Omega Cabinetry. He works between 40 and 50 hours per week and is paid $15.25 per hour. He agrees that he can perform all the essential functions of his job without accommodation, but also states that it is not a very physical job.

Prior to working at O'Neal, Cole worked for PSSI for about one year cleaning a Tyson facility. His duties included using a hose to push meat that is on the floor into a pile. He would then use a scoop shovel to scoop the meat into a garbage barrel and then lift the barrel into big dumpsters. He performed that job when he was approximately 18 years old and was paid $10.00 per hour. He testified that he would no longer be able to perform this job because you had to be in really good shape and it would be too demanding for his right shoulder. Cole also testified that he had hoped to become a welder, but he does not believe he would be physically capable of being a welder.

Cole's right shoulder continues to bother him some. He takes over-the-counter ibuprofen. Considering his age, educational background, employment history, ability to retrain, motivation to seek work, length of healing period, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that he has sustained a 15 percent loss of future earning capacity as a result of his work injury with the defendant employer.

Cole is seeking temporary benefits from November 6, 2016 through May 1, 2017, when he returned to work. November 6, 2016 is the date that Cole dislocated his right shoulder while yawning. The expert opinions that I found to be most persuasive, state that the September 28, 2016 shoulder dislocation caused Cole to be more susceptible to future dislocations, including the November 6, 2016 dislocation. Cole testified that he returned to work as soon as he felt he was able. However, I do not see any documentation that claimant was medically restricted from working during this timeframe. Thus, I cannot find that Cole was off work from November 6, 2016 through

May 1, 2017 as the result of the September 28, 2016 work injury. Dr. Jabbari opined that Cole could return to full-duty work on November 6, 2016. (JE5, p. 49)

I find that claimant's dislocations and his need for surgery are related to the September 28, 2016 work injury. Cole is seeking reimbursement for past medical expenses as set forth in claimant's exhibit 2. Based on the opinions of Dr. Tearse and Dr. Gorsche I find that the September 28, 2016 dislocation arose out of and in the course of employment with O'Neal. I further find that the subsequent dislocations were related to the work injury. Dr. Tearse has opined that the submitted bills were reasonable and necessary as the result of the September 28, 2016 work injury. I find the submitted charges were incurred as a result of the September 28, 2016 work injury and therefore are the responsibility of the defendants.

CONCLUSIONS OF LAW

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

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).

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.

Based on the above findings of fact, I conclude that Cole sustained an injury to his right shoulder on September 28, 2016 that arose out of and in the course of his employment with O'Neal. I further conclude that he sustained permanent disability to his body as a whole as the result of that injury. I conclude claimant has sustained his burden of proof to demonstrate by a preponderance of the evidence that he sustained a 15 percent loss of earning capacity as the result of the September 28, 2016 injury. As such he is entitled to 75 weeks of permanent partial disability benefits. These benefits shall commence on November 6, 2016; this is the time when Dr. Jabbari indicated that he was medically capable of returning back to full-duty work.

Cole is seeking temporary benefits from November 6, 2016 through May 1, 2017, when he returned to work. Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986). Based on the above findings of fact, I conclude claimant failed to carry his burden of proof to demonstrate entitlement to healing period benefits from November 6, 2016 through May 1, 2017.

Cole is seeking reimbursement for past medical expenses as set forth in claimant's exhibit 2. The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975). Based on

the above findings of fact, I conclude that the submitted charges were incurred as a result of the September 28, 2016 work injury and therefore are the responsibility of the defendants.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of three hundred eighteen and 02/100 dollars ($318.02).

Defendants shall pay seventy-five (75) weeks of permanent partial disability benefits commencing on November 6, 2016.

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

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Deciga Sanchez v. Tyson Fresh Meats, Inc., File No. 5052008 (App. Apr. 23, 2018) (Ruling on Defendants' Motion to Enlarge, Reconsider or Amend Appeal Decision re: Interest Rate Issue).

Defendants shall be responsible for past medical expenses as set forth above.

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 6th day of April, 2020.

ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

John Rausch (via WCES)
Peter Thill (via WCES)

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