BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LEOPOLDO ZAVALA, Claimant, vs. TYSON FRESH MEATS, Employer, Self-Insured, Defendant.	File No. 5065944 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 2403, 2502
LEOPOLDO ZAVALA, Claimant, vs. TYSON FRESH MEATS, Employer, Self-Insured, Defendant.	File No. 5033035 R E V I E W R E O P E N I N G D E C I S I O N Head Note Nos.: 1803; 2502; 1702

STATEMENT OF THE CASE

Claimant, Leopoldo Zavala, filed petitions in arbitration and review-reopening seeking workers' compensation benefits from Tyson Fresh Meats, Inc., self-insured employer. This matter was heard in Des Moines, Iowa, on November 22, 2017, with a final submission date of January 10, 2018. The record in this case consists of Joint Exhibits 1 through 9, Claimant's Exhibits 1 through 12, Defendant's Exhibits A through F, and the testimony of claimant and Jeaneth Ibarra.

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.

ISSUES

Regarding File No.: 5033035 (Date of injury, September 10, 2009):

1. Whether claimant had a change in condition qualifying him for benefits under a review-reopening proceeding;

2. Whether claimant is due reimbursement for independent medical evaluations (IME) under Iowa Code section 85.39;

3. Costs.

Regarding File No.: 5065944 (Date of injury, July 28, 2016):

1. The extent of claimant's entitlement to permanent partial disability benefits;

2. Whether claimant is due reimbursement for an IME under Iowa Code section 85.39.

3. Whether apportionment under Iowa Code section 85.34(7)(b) is applicable.

FINDINGS OF FACT

Claimant was 64 years old at the time of hearing. Claimant completed two years of elementary school in Mexico. Claimant speaks English. He reads and writes a little Spanish. Claimant only knows enough English to greet people.

In 1985, claimant immigrated to the United States. From 1985 to 1998 claimant did agricultural work for fruit producers. Claimant began employment with defendant, Tyson in 1998.

On September 10, 2009, claimant fell at work on his right shoulder and neck. Claimant underwent a functional capacity evaluation (FCE), which limited claimant to a maximum lift of 20 pounds, 15 pounds occasionally, and 5 pounds frequently. Claimant underwent an IME with Jacqueline Stoken, D.O. Dr. Stoken found claimant had an 8 percent permanent impairment to the body as a whole for the right shoulder and a 5 percent permanent impairment to the body as a whole for the neck. Zavala v. Tyson Fresh Meats, File No. 5033035, p. 11 (Arb. April 10, 2012).

An April 10, 2012 arbitration decision adopted the findings of the FCE's and the opinions of Dr. Stoken. The arbitration decision found that claimant had a 60 percent industrial disability. In that decision, claimant was awarded benefits based on that finding of industrial disability plus 15 percent industrial disability for a June 1, 2002 date of injury. (Arb., pp. 15-18)

The April 9, 2013 appeal decision affirmed the arbitration decision.

Claimant was evaluated by William Andrews, M.D., on May 15, 2014. Claimant had pain in the neck radiating into the right shoulder. A cervical evaluation was recommended. (Joint Exhibit 3, pages 86-87)

Claimant was seen by Grant Shumaker, M.D., on June 20, 2014. Claimant was assessed as having an impingement syndrome in the right shoulder with a possible rotator cuff tear. An MRI of the right shoulder was recommended. (Jt. Ex. 3, p. 91)

On November 19, 2014, claimant underwent an MRI to the right shoulder. It showed a full thickness supraspinatus tear, a long head of the bicep tendon tear and AC joint arthrosis. (Jt. Ex. 3, p. 99)

On December 11, 2014, claimant was evaluated by Daniel Nelson, M.D. Surgery was discussed and chosen as a treatment option. (Jt. Ex. 3, p. 102)

In a June 12, 2015 letter, written by claimant's counsel, Dr. Nelson indicated he recommended claimant have right shoulder surgery. (Jt. Ex. 3, pp. 110-111)

