

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ARLYN WOOD,	:	
	:	
Claimant,	:	File No. 5066830
	:	
vs.	:	A R B I T R A T I O N
	:	
WINNEBAGO INDUSTRIES, INC.,	:	D E C I S I O N
	:	
Employer,	:	
Self-Insured,	:	Head Note Nos.: 1801, 1801.1, 2204,
Defendant.	:	2501, 2502, 2701, 2907, 4000

Claimant Arlyn Wood filed a petition in arbitration on December 3, 2018, alleging he sustained a mental health injury while working for the defendant, Winnebago Industries, Inc. (“Winnebago”), on September 12, 2016. Winnebago filed an answer on December 27, 2018.

An arbitration hearing was held at the Division of Workers’ Compensation on February 11, 2020. Attorney Mark Soldat represented Wood. Wood appeared and testified. Thomas Schroader, Shelly Wood, Lindsey Thorson, and Shannon Deetz testified on Wood’s behalf. Attorney Jason Wiltfang represented Winnebago. Brenda Vigil appeared on behalf of Winnebago, but did not testify. Joint Exhibit (“JE”) 1, and Exhibits 1 and A through L were admitted into the record. The record was held open through March 13, 2020, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

At the start of the hearing the parties submitted a hearing report, listing stipulations and issues to be decided. Winnebago waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed between Winnebago and Wood at the time of the alleged injury.
2. Wood sustained an injury which arose out of and in the course of his employment with Winnebago on September 12, 2016.
3. The alleged injury is the cause of a temporary disability during a period of recovery.
4. Although entitlement to temporary benefits cannot be stipulated to, Wood has been off work since April 28, 2019.

5. If the alleged injury is found to be a cause of permanent disability, the disability is an industrial disability.

6. The issue of whether Wood is entitled to permanent partial or permanent total disability benefits is not ripe for adjudication.

7. At the time of the alleged injury Wood's gross earnings were \$1,236.98 per week, he was married and entitled to two exemptions, and the parties believe the weekly rate is \$767.91.

8. After July 1, 2017, the interest rate for any compensation or benefits accruing after that date is .0257.

9. As a matter of both Winnebago's prior agreement and alternate care, James L. Gallagher, M.D., is Wood's treating doctor for the September 12, 2016 work injury.

10. Costs have been paid.

ISSUES

1. Is Wood entitled to temporary benefits from September 14, 2016 through July 5, 2017, and a running award of temporary benefits from April 28, 2019?

2. Should payment of temporary benefits continue until such time as Dr. Gallagher medically indicates that significant improvement from the September 12, 2016 work injury is not anticipated?

3. Is Wood entitled to payment of medical expenses set forth in Exhibit 1, pages 62 and 66?

4. Is Wood entitled to alternate medical care?

5. Did Winnebago pay Wood 18.429 weeks of compensation at the rate of \$792.02 per week, and is Winnebago entitled to a credit of \$14,599.47?

6. Is Wood entitled to penalty benefits for payment delays and underpayments of temporary benefits?

7. Is Wood entitled to interest?

8. Should costs be assessed against either party?

FINDINGS OF FACT

Wood and his wife live in Rudd, Iowa, and have four grown children. (Transcript, pp. 28-29; Exhibits A, p. 2; H, p. 3) Wood graduated from high school in 1984. (Exs. A, p. 2; H, p. 4) After high school Wood enlisted in the Army and served two years before receiving a medical discharge with a thirty percent service-connected disability to his

feet. (JE 1, p. 28; Exs. A, p. 2; H, p. 5) At the time of the hearing Wood was fifty-five. (Tr., p. 44)

Wood holds a commercial driver's license ("CDL") and he worked for many companies as a truck driver over the course of thirty-two years. (Tr., p. 44; Exs. A, pp. 2-8; H, pp. 5-8) Winnebago hired Wood as a truck driver on August 17, 2015. (Tr., p. 51; Exs. A, p. 8; F, pp. 1-3) Winnebago employed three truck drivers, Wood, Schroader, and Kevin Lunning. (Tr., p. 18) The drivers worked a rotation where two drivers were assigned to over-the-road trips to Texas, Tennessee, and Indiana, and the third driver was assigned to local trips to Charles City and Albert Lea. (Tr., pp. 18-19; Ex. A, p. 8) Todd Joss was the manager of the warehouse where Wood, Schroader and Lunning worked. (Tr., p. 20)

On September 12, 2016, Wood was working for Winnebago and coming back from Indiana in the third lane of a four-lane interstate, traveling westbound,

[a]nd all of a sudden, I – I looked up. And I was under a bridge. And a man was falling like a scarecrow out of the sky. And I can remember looking to my left.

And I crowded the left, but there was a car there and then there was a cement barrier. So I just kind of held the truck still. And I ran over the guy or hit the guy. It's very – I either hit him or ran over him.

But I can remember pieces of him flying apart. And there was a car on my right that I – when I got stopped, he pulled over to the other side of the interstate and basically got out and wiping [the body parts off of his car].

(Tr., pp. 48-49) Wood drove to Morris, Illinois, twelve miles from the scene and Lunning picked him up. (Ex. A, p. 10)

Wood's wife received a call from her brother the day of the accident and he told her what had happened. (Tr., p. 29) That night Wood returned home late. (Tr., p. 30) Mrs. Wood testified her husband was a mess and he has remained a mess. (Tr., p. 30) Mrs. Wood reported her husband is very depressed and he does not do much of anything other than watch television and sit in his chair. (Tr., p. 30)

On September 14, 2016, Wood attended an appointment with Mark Haganman, D.O., his primary care physician. (JE 1, p. 1) Dr. Haganman documented while driving earlier in the week a man jumped off a bridge and Wood's truck struck the man. (JE 1, p. 1) Dr. Haganman provided grief and loss counseling, prescribed Ativan, restricted Wood from working, referred Wood to Katelyn Froehner, ARNP, in psychology, and told Wood he could return when Froehner released him. (JE 1, pp. 1-2; Tr., p. 66) Wood reported did not return to Dr. Haganman because he thought he could work out his situation by himself. (Tr., p. 66)

On September 14, 2016, Wood attended his first appointment with Froehner. (JE 1, p. 18) Wood told Froehner, “[I] [c]an’t get the image out of my mind, and I can’t forget the images of his body parts hanging from my truck.” (JE 1, p. 18) Froehner documented, “[t]he patient explains that he has been having vivid playbacks of the incident since the incident on Monday. The patient states that as he continuously has images of the incident, he tries to distract himself by watching movies or reading; however, he states he can find triggers for the playbacks in everything.” (JE 1, p. 18)

On September 15, 2016, Wood attended his first appointment with Linda Vold, LISW, for therapy. (JE 1, p. 27) Vold noted Wood reported he is not able to focus, he is tearful and keeps having the picture of the incident in his mind, he wakes up with a sick feeling, and he is afraid he would not be able to get back in his truck. (JE 1, p. 28) Vold diagnosed Wood with an adjustment reaction with anxiety that was severe, and recommended cognitive behavioral interventions with individual therapy to decrease Wood’s distress, improve his sleep, and allow Wood to distract himself from the repetitive image of the accident. (JE 1, p. 29) Vold wrote to Winnebago requesting Wood receive leave from work due to work-related trauma that occurred earlier that week, noting Wood was not able to concentrate, he was having nightmares, and he was tearful. (JE 1, p. 30) Winnebago paid for the care Wood received from Dr. Haganman, Froehner, and Vold.