On August 3, 2015, claimant was put on light duty by Ryan Meis, M.D. (Jt. Ex. 3, p. 119) Claimant testified he was on light duty for approximately one year. (Transcript pages 24-25)

On August 31, 2015, claimant underwent right shoulder surgery consisting of a semi-subacromial decompression with a distal clavicle excision. Dr. Meis noted that claimant's rotator tear was relatively large encompassing one of the four rotator cuff muscles. He noted that claimant was likely to have weakness with certain motions and potentially have a frozen shoulder. (Jt. Ex. 3, pp. 120-121)

On December 11, 2015, claimant saw Dr. Meis in follow up. Claimant indicated little improvement in his shoulder. Dr. Meis noted that claimant might have an irreparable rotator cuff tear and would take 6-12 months before claimant had maximum medical improvement (MMI). (Jt. Ex. 3, pp. 128-129)

Claimant returned to Dr. Meis on January 26, 2016 with complaints of right shoulder and neck pain. Dr. Meis noted that claimant did not have a stable rotator cuff, which probably contributed to his symptoms. He recommended an FCE. (Jt. Ex. 3, p. 130)

On March 3, 2016, claimant underwent an FCE performed by Marcus Witter, PT. Physical Therapist Witter found that claimant's test results were considered invalid. Physical Therapist Witter estimated claimant could work in the light to medium physical demand level. (Jt. Ex. 7)

On April 16, 2016, claimant underwent a second FCE with Daryle Short, PT. Physical Therapist Short found that claimant gave valid effort. Physical Therapist Short

found that claimant could lift 10 pounds occasionally and only occasionally engage in overhead work. (Cl. Ex. 3, pp. 22-26)

Claimant returned to Dr. Meis on May 3, 2016. Claimant had continued complaints of right shoulder pain. Dr. Meis gave claimant restrictions based upon the Witter FCE. Dr. Meis found claimant was at MMI. (Jt. Ex. 3, p. 133)

In June 2016, Tyson began to attempt to return claimant to his job in Final Trim. Claimant was doing the Final Trim job for 10-15 minutes every hour with the remaining hour doing light duty. (Tr. pp. 27-28)

On July 26, 2016, claimant was evaluated by Dr. Stoken for another IME. She found claimant had a 13 percent permanent impairment to the right shoulder. Dr. Stoken gave permanent restrictions based on the FCE from Physical Therapist Short. (Cl. Ex. 4, pp. 35-46) Dr. Stoken opined that there was a change in condition of claimant's right shoulder since she had evaluated him in May 2010, based on loss of range of motion and increased permanent impairment. She found that claimant had a 5 percent permanent impairment to the cervical spine. (Cl. Ex. 4, pp. 34-46)

On July 28, 2016, claimant tripped on a cord at work and fell on his right shoulder. (Tr. pp. 28-29)

On September 13, 2016, claimant returned to Dr. Meis. Claimant had continued pain in the right shoulder that had increased with activity. Claimant was given an injection and kept on light duty. (Jt. Ex. 3, pp. 140-141)

Claimant returned to Dr. Meis on October 28, 2016. Claimant was assessed as having persistent pain with an irreparable rotator cuff tear. Superior capsular reconstruction (SCR) surgery was recommended. (Jt. Ex. 3, pp. 143-144)

On January 16, 2017, claimant underwent a second right shoulder surgery performed by Dr. Meis. Surgery consisted of arthroscopic SCR. (Jt. Ex. 6, pp. 182-183)

Claimant testified he was off work following his second shoulder surgery for five months. (Tr. p. 32)

Claimant testified at hearing the second surgery helped a little with his symptoms, but that his shoulder was worse at the time of hearing than it was in 2011. (Tr. pp. 34-35)

Claimant returned to Dr. Meis in follow up in March, through June 2017. (Jt. Ex. 3, pp. 149-152) On June 19, 2017, Dr. Meis noted claimant had improvement, but still had pain with any kind of substantial activity. Dr. Meis ordered work hardening. (Jt. Ex. 3, p. 152)