On September 20, 2016, Wood returned to Vold for therapy. (JE 1, p. 31) Wood relayed he believed he was making some progress and his feelings were not quite as intense as they had been the week before. (JE 1, p. 31) Wood reported he was experiencing an empty feeling, noted activities with his hands helped interrupt the anxiety, and he stated he worried he would not be able to get back into his truck. (JE 1, p. 31)

Wood returned to Vold for therapy on September 27, 2016. (JE 1, p. 32) Wood reported he had been driving his pickup truck, and he randomly felt short of breath, but he had been able to stop and take deep breaths. (JE 1, p. 32) Vold documented Wood was motivated to return to work, but reported he did not believe he was quite ready yet, and noted his condition was moderate. (JE 1, p. 32)

Wood attended a follow-up appointment with Froehner on September 28, 2016. (JE 1, p. 19) Froehner documented Wood has had “significant posttraumatic stress disorder since this incident” and anxiety, and he had been prescribed sertraline, prazosin, and propranolol. (JE 1, p. 19) Froehner noted Wood described his mood as better, and that his thought content “continues to be ruminative over the incident,” but he was having more appropriate thought content, and his affect seemed brighter than during the previous appointment. (JE 1, p. 20) Froehner listed an impression of posttraumatic stress disorder, acute, discontinued Wood’s prazosin, continued his sertraline and propranolol, and prescribed Seroquel at bedtime because Wood was only sleeping approximately four hours per night. (JE 1, p. 20) Froehner noted Wood was continuing with therapy with Vold. (JE 1, p. 21)

After the September 12, 2016 accident Schroader tried to contact Wood, but Wood did not return his calls. (Tr., p. 19)

On October 3, 2016, Wood returned to Vold, reporting his anxiety had improved, but he was still occasionally feeling short of breath, and noting he was trying to keep busy to manage his distress. (JE 1, p. 33) During his next appointment on October 13, 2016, Wood told Vold he was planning on returning to work in ten days with a modified work assignment before returning to over-the-road, trucking. (JE 1, p. 34) Wood reported he was experiencing vivid dreams and nightmares and wondered if his medication was causing the nightmares. (JE 1, p. 34)

During his October 24, 2016 appointment Wood told Froehner he wanted to return to work. (JE 1, p. 22) Froehner documented Wood was continuing to have problems with flashbacks and sleeping, and experiencing significant anxiety and depression regarding the incident. (JE 1, p. 22) Wood relayed he was doing much better and he was having flashbacks approximately every other day. (JE 1, p. 22) Wood reported he was experiencing some anxiety when driving under overpasses, but he wanted to return to work. (JE 1, p. 22) Froehner listed an impression of posttraumatic stress disorder, chronic, continued his sertraline, discontinued the Seroquel because Wood reported it was making him groggy in the morning and he had been sleeping fine without it for one week, and she released Wood to return to work with a gradual return to trucking. (JE 1, pp. 23-24; Ex, A, p. 12)

While he was off work and treating with Dr. Haganman, Vold, and Froehner, Wood received weekly workers' compensation benefits from Winnebago. (Ex. A, p. 12)

Wood returned to work at Winnebago part-time, making local runs. (Tr., pp. 51, 99; Ex. A, pp. 12-13) Wood was able to do his work and his hours increased over time. (Tr., p. 55; Ex. A, pp. 12-13)

Wood testified he returned to work because he did not want to lose his job and "I had to have some out to try and figure out how to get this guy out of my head. And I thought maybe if I went back to driving, I could figure this stuff out myself." (Tr., p. 51) Mrs. Wood reported her husband forced himself to return to work in October 2016. (Tr., p. 30) She testified her husband's mental condition had not changed a lot. (Tr., p. 30)

Wood testified Winnebago sent him on a short run to Minneapolis and back, and he relayed,

[a]nd as I was coming through town, they were having some type of – either it was an election rally or something. And the people were completely lined on the – the bridge. And I had some major flashback issues I had to deal with.

I had to pull the truck over and stop and wait until I could get this image out of my head. And as a result, I didn't get back to Winnebago until late that night.

(Tr., p. 55)

Wood told Joss he had a goal of returning to over-the-road trucking as of December 25, 2016. (Tr., p. 54) Wood relayed he wanted to return full-time for "[m]oney, income for my family, a sense of trying to put this thing behind me, this accident. I've always been the kind of guy that thinks I can work through most problems in life. And that's kind of how I thought about going – approaching this ordeal." (Tr., pp. 54-55)

In January 2017, Joss told Wood he was concerned about how he was improving in driving the truck and said, "[y]ou know, we need to get you back going in the truck full time or, you know, maybe have to look for some other alternative for you including termination." (Tr., p. 54)

Winnebago stopped paying workers' compensation to Wood as of January 19, 2017. (Tr., p. 52) Wood testified he did not receive a letter from Winnebago when he stopped receiving benefits providing him with thirty days' notice Winnebago was not going to pay him any further. (Tr., p. 53)

Wood returned to work full-time on or about January 22, 2017. (Tr., p. 56) Joss told Wood he wanted him to return to over-the-road trucking gradually, and that he would try to get him straight out and straight back. (Tr., p. 81) Wood testified before the accident he would go out and pick up five or six stops throughout Elkhart and down into Goshen, Indiana, and after he returned to over-the-road trucking Winnebago sent him straight out and straight back. (Tr., p. 57) The routes were shorter and Wood testified his pay in January 2017 was up to \$700.00 lower per week. (Tr., pp. 58-59, 80) Wood reported Winnebago did not pay him any temporary partial disability benefits. (Tr., p. 59)

Wood received a performance review on April 24, 2017, where Joss documented "Arlyn has had a difficult last 6 months. Doing better. Getting back on the road helped. Does a good job for the company." (Ex. F, p. 3) Wood acknowledged after he returned to work and started driving he did not inform Winnebago he was having any ongoing issues while driving. (Tr., p. 72)

Wood testified on June 12, 2017, he attended an appointment with Froehner, and told her his medication was causing him to become lightheaded and dizzy and he was feeling a pulsating feeling in his head because he tried to stop the medication. (Tr., p. 59; Ex. A, p. 13) Froehner restricted Wood from working through June 28, 2017. (Tr., p. 60; JE 1, p. 26)

On or about June 30, 2017, Joss held a meeting with Wood, Schroader, and Lunning, and informed them Winnebago had decided to eliminate the truck fleet and outsource the trucking. (Tr., pp. 21, 23, 25, 60-61) Joss told the drivers they could stay with Winnebago, they could go to IMT transport, the company that obtained the Winnebago trucking contract, or they could quit. (Tr., pp. 21-22) Schroader testified he had a fourth option because of his years of service and age, and he elected to retire. (Tr., p. 22) Schroader relayed the position he was offered with Winnebago paid less than his trucking job. (Tr., p. 22) Lunning opted to stay with Winnebago. (Tr., p. 24) During the meeting Wood asked if he could work in Charles City because it was closer to his home and Joss told him he would have to check. (Tr., pp. 25, 61) Schroader did not recall whether Joss offered the drivers a shag driver position in Forest City, but recalled Joss offered him a position in the warehouse driving a forklift or performing some other job. (Tr., p. 26)

Wood testified “right when they told us that we were going to be done in a couple weeks, I asked Todd if I could have time off to look for another job as the ultimatums they gave Tom was also the ultimatums they gave me but with one exception. The IMT job was not a guarantee. It was a – you know, you’re going to have to pursue that on your own. Whether or not Winnebago had any influence of me getting that job, I don’t know.” (Tr., pp. 61-62)

Wood reported he did not hear back from Joss about a position in Charles City so he called Tim Parcher, the manager in Charles City, and asked him if he had a job for him and Parcher did not respond. (Tr., p. 61; Ex. A, p. 14)

On June 30, 2017, Froehner noted Wood had been unable to return to work on June 29, 2017, and she restricted him from working from June 29, 2017 through July 4, 2017. (JE 1, p. 26) Froehner released Wood to return to work on July 5, 2017. (Ex. A, p. 13)

Wood has not worked for Winnebago since June 14, 2017. (Tr., p. 62) Wood received paid vacation from Winnebago through July 15, 2017. (Tr., p. 64) Wood worked for Winnebago full-time as a truck driver for five months before his position with Winnebago ended. (Tr., p. 80) Winnebago permitted Wood to deviate from the accident location when traveling through Indiana. (Tr., p. 80) Wood testified he never told Winnebago he was having any ongoing issues from the accident before the end of his employment. (Tr., p. 80)

Exhibit G contains a Winnebago Change Notice for Wood. Joss documented on June 29, 2017, Wood “called & quit 7/5/17” and he was terminated. (Ex. G, p. 1) Winnebago produced an unsigned statement dated July 5, 2017, which provides “transfer from Colleen wanted to work in Charles City and Tim did not get back with him. Arlyn is not interested in the Forest City position so he voluntarily quit.” (Ex. G, p. 2) Wood reported he never received a letter stating he had been terminated. (Tr., p. 76) Wood testified he had not seen the documents and he did not quit. (Tr., p. 62) Wood denied Winnebago offered him a position in Forest City. (Tr., p. 98; Ex. A, p. 14)

Lunning received a shag driver position in Forest City. (Tr., pp. 62, 98; Ex. A, p. 14) Wood did not apply for unemployment compensation after he was terminated. (Tr., pp. 62-63) Winnebago did not call any witnesses at hearing to refute Wood's testimony. I find Wood's testimony persuasive and reasonable and consistent with the other evidence I believe. At hearing Wood engaged in direct eye contact, he did not engage in furtive movements, and his testimony was clear and consistent. I find Wood did not resign or quit from Winnebago.

Wood testified Winnebago did not offer him any medical care from October 24, 2016 until his employment ended in 2017. (Tr., pp. 52-53) Wood did not request any medical care during this period. (Tr., p. 53) Wood testified he did not request any medical care because "I was not aware I was offered any. I basically received a letter one day in the mail after I was terminated that said that they were not responsible for me." (Tr., p. 53)

Wood reported after Winnebago terminated his employment he was in terrible shape. (Tr., p. 63) Mrs. Wood testified after her husband was let go he did not have a lot of ambition. (Tr., pp. 30-31) She reported he blamed himself for hitting the person who jumped off the overpass. (Tr., p. 31)

After his position with Winnebago ended Wood worked as a truck driver for IMT, Carsten & Sons, and J-Bird. (Tr., pp. 64-65) In late June or early July 2017, Wood approached IMT and IMT hired him. (Tr., pp. 76-78) The IMT route was the same route Wood drove for Winnebago before his position ended, straight in and straight back without extra stops. (Tr., p. 82; Ex. A, p. 9) Wood worked for IMT for thirty to forty-five days after he left Winnebago. (Tr., pp. 79, 82) Wood reported he resigned from IMT because "I just – for one, I couldn't deal with going out there and passing underneath the bridge all the time because they weren't going to be as near cooperative as Todd was and let me drive another route." (Tr., p. 82) When asked whether the problem was with the specific bridge where the accident occurred Wood responded, "[a]ny bridge. Any bridge that I – it'd bring back flashbacks of the whole accident." (Tr., p. 83)

Wood accepted a seasonal, local route trucker driver position with Carsten & Sons. (Tr., p. 78-79, 83) Wood worked for Carsten & Sons for approximately one month until he was offered a position with J-Bird Trucking in 2017, where he had previously worked. (Tr., pp. 78-79)

Wood worked as an over-the road truck driver for J-Bird, driving through Kansas, Oklahoma, Texas, Louisiana, Mississippi, Tennessee, Missouri, and Minnesota. (Tr., pp. 83-84; Ex. A, p. 9) Wood reported his work for J-Bird was more difficult than his work for Winnebago because he worked more hours. (Tr., p. 65)

On July 26, 2018, Alisha Turner, with EMC sent Wood a letter enclosing a check for six days of temporary partial disability benefits for June 29, 2017 through July 4, 2017. (Ex. B, p. 1) Turner further advised Wood that since he voluntarily terminated his

employment effective July 5, 2017, and given work was available to him no further benefits were owed to him at this time. (Ex. B, p. 1)

On December 17, 2018, Wood returned to Vold's office and completed a psychosocial assessment through telehealth services with Debra Georgia, LMFT, in Boynton Beach, Florida, complaining of having a loss of emergency, sleep disturbance, anxiety, confusion, a depressed mood, and feelings of hopelessness, worthlessness, and guilt. (JE 1, pp. 35, 37) Wood expressed his condition was impacting his marital and family relationships. (JE 1, p. 36) Vold had retired, so Wood resumed care with Georgia.

On December 22, 2018, Wood attended an appointment with Dr. Haganman, reporting Winnebago terminated him when it eliminated the driving positions. (JE 1, p. 6) Wood told Dr. Haganman he took another job, but he continued to have low mood, anhedonia, fatigue, malaise, poor sleep, and poor concentration revolving around the accident. (JE 1, p. 6) Wood complained of poor sleep, nightmares, night sweats, low mood, and low energy. (JE 1, p. 6) Dr. Haganman listed an impression of major depressive disorder resulting around a motor vehicle accident in September 2016, insomnia, and ongoing nicotine addiction and tobacco abuse, and prescribed medication. (JE 1, p. 6)

On January 12, 2019, Wood attended an appointment with Jeffrey Nasstrom, D.O., a family medicine provider. (JE 1, p. 8) Wood reported after being prescribed escitalopram two weeks ago he was sleeping better. (JE 1, p. 8) Dr. Nasstrom assessed Wood with major depression secondary to the September 2016 accident, insomnia and nicotine dependence, documented Wood reported he was not getting out or doing things, encouraged Wood to follow up with his counselor, and asked him to return in two to three weeks. (JE 1, p. 8)

Wood attended another telehealth appointment with Georgia on March 7, 2019, noting his physician had prescribed Lexapro and Trazadone, which had improved his sleep and reported a decrease in his frustration and an increase in his hopefulness. (JE 1, p. 38) Wood relayed he was still struggling with flashbacks of the incident and with feelings that he killed the man who jumped from the bridge, and reporting he had a new puppy that was distracting and soothing to him. (JE 1, p. 38)

Wood testified while he was working for J-Bird his condition became worse. (Ex. A, p. 15) Wood reported he was experiencing flashbacks and he found himself not paying attention to things he should and concentrating on bridge overpasses and dead animal carcasses while he was driving for J-Bird. (Ex. A, p. 15)

On April 2, 2019, Wood returned to Dr. Haganman, reporting he was sleeping better, his mood was better, and he had increased his activity, sitting in the house, garage and shop. (JE 1, p. 9) Dr. Haganman listed an impression of major depressive disorder, generalized anxiety disorder, and insomnia, "markedly improved." (JE 1, p. 9) Dr. Haganman documented "[a]t this point in time, I do not believe he is able or willing to

go back to driving truck. He may do some activities; however, around the shop. We will discuss that at the 2-month visit and follow up.” (JE 1, p. 9)

Wood inquired whether J-Bird had any alternative employment available to him on April 27, 2019, and he was told no. (Tr., p. 84; Ex. A, p. 16) Wood worked for J-Bird Trucking until April 27, 2019, when he resigned. (Tr., p. 84; Ex. A, p. 16)