Claimant testified when he returned to work, his supervisor told him to work in an inspector job. Claimant said the inspector position required him to watch meat fall into a

bin and to ensure that no bone, wood, plastic, or other foreign object went into the meat. (Tr. pp. 33-37)

Claimant returned to Dr. Meis on August 7, 2017. Claimant's shoulder pain had improved, but claimant still had daily right shoulder pain. Dr. Meis recommended another FCE to determine restrictions following the second surgery. Dr. Meis opined claimant had a 9 percent permanent impairment. He opined that he was uncertain why claimant had pain complaints. (Jt. Ex. 3, pp. 150-154)

On August 15, 2017, claimant had another IME with Dr. Stoken. Dr. Stoken found claimant had a 16 percent permanent impairment to the body as a whole for the right shoulder. She limited claimant to no repetitive reaching, pushing, or pulling, and rarely lifting 15 pounds. (Cl. Ex. 4, pp. 59-66)

On August 17, 2017, claimant underwent an FCE with Neal Wachholtz, P.T. Physical Therapist Wachholtz found that claimant gave valid effort in the FCE. Claimant was found to be able to carry 30 pounds occasionally and 15 pounds frequently at waist level or below. Claimant was limited to carrying up to 10 pounds occasionally at shoulder level. He found that claimant could work in the light to medium physical demand level. (Jt. Ex. 9)

In a September 8, 2017 letter, written by defendants counsel, Dr. Meis gave his opinions of claimant's condition. Dr. Meis agreed with the restrictions detailed in the August of 2017 FCE. Dr. Meis noted there was no objective findings to explain claimant's ongoing subjective complaints of pain. He indicated claimant no longer had a rotator cuff tear following surgery. He agreed claimant's rotator cuff condition had improved since the January 2017 surgery. (Jt. Ex. 3, p. 154a-154b)

Claimant testified he is earning more per hour than he made in 2011. (Tr. p. 46) He testified the inspector job is a full time position. He said the inspectors on other lines do the same kind of job that he does. (Tr. pp. 51-52) Claimant testified he does not believe he could return to work at any of his prior jobs given his limitations. (Tr. pp. 52-53)

Jeaneth Ibarra testified she is the human resource manager at the plant where claimant works. She testified claimant's job as an inspector is a full time position. She said it is a regular duty position. She said that Tyson has not made accommodations in order for claimant to do the job. (Tr. pp. 54-57)

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant has had a change of condition qualifying him for further benefits under a review-reopening proceeding.

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

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity. However, consideration must also be given to the injured workers' medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured worker's qualifications intellectually, emotionally and physically; the worker's earnings before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted; Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); 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).

Upon review-reopening, claimant has the burden to show a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability arising from an original injury is not sufficient to justify a different determination on a petition for review-reopening. Rather, claimant's condition must have worsened or deteriorated in a manner not contemplated at the time of the initial award or settlement before an award on review-reopening is appropriate. Bousfield v. Sisters of Mercy, 249 Iowa 64, 86 N.W.2d 109 (1957). A failure of a condition to improve to the extent anticipated originally may also constitute a change of condition. Meyers v. Holiday Inn of Cedar Falls, Iowa, 272 N.W.2d 24 (Iowa App. 1978).

In a review-reopening procedure, the claimant has the burden of proof to prove whether he has suffered an impairment of earning capacity proximately caused by the original injury. E.N.T. Associates v. Collentine, 525 N.W.2d 827, 829 (Iowa 1994).

The 2012 arbitration decision found claimant had a 60 percent industrial disability. Since that decision, claimant was kept on light duty for nearly a year in 2015. (Tr. pp. 24-25) Claimant underwent his first shoulder surgery on August 31, 2015. (Jt. Ex. 3, pp. 120-121) Claimant had two FCE's in March and April 2016. Both FCE's found that claimant could work in the light to medium physical demand category. (Jt. Ex. 7, pp. 184-186; Cl. Ex. 3, pp. 22-26)

Following his first surgery with Dr. Meis, claimant was assessed as having a irreparable rotator cuff tear. (Jt. Ex. 3, pp. 128-129) Claimant was eventually moved to an inspector job in June 2017. (Tr. pp. 33-34) The record indicates that the inspector job is a less physical demanding position than a Final Trim job that claimant had previously worked.