Wood returned to Dr. Haganman on April 27, 2019. (JE 1, p. 10) Wood reported he did not feel safe behind the wheel of his truck, noted he had made some bad judgment errors while driving, and reported he had a sense of carelessness. (JE 1, p. 10) Dr. Haganman listed an impression of major depressive disorder, insomnia, and possible posttraumatic stress disorder. (JE 1, p. 10) Dr. Haganman documented he believed Wood needed to be seen by psychiatry and Wood should turn in his CDL. (JE 1, p. 10)

Wood applied for a field supervisor position with the Department of Transportation in Charles City, but he did not receive the job. (Tr., pp. 63, 86; Ex. A, pp. 9, 20) Wood has not applied for any other positions and he has not worked since he left J-Bird. (Ex. A, p. 9; Tr., p. 87)

On April 30, 2019, Wood attended a telehealth appointment with Georgia reporting he was experiencing flashbacks of the accident, and noting he was considering applying for disability. (JE 1, p. 39) During his appointment on May 13, 2019, Wood told Georgia not driving had provided him with some relief and he reported he had a few days without flashbacks and a reduction in his nightmares. (JE 1, p. 40)

On May 20, 2019, Dr. Haganman documented he had seen Wood on April 27, 2019, he had recommended Wood be examined by psychiatry, and Wood’s attorney had requested a referral to the Mayo Clinic. (JE 1, p. 14)

Wood requested temporary benefit after his position with J-Bird ended. On June 7, 2019, the attorney for Winnebago sent Wood’s attorney a letter stating Winnebago had received Wood’s request for temporary total disability benefits and noting:

[i]t is our position that Mr. Wood remains at MMI and no authorized treating physician has taken him off work or indicated that he is no longer at MMI, therefore Winnebago asserts that no TTD is owed. Furthermore, Mr. Wood took himself out of driving voluntarily and his current work status note, that you provided, does not prohibit or restrict him from driving. We will reassess this once he has been seen at Mayo and once we receive the records from that appointment.

(Ex. C, p. 1)

During a telehealth appointment with Georgia on June 10, 2019, Wood reported he was having frequent nightmares and he was waking up sweating and fearful of falling back to sleep due to a desire to avoid the nightmares. (JE 1, p. 41) Wood relayed he

sees the accident all of the time and he had not driven a semi tractor trailer since his physician recommended he discontinue driving due to his reports of near accidents and not feeling safe. (JE 1, p. 41)

In June 2019, Wood applied for additional disability benefits from the Department of Veterans Affairs ("VA") for fallen arches in his feet based on a medical discharge from the Army. (Tr., p. 87) The VA increased Wood's service-connected disability rating from thirty percent to sixty percent. (Tr., p. 88; Ex. A, p. 3) Wood's disability payment increased from \$460.00 per month to \$1,253.00 per month. (Tr., p. 88; Ex. A, p. 3)

On July 9, 2019, Wood attended a telehealth appointment with Georgia reporting he had not been seen at Mayo Clinic or received a psychological evaluation necessary to pursue his workers' compensation claim. (JE 1, p. 42) The Mayo Clinic was unwilling to see Wood. (Ex. A, p. 17)

On August 1, 2019, Wood attended a telehealth appointment with Georgia reporting he had been practicing distraction and had experienced some success, noting he had taken a flying lesion and attended a concert with a friend and that he did "not see it" during those events but then "it came back and I could see all of it and feel like I did that day, having the oxygen mask on sitting in the ambulance." (JE 1, p. 43)

During a telehealth appointment with Georgia on August 22, 2019, Wood reported he was struggling to sleep, often only sleeping four to five hours per night or less. (JE 1, p. 44) Wood reported he did not have anything to do and he had not been able to find work. (JE 1, p. 44)

On September 5, 2019, Wood attended a telehealth appointment with Georgia, reporting he was struggling with sleep and flooding images of the event. (JE 1, p. 45) Wood continued to struggle and during an appointment with Georgia on September 30, 2019, he reported he was struggling with not working, feelings of frustration and worthlessness, his wife having to work overtime, and not being able to cover his expenses. (JE 1, p. 46) During an appointment on October 15, 2019, Wood expressed frustration about not being able to "get that guy out of my head" and his Trazadone did not seem to be helping. (JE 1, p. 47) Wood returned to Georgia for a telehealth appointment on November 3, 2019, reporting he was struggling with sleep, sleeping well one night and then not at all the next, and noting he was struggling with "getting that guy out of my head" on a daily, sometimes hourly basis. (JE 1, p. 48)

James Gallagher, M.D., a psychiatrist, conducted an independent psychiatric examination for Wood on November 7, 2019, and issued his report on December 4, 2019. (Ex. 1, p. 53) Dr. Gallagher reviewed Wood's medical records and examined him. (Ex. 1) Dr. Gallagher noted Wood is quite capable mechanically, noting he built his own home and was building another smaller home. (Ex. 1, p. 53) Dr. Gallagher opined Wood met the criteria for posttraumatic stress disorder and "probably a concurrent major depression," and he needed treatment. (Ex. 1, p. 59) Dr. Gallagher

prescribed doxazosin for nightmare suppression and Zoloft and recommended EMDR, a desensitization technique. (Ex. 1, p. 59)

Dr. Gallagher found the September 12, 2016 accident caused Wood to sustain a permanent impairment such that he cannot drive a semi. Dr. Gallagher opined Wood did not reach maximum medical improvement for the September 2016 work injury as of October 13, 2016 or October 24, 2016, noting Wood could not sustain the work. (Ex. 1, p. 60) Dr. Gallagher noted Wood required ordinary and necessary psychiatric medical care for the September 2016 work injury, and that he could not do his job safely, requiring his removal from the workforce. (Ex. 1, p. 60) Dr. Gallagher agreed to provide treatment to Wood. (Ex. 1, p. 60)

On December 20, 2019, Dr. Gallagher sent a supplemental opinion letter to Wood's attorney. (Ex. 1, p. 64) Dr. Gallagher noted Wood was doing much better noting his mood was better, he was sleeping better, and his nightmares had decreased. (Ex. 1, p. 64) Dr. Gallagher decreased Wood's Zoloft prescription due to a partial response, and continued trazadone and doxazosin, noting the doxazosin had been very helpful in eliminating Wood's nightmares almost entirely and turning them into ordinary dreams. (Ex. 1, p. 64) Dr. Gallagher noted Wood looked better and showed some signs of improvement when he talked about going fishing. (Ex. 1, p. 64) Dr. Gallagher documented Wood needed EMDR therapy and he would try to arrange for the therapy for him with Shannon Sandahl, LISW, in his office. (Ex. 1, p. 64)

Wood testified he has seen a flash of the accident "thousands of times" since it occurred. (Tr., p. 49) Wood reported it is better since he started seeing Dr. Gallagher and he now takes medication to help him sleep. (Tr., p. 49) Wood relayed, "before Dr. Gallagher, I would see a vivid picture of the guy falling. I could see in my mirror the body parts laying on the highway. I could see the guy wiping his car off." (Tr., p. 49) Wood reported in the past few months he has slept better after Dr. Gallagher prescribed doxazosin. (Tr., p. 91)

As referenced by Dr. Gallagher, Wood has mechanical skills. Wood tore down a house on his property. (Tr., p. 67; Ex. A, p. 19) Wood hooked a chain to the walls and pulled down the walls with a tractor. (Tr., p. 90) Wood acknowledged he has physical skills, but reported it took him the better part of a month to tear down the house, which is longer than it would have taken him to do the project before. (Tr., p. 67) Wood reported before the accident it would have taken him a week to tear down the home. (Ex. A, p. 21)

Wood used to fix cars by welding two halves together before the September 2016 accident. (Tr., p. 67; Ex. A, p. 18) Wood relayed after the accident he has no desire to work on cars any more, reporting "I don't care." (Tr., p. 67) The last time he worked on a vehicle was in 2014. (Tr., p. 89) He has not done any of that work since 2014. (Tr., p. 89; Ex. A, p. 18)

Wood enjoyed fishing before the September 2016 accident and reported he does not enjoy it as much as he used to. (Tr., p. 90) Wood acknowledged he had gone fishing within the past year and he had not decided if he would go fishing this year. (Tr., p. 90)

Wood testified he does not have problems driving under bridges as a passenger or when driving a motorcycle. (Tr., p. 91; Ex. A, p. 17) Wood has operated a motorcycle within the past year. (Tr., p. 91) Wood testified after he stopped driving his truck his symptoms improved. (Ex. A, p. 17) Wood relayed he still had flashbacks, but the issues he was having while driving are much less. (Ex. A, p. 17)

Thorson is the Woods' daughter. (Tr., p. 36) Thorson lives five to seven miles away from her parents and sees her father two to three days per week. (Tr., pp. 36, 43) She spends an entire evening with her father one day per week and a couple hours during her other visits. (Tr., p. 43) Thorson testified before September 12, 2016, her father was a "give-you-the shirt-off-your-back kind of guy. He'd do just about anything for anybody." (Tr., p. 36)

Thorson reported when she and her sisters saw their father after the accident he was "a very shaken man. Very broken, very – I can say I've actually seen my dad cry once prior to this event. And that was when his father had passed away." (Tr., p. 37) Thorson testified since the accident her father has not been the same. (Tr., p. 38) Thorson reported when she visits Wood is normally by himself watching television and not doing anything. (Tr., pp. 39-40) Thorson relayed at times her father looks a little better, but since the incident he has struggled and he is forgetful and not helpful like he used to be. (Tr., pp. 38-39) Thorson testified when she goes under an overpass with her father he will say "[t]hat's what he did. And, 'See that guy up there and just see what he's doing there?' Always pointing out those things that you and I wouldn't look for typically like somebody walking across the bridge above you." (Tr., p. 40)

Thorson admitted during the past summer Wood tore down a house on his property with help from others. (Tr., p. 41) Thorson acknowledged that is something he would do on a normal basis before and he remains physically capable of doing a lot of tasks. (Tr., p. 41) Thorson relayed her father lacks desire and motivation since the accident. (Tr., p. 41) There are days when he looks well and he enjoys fishing, but some of the desire to go do that is gone as well. (Tr., p. 42) Thorson testified her father's attention span is not as long as it used to be. (Tr., p. 42)

Deetz is also the Woods' daughter. (Tr., p. 101) Deetz lives in Charles City. (Tr., p. 101) Deetz reported before the September 2016 accident her father was "outgoing, very hard working, and [a] sociable guy." (Tr., p. 102) Deetz called her father the evening of the accident to see how he was doing and he was "very monotone and really kind of not himself. He was very short, did not want to explain anything." (Tr., p. 102) Deetz reported her father's behavior continued and he was "very to himself, secluded," nervous, and very distracted. (Tr., p. 103) Deetz reported sometimes her father does well with communication and other times she has seen him

“looking off into space and not really communicating with his family.” (Tr., p. 104) At the time of the hearing Deetz was spending four hours per week with her father. (Tr., p. 105)

Exhibit L contains video surveillance of Wood at his home, by a semi-tractor trailer, and driving a semi-tractor trailer in clips dated June 12, 2019, November 11, 2018, November 19, 2018, and November 12, 2018. Winnebago did not reference the video surveillance in its post-hearing brief. The video surveillance was not helpful in deciding any issue in this case.

CONCLUSIONS OF LAW

I. Applicable Law

This case involves several issues, including entitlement to temporary benefits, credits, alternate medical care, penalty benefits, recovery of the cost of an independent medical examination and other costs, and interest under Iowa Code sections 85.27, 85.33, 85.34, 85.39, 86.13, 86.40, and 535.3. In March 2017, the legislature enacted changes (hereinafter “Act”) relating to workers’ compensation in Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code section 85.33 and 85.34 apply to injuries occurring on or after the effective date of the Act. This case involves a work injury occurring before July 1, 2017, therefore, the provisions of the new statute involving temporary benefits do not apply to this case.

The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant’s Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is 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. The parties stipulated the interest rate as of July 1, 2017 was 2.57%.

II. Temporary Partial and Temporary Total Disability Benefits

Iowa Code section 85.33 (2016) governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

The purpose of temporary total disability benefits and healing period benefits is to “partially reimburse the employee for loss of earnings” during a period of recovery from the condition. Id. As a general rule, “temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition.” Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The appropriate type of benefit depends

on whether or not the employee has a permanent disability. Dunlap, 824 N.W.2d at 556. The parties stipulated the issue of permanency is not ripe for adjudication. Therefore, any temporary benefits Wood is entitled to are temporary total or temporary partial disability benefits. If it is later deemed Wood sustained a permanent mental health impairment caused by the work injury, the temporary benefits would be characterized as healing period benefits.

An employee has a temporary partial disability when because of the employee's medical condition, "it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, but is able to perform other work consistent with the employee's disability." Iowa Code § 85.33(2). Temporary partial disability benefits are payable, in lieu of temporary total disability and healing period benefits, due to the reduction in earning ability as a result of the employee's temporary partial disability, and "shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of injury." Id. Temporary total, temporary partial, and healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986); Stourac-Floyd v. MDF Endeavors, File No. 5053328 (App. Sept. 11, 2018); Stevens v. Eastern Star Masonic Home, File No. 5049776 (App. Dec. Mar. 14, 2018).

Iowa Code section 85.33(3) provides:

[i]f an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employee refuses to accept the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.

Thus, the statute precludes an employee who refuses suitable work offered by the employer, consistent with the employee's disability, from receiving temporary or healing period benefits during the period of refusal. Iowa Code § 85.33(3); Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 520 (Iowa 2012). The employer bears the burden of providing the affirmative defense. Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549, 559 (Iowa 2010). The issue of whether an employer has offered suitable work is ordinarily an issue for the trier of fact. Neal, 814 N.W.2d at 518. The Iowa Supreme Court has held under the express wording of the statute, the offered work must be

“‘suitable’ and ‘consistent with the employee’s disability’ before the employee’s refusal to accept such work will disqualify [the employee] from receiving temporary partial, temporary total, and healing period benefits.” Id. at 519.

A. Temporary Total Disability Benefits for September 14, 2016 through October 24, 2016

Wood alleges he is entitled to temporary total disability benefits for the period of September 14, 2016 through October 24, 2016. Wood did not return to work following the September 14, 2016 accident and he sought medical care. During this period of time Wood was restricted from working by Vold and receiving treatment from Vold and Froehner. (JE 1, p. 30) Froehner released Wood return to work, at his request on October 24, 2016, with a “gradual return” to work. (JE 1, p. 24) During this period Wood was entitled to temporary total disability benefits for his work injury at the stipulated weekly rate of \$767.91. According to the parties’ exhibits, and Wood’s testimony, Winnebago paid Wood five weeks of temporary total disability benefits at the rate of \$792.02 for this period, for a total of \$3,960.10. (Exs. 1, pp. 74-75; E, p. 2) No underpayment occurred for this period. Winnebago is entitled to a credit for the benefits paid.

B. Temporary Partial Disability Benefits for October 25, 2016 through June 17, 2017

Wood seeks temporary partial disability benefits from October 25, 2016 through June 17, 2017. Winnebago avers Wood is not entitled to temporary partial disability benefits during this period because he was not restricted from working and he returned to work.