Claimant's unrebutted testimony is that he can no longer perform the Final Trim job that he had in 2011. The record suggests that other than the inspector job, claimant

is not able to perform most of his other prior jobs at Tyson. At the time of hearing, claimant continued to work at Tyson's as inspector.

Given this record, claimant has carried his burden of proof he sustained a change in his physical condition that impacts his earning capacity. Claimant is still employed with Tyson. He testified he makes more an hour in 2017 than he did in 2011. (Tr. p. 46) His unrebutted testimony is that he is no longer able to perform most of his other prior jobs at Tyson. Given this record, claimant has an additional 5 percent of industrial disability or loss of earning capacity related to the 2009 date of injury.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits for the July 28, 2016 date of injury.

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v.

Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Claimant sustained a fall at work on July 28, 2016. That fall eventually resulted in claimant undergoing a second shoulder surgery. (Jt. Ex. 6, p. 182) Following his second fall, claimant was again assessed as having an irreparable rotator cuff repair. (Jt. Ex. 3, pp. 143-144) Claimant underwent a second shoulder surgery on January 16, 2017. (Jt. Ex. 6, p. 182) Claimant was off work following that surgery for approximately five months. (Tr. p. 32) In July of 2017, claimant was put on the inspector job.

There is a dispute between the experts regarding whether claimant's second shoulder injury resulted in greater permanent restrictions and greater permanent impairment. Dr. Stoken found that claimant had a 16 percent permanent impairment to the body as a whole from the injury, compared with a 13 percent permanent impairment to the body as a whole from the 2016 IME. Dr. Stoken also found claimant's permanent restrictions increased. Claimant's permanent restrictions in the 2017 IME were a maximum lift of 15 pounds. This is compared to 20 pounds in the 2016 IME. (Ex. 4, pp. 59, 65-66)

Dr. Meis opined that claimant's right shoulder condition actually improved following the January 2017 surgery. (Jt. Ex. 3, pp. 154a-154b)

The record indicates claimant has worked at the Tyson's plant for nearly 20 years. His unrebutted testimony is the inspector job is one of the physically easiest jobs in the plant.

Claimant continues to work at Tyson's at the time of hearing. Claimant had a second surgery. The experts dispute whether the July of 2016 injury increased or decreased claimant's permanent impairment and permanent restrictions. The record indicates that following surgery, claimant was off work for nearly a half a year. Following the January 2017 surgery, claimant was put on the inspector job. The record indicates the inspector job is one of the physically easiest jobs in the plant. The record suggests that it is unlikely claimant could return to work to any of his other prior jobs at Tyson's. When all relevant factors are considered, it is found claimant has a 70 percent loss of earning capacity or industrial disability as a result of the July 28, 2016 fall at work.

The next issue to be determined is whether Iowa Code section 85.34(7)(b) is applicable.

Iowa Code section 85.34(7)(a) provides that "An employer is fully liable for compensating all of an employee's disability that arises out of and in the course of the employee's employment with the employer."

However, Iowa Code section 85.34(7)(b)(2) states:

> If ... an employer is liable to an employee for a combined disability that is payable under subsection 2, paragraph "u," and the employee has a preexisting disability that causes the employee's earnings to be less at the time of the present injury than if the prior injury had not occurred, the employer's liability for the combined disability shall be considered to be already partially satisfied to the extent of the percentage of disability for which the employee was previously compensated by the employer minus the percentage that the employee's earnings are less at the time of the present injury than if the prior injury had not occurred.

The legislative history relevant to the above statutory provision indicates, "The general assembly intends that an employer shall fully compensate all of an injured employee's disability that is caused by work-related injuries with the employer without compensating the same disability more than once." 15 Iowa Practice, Workers' Compensation, § 13.6, page 164 (2014-2015) (citation omitted).

In this case, defendants should fully compensate claimant for the entire