Wood testified Winnebago accommodated Froehner’s recommendation that he return to work gradually. (Tr., p. 81) Wood reported he worked part-time and performed very local runs when he returned to work in October 2016. (Tr., pp. 51, 99) Wood relayed he returned to work full-time on or about January 22, 2017, but his duties were different. (Tr., pp. 56-57) Wood testified before the accident he would go out and pick up five or six stops throughout Elkhart and down into Goshen, Indiana, and after he returned to over-the-road trucking Winnebago sent him straight out and straight back. (Tr., p. 57) Wood reported when he returned to over-the-road trucking in January 2017, the routes were shorter and his pay was up to \$700.00 lower per week. (Tr., pp. 58-59, 80) As discussed above, I found Wood to be a credible witness at hearing. Winnebago did not call any witnesses at hearing to refute Wood’s testimony. Dr. Gallagher, the treating psychiatrist, also opined Wood did not reach maximum medical improvement for the September 2016 work injury as of October 13, 2016 or October 24, 2016, noting Wood could not sustain the work. (Ex. 1, p. 60) I find Wood did not reach maximum medical improvement as of October 13, 2016 or October 24, 2016.

The parties stipulated that at the time of the alleged injury Wood's average weekly earnings ("AWE") were \$1,236.98 per week. The payment log produced by Wood shows he received the following wages after returning to work:

Week	Check	Gross Pay (GP)
10/23/16-10/29/16	11/04/16	\$329.00
10/30/16-11/05/16	11/10/16	\$320.68
11/06/16-11/12/16	11/18/16	\$531.20
11/13/16-11/19/16	11/25/16	\$576.89
11/20/16-11/26/16	12/02/16	\$1,109.86
11/27/16-12/03/16	12/09/16	\$894.42
12/04/16-12/10/16	12/16/16	\$802.62
12/11/16-12/17/16	12/23/16	\$1,025.08
12/18/16-12/24/16	12/30/16	\$976.63
12/25/16-12/31/16	01/06/17	\$953.28
01/01/17-01/07/17	01/13/17	\$1,001.59
01/08/17-01/14/17	01/20/17	\$1,411.71
01/15/17-01/21/17	01/27/17	\$800.75
01/22/17-01/28/17	02/03/17	\$1,059.88
01/29/17-02/04/17	02/10/17	\$1,264.25
02/05/17-02/11/17	02/17/17	\$1,207.96
02/12/17-02/18/17	02/24/17	\$1,144.10
02/19/17-02/25/17	03/03/17	\$1,106.21
02/26/17-03/04/17	03/10/17	\$1,296.10
03/05/17-03/11/17	03/17/17	\$1,059.88
03/12/17-03/18/17	03/24/17	\$1,428.42
03/19/17-03/25/17	03/31/17	\$993.13
03/26/17-04/01/17	04/07/17	\$1,396.63
04/02/17-04/08/17	04/14/17	\$792.71
04/09/17-04/15/17	04/21/17	\$1,168.46
04/16/17-04/22/17	04/28/17	\$1,129.03
04/23/17-04/29/17	05/05/17	\$1,565.90
04/30/17-05/06/17	05/12/17	\$1,435.11
05/07/17-05/13/17	05/19/17	\$1,108.22
05/14/17-05/20/17	05/26/17	\$1,037.98
05/21/17-05/27/17	06/02/17	\$1,234.10
05/28/17-06/03/17	06/09/17	\$1,283.10
06/04/17-06/10/17	06/16/17	\$919.02
06/11/17-06/17/17	06/23/17	\$318.62

For the period of October 25, 2016 through January 21, 2017, Wood had one week where he earned more than his average gross earnings of \$1,236.98 at the time of the work injury. Under the statute,

[i]f an employee is entitled to temporary partial benefits under subsection 3 of this section [governing suitable work], the employer for whom the employee was working at the time of injury shall pay to the employee weekly compensation benefits, as provided in section 85.32, for and during the period of temporary partial disability. The temporary partial benefit shall be sixty-six and two-thirds percent of the difference between the employee's weekly earnings at the time of the injury, computed in compliance with section 85.36, and the employee's actual gross weekly income from employment during the period of temporary partial disability.

Iowa Code § 85.33(4). The parties stipulated Wood received \$1,236.98 in average weekly earnings ("AWE") at the time of the alleged injury. Wood is entitled to the following temporary partial disability ("TPD") amounts:

Week	Check	GP	AWE-GP	TPD Amount
10/23/16-10/29/16	11/04/16	\$329.00	\$907.98	\$605.32
10/30/16-11/05/16	11/10/16	\$320.68	\$916.30	\$610.87
11/06/16-11/12/16	11/18/16	\$531.20	\$705.78	\$470.52
11/13/16-11/19/16	11/25/16	\$576.89	\$660.09	\$440.06
11/20/16-11/26/16	12/02/16	\$1,109.86	\$127.12	\$84.75
11/27/16-12/03/16	12/09/16	\$894.42	\$342.56	\$228.37
12/04/16-12/10/16	12/16/16	\$802.62	\$434.36	\$289.57
12/11/16-12/17/16	12/23/16	\$1,025.08	\$211.90	\$141.27
12/18/16-12/24/16	12/30/16	\$976.63	\$260.35	\$173.57
12/25/16-12/31/16	01/06/17	\$953.28	\$283.70	\$189.13
01/01/17-01/07/17	01/13/17	\$1,001.59	\$235.39	\$156.93
01/08/17-01/14/17	01/20/17	\$1,411.71	\$0	\$0
01/15/17-01/21/17	01/27/17	\$800.75	\$436.23	\$290.82
Total TPD				\$3,681.18

Wood is entitled to \$3,681.18 in intermittent temporary partial disability benefits for the period of October 25, 2016 through January 21, 2017.

For the period of January 22, 2017 through June 17, 2017, Wood had seven weeks where he earned more than his average gross earnings of \$1,236.98 at the time of the work injury.

Week	Check	GP	AWE-GP	TPD Amount
01/22/17-01/28/17	02/03/17	\$1,059.88	\$177.10	\$118.07
01/29/17-02/04/17	02/10/17	\$1,264.25	\$0	\$0
02/05/17-02/11/17	02/17/17	\$1,207.96	\$29.02	\$19.35
02/12/17-02/18/17	02/24/17	\$1,144.10	\$92.88	\$61.92
02/19/17-02/25/17	03/03/17	\$1,106.21	\$130.77	\$87.18
02/26/17-03/04/17	03/10/17	\$1,296.10	\$0	\$0
03/05/17-03/11/17	03/17/17	\$1,059.88	\$177.10	\$118.07

03/12/17-03/18/17	03/24/17	\$1,428.42	\$0	\$0
03/19/17-03/25/17	03/31/17	\$993.13	\$243.85	\$162.57
03/26/17-04/01/17	04/07/17	\$1,396.63	\$0	\$0
04/02/17-04/08/17	04/14/17	\$792.71	\$444.27	\$296.18
04/09/17-04/15/17	04/21/17	\$1,168.46	\$68.52	\$45.68
04/16/17-04/22/17	04/28/17	\$1,129.03	\$107.95	\$71.97
04/23/17-04/29/17	05/05/17	\$1,565.90	\$0	\$0
04/30/17-05/06/17	05/12/17	\$1,435.11	\$0	\$0
05/07/17-05/13/17	05/19/17	\$1,108.22	\$128.76	\$85.84
05/14/17-05/20/17	05/26/17	\$1,037.98	\$199.00	\$132.67
05/21/17-05/27/17	06/02/17	\$1,234.10	\$2.88	\$1.92
05/28/17-06/03/17	06/09/17	\$1,283.10	\$0	\$0
06/04/17-06/10/17	06/16/17	\$919.02	\$317.96	\$211.97
06/11/17-06/17/17	06/23/17	\$318.62	\$918.36	\$612.24
Total TPD				\$2,031.23

Wood is entitled to \$2,031.23 in intermittent temporary partial disability benefits for the period of January 21, 2017 through June 17, 2017.

I find Wood is entitled to \$5,712.41 in intermittent temporary partial disability benefits after he returned to work in October 2016 through June 17, 2017. According to the parties' exhibits, Winnebago paid Wood \$3,388.94 in temporary benefits during this period. (Exs. 1, pp. 75-76; E, p. 1) Winnebago is entitled to a credit for the benefits paid. (Exs. 1, pp. 75-76; E, p. 1) Winnebago is entitled to a credit for the benefits paid.

C. Temporary Total Disability Benefits for June 18, 2017 through July 5, 2017

Wood alleges he is entitled to temporary total disability benefits from June 18, 2017 through July 5, 2017. Wood testified on June 12, 2017, Wood attended an appointment with Froehner, and told her his medication was causing him to become lightheaded and dizzy and he was feeling a pulsating feeling in his head because he tried to stop the medication. (Tr., p. 59) Froehner restricted Wood from working through June 28, 2017. (Tr., p. 60; JE 1, p. 26) Froehner later extended Wood's restriction from working through July 4, 2017, releasing him to return to work on July 5, 2017. (JE 1, p. 26) During the period of time Wood was restricted from working he was entitled to temporary total disability benefits.

Wood produced a payment log showing he received no wages from Winnebago for June 18, 2017 through June 24, 2017, June 25, 2017 through July 1, 2017, and July 2, 2017 through July 8, 2017. (Ex. 1, p. 72) Winnebago produced a payment log, showing it paid Wood \$792.02 in temporary total disability benefits on June 26, 2017, for the period of June 21, 2017 through June 27, 2017, and \$679.92 on July 4, 2017, for the period of June 29, 2017 through July 4, 2017, totaling \$1,471.94. (Ex. E, p. 2) Wood was restricted from working starting on June 18, 2017 through July 4, 2017.

During this period he was entitled to temporary total disability benefits. Winnebago did not pay Wood temporary total disability benefits for June 18, 2017 through June 20, 2017, or for July 5, 2017. Wood is entitled to temporary total disability benefits based on his stipulated rate for these days at the stipulated weekly rate of \$767.91.

Winnebago is entitled to a credit for the \$1,471.94 it paid in temporary total disability benefits for this period paid to Wood in June and July 2017. (Ex. E, p. 2)

D. Temporary Total Disability Benefits from April 27, 2019

Wood seeks a running award of temporary benefits from April 27, 2019. Winnebago contends Wood is not entitled to a running award of temporary benefits because he resigned from Winnebago, he worked for three employers after leaving Winnebago, and he voluntarily removed himself from trucking.

Winnebago asserts Wood voluntarily terminated his employment with Winnebago on July 5, 2017, relying on Exhibit G. Exhibit G contains a Change Notice for Wood, where Joss allegedly documented on June 29, 2017, Wood “called & quit 7/5/17” and he was terminated. (Ex. G, p. 1) Winnebago also produced an unsigned statement dated July 5, 2017, which provides “transfer from Colleen wanted to work in Charles City and Tim did not get back with him. Arlyn is not interested in the Forest City position so he voluntarily quit.” (Ex. G, p. 2) Wood reported he never received a letter stating he had been terminated. (Tr., p. 76) Wood testified he had not seen the documents and he did not quit. (Tr., p. 62) Wood denied Winnebago offered him a position in Forest City. (Tr., p. 98) Wood did not apply for unemployment compensation after he was terminated. (Tr., pp. 62-63) Winnebago did not call any witnesses at hearing to refute Wood’s testimony. As discussed above, I found Wood’s testimony to be reasonable and consistent with the other evidence I believe. I do not find Wood voluntarily terminated his employment with Winnebago, or that he refused suitable work offered by Winnebago under Iowa Code section 85.33(3).

Contrary to Winnebago’s assertion, Wood’s repeated, and unsuccessful attempts to return to work demonstrate Wood was motivated and he wanted his condition to improve. Unfortunately, it did not, and Dr. Haganman recommended Wood find another position and to turn in his CDL.

During his appointment with Dr. Haganman on April 27, 2019, Wood relayed he did not feel safe driving a truck, noting he had made errors in judgment and he had a sense of carelessness. (JE 1, p. 10) Dr. Haganman noted, “[h]e gave me an example of making a right hand turn in his truck, typically he has to be in the left lane to make a right hand turn because of the length of the vehicle, most recently he made a right hand turn out of the right lane driving his trailer partly in the ditch.” (JE 1, p. 10) Dr. Haganman documented, “[m]y recommendations would be for his current place of employment to find him a separate job for him to turn in his CDL, and if he chooses to have a CDL in the future that he will have to retest and start the process over” noting he had made a referral to psychiatry. (JE 1, p. 10) As noted previously, Dr. Gallagher opined Wood had not reached maximum medical improvement in October 2016. Dr.

Gallagher has also opined Wood could not do his job safely, requiring his removal from the workforce. (Ex. 1, p. 60) Wood testified inquired whether J-Bird had any alternative employment available and he was told no. (Tr., p. 84) I find Wood is entitled to a running award of temporary total disability benefits from April 27, 2019.

Wood contends he is entitled to a running award of temporary total disability benefits until Dr. Gallagher finds he has reached maximum medical improvement. Winnebago rejects his assertion.

Under the statute, an employer is required to pay temporary total disability benefits “until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, whichever occurs first.” Iowa Code § 85.33(1). The healing period also terminates when a claimant reaches maximum medical improvement. *Id.* § 85.34(1) The statute does not provide temporary disability benefits continue until a specific treating physician opines the claimant has reached maximum medical improvement. Temporary benefits continue until the claimant has returned to work or the claimant is medically capable of returning to employment substantially similar to the employment the claimant was engaged in at the time of the injury, whichever occurs first. Iowa Code § 85.33(1) The healing period ends when one of these two factors is satisfied or when it is medically indicated that significant improvement from the injury is not anticipated. Wood is entitled to a running award of temporary total disability benefits from April 27, 2019 at the stipulated weekly rate of \$767.91, until he returns to work, he is medically capable of returning to substantially similar employment he was engaged in at the time of his work injury, or until he reaches maximum medical improvement.

III. Credit

Winnebago alleged at hearing and in its post-hearing brief it paid Wood 18.429 weeks of benefits at the weekly rate of \$792.02. On the hearing report Winnebago averred the total credit it is entitled to is \$14,599.47. Wood contends Winnebago is not entitled to a credit in this amount and disputes the claimed credit.

18.429 weeks times \$792.02 equals \$14,596.14. Winnebago and Wood submitted exhibits showing the payments received. (Ex. 1, pp. 74-76; E, pp. 1-2) I find Wood’s records from September 20, 2016 through January 19, 2017, to be the most persuasive, supporting Winnebago paid Wood \$7,349.06 in benefits. (Ex. 1, pp. 74-76; Ex. E, pp. 1-2) Winnebago’s Exhibit E supports it paid Wood temporary benefits totaling \$1,471.54 in June and July 2017. (Ex. E, p. 2) The records support Winnebago paid Wood a total of \$8,821.00 in temporary partial and temporary total benefits. Winnebago is entitled to a credit for the benefits it paid Wood.

IV. Medical Bills and Alternate Medical Care

Wood alleges he is entitled to medical expenses set forth in pages 62 through 66 of Exhibit 1, for services performed by Dr. Gallagher. Winnebago refutes his assertion.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

Before Dr. Gallagher accepted Wood as a patient, he performed an independent psychiatric examination of Wood, at a total cost of \$3,825.00. (Ex. 1, pp. 53-63) The examination was not for treatment. I do not find Wood is entitled to recover the \$3,825.00 he paid to Dr. Gallagher for an independent psychiatric examination.

After Dr. Gallagher accepted Wood as a patient, Wood returned to Dr. Gallagher on December 20, 2019. (Ex. 1, pp. 64-67) The total cost of the appointment was \$420.00. I find the treatment was reasonable and beneficial to Wood and that Winnebago should be responsible for the cost of the treatment. Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 206; Brewer-Strong v. HNI Corp. 913 N.W.2d 235 (Iowa 2018).

While it was difficult to secure psychiatric care for Wood after he requested it, I do not find Winnebago abandoned care and that it is now furnishing reasonable care to Wood through Dr. Gallagher, the treating psychiatrist. I find Winnebago should retain the right to control Wood's care.

V. Penalty

Iowa Code section 86.13 governs compensation payments. Under the statute's plain language, if there is a delay in payment absent "a reasonable or probable cause or excuse," the employee is entitled to penalty benefits, of up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable

cause or excuse. Iowa Code § 86.13(4); see also Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996) (citing earlier version of the statute). “The application of the penalty provision does not turn on the length of the delay in making the correct compensation payment.” Robbennolt v. Snap-On Tools Corp., 555 N.W.2d 229, 236 (Iowa 1996). If a delay occurs without a reasonable excuse, the commissioner is required to award penalty benefits in some amount to the employee. Id.

The statute requires the employer or insurance company to conduct a “reasonable investigation and evaluation” into whether benefits are owed to the employee, the results of the investigation and evaluation must be the “actual basis” relied on by the employer or insurance company to deny, delay, or terminate benefits, and the employer or insurance company must contemporaneously convey the basis for the denial, delay, or termination of benefits to the employee at the time of the denial, delay, or termination of benefits. Iowa Code § 86.13(4). An employer may establish a “reasonable cause or excuse” if “the delay was necessary for the insurer to investigate the claim,” or if “the employer had a reasonable basis to contest the employee’s entitlement to benefits.” Christensen, 554 N.W.2d at 260. “A ‘reasonable basis’ for denial of the claim exists if the claim is ‘fairly debatable.’” Burton v. Hilltop Care Ctr., 813 N.W.2d 250, 267 (Iowa 2012). “Whether a claim is ‘fairly debatable’ can generally be determined by the court as a matter of law.” Id. The issue is whether the employer had a reasonable basis to believe no benefits were owed to the claimant. Id. “If there was no reasonable basis for the employer to have denied the employee’s benefits, then the court must ‘determine if the defendant knew, or should have known, that the basis for denying the employee’s claim was unreasonable.’” Id.

Benefits must be paid beginning on the eleventh day after the injury, and “each week thereafter during the period for which compensation is payable, and if not paid when due,” interest will be imposed. Iowa Code § 85.30. In Robbennolt, the Iowa Supreme Court noted, “[i]f the required weekly compensation is timely paid at the end of the compensation week, no interest will be imposed As an example, if Monday is the first day of the compensation week, full payment of the weekly compensation is due the following Monday.” Robbennolt, 555 N.W.2d at 235. A payment is “made” when the check addressed to the claimant is mailed, or personally delivered to the claimant. Meyers v. Holiday Express Corp., 557 N.W.2d 502, 505 (Iowa 1996) (abrogated by Keystone Nursing Care Ctr. v. Craddock, 705 N.W.2d 299 (Iowa 2005) (concluding the employer’s failure to explain to the claimant why it would not pay permanent benefits upon the termination of healing period benefits did not support the commissioner’s award of penalty benefits)).

When considering an award of penalty benefits, the commissioner considers “the length of the delay, the number of the delays, the information available to the employer regarding the employee’s injuries and wages, and the prior penalties imposed against the employer under section 86.13.” Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 336 (Iowa 2008). The purposes of the statute are to punish the employer and insurance company and to deter employers and insurance companies from delaying payments. Robbennolt, 555 N.W.2d at 237.

Winnebago underpaid temporary benefits due and owing to Wood, which is documented above. Winnebago also refused to pay Wood temporary total disability benefits when Dr. Haganman recommended Wood turn in his CDL. The first notice Winnebago provided in writing to Wood concerning benefits occurred on July 26, 2018 when Turner with EMC sent Wood a letter, enclosing a check for six days of temporary partial disability benefits for June 29, 2017 through July 4, 2017. (Ex. B, p. 1) Turner further advised Wood that since he voluntarily terminated his employment effective July 5, 2017, and given work was available to him no further benefits were owed to him going forward. (Ex. B, p. 1) The next correspondence Winnebago sent was on June 7, 2019, stating no temporary total disability benefits were owed given Wood allegedly remained at maximum medical improvement and purportedly took himself out of driving. I do not find Winnebago conducted an adequate investigation into Wood's claims in this case or that compensability was fairly debatable. I find a penalty of \$10,000.00 should be assessed against Winnebago to deter Winnebago and other employers and insurance carriers from engaging in similar conduct in the future.

VI. Costs

Wood seeks to recover the \$6.67 certified mail fee, \$1,500.00 prepayment for Dr. Gallagher's report, and \$2,325.00 for Dr. Gallagher's report. (Ex. 1, p. 79)

Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides

[c]osts 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.

I find under the rule, Wood is entitled to recover the \$6.67 certified mail fee.

Wood pre-paid Dr. Gallagher \$1,500.00 to perform an independent psychiatric examination. (Ex. 1, pp. 51-52) Wood paid Dr. Gallagher an additional \$2,325.00 for record review, clinical interview, psychological testing/consultation, and report preparation. (Ex. 1, pp. 62-63) The bills are not itemized. Dr. Gallagher's bills do not contain separate charges for his examination and the report. In the case of Des Moines Area Regional Transit Authority v. Young, the Iowa Supreme Court held:

[w]e conclude section 85.39 is the sole method for reimbursement of an examination by a physician of the employee's choosing and that the expense of the examination is not included in the cost of a report. Further, even if the examination and report were considered to be a single, indivisible fee, the commissioner erred in taxing it as a cost under administrative rule 876-4.33 because the section 86.40 discretion to tax costs is expressly limited by Iowa Code section 85.39.

867 N.W.2d 839, 846-47 (Iowa 2015). I conclude Wood is not entitled to recover the \$3,825.00 cost of Dr. Gallagher's independent psychiatric examination.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay the claimant temporary total disability benefits from September 14, 2016 through October 24, 2016, at the stipulated rate of seven hundred sixty-seven and 91/100 dollars (\$767.91) per week.

Defendant shall pay the claimant intermittent temporary partial disability benefits from October 25, 2016 through June 17, 2017, totaling five thousand seven hundred twelve and 41/100 dollars (\$5,712.41).

Defendant shall pay the claimant temporary total disability benefits from June 18, 2017 through July 5, 2017, at the stipulated rate of seven hundred sixty-seven and 91/100 dollars (\$767.91) per week.

Defendant shall pay the claimant a running award of temporary total disability benefits from April 27, 2019, at the stipulated rate of seven hundred sixty-seven and 91/100 dollars (\$767.91) per week until one of the requirements in Iowa Code sections 85.33(1) and 85.34(1) have been satisfied.

Defendant is entitled to a credit for all temporary benefits paid to Wood as set forth in this decision.

Defendant 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, which the parties have stipulated is 2.57 percent. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

Defendant shall pay the claimant ten thousand and 00/100 dollars (\$10,000.00) in penalty benefits.

Defendant shall reimburse the claimant four hundred twenty and 00/100 dollars (\$420.00) for the December 20, 2019 medical bill.

Defendant shall reimburse the claimant six and 67/100 dollars (\$6.67) for the certified mail fee.

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

Signed and filed this 15th day of May, 2020.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mark S. Soldat (via WCES)

Jason Wiltfang (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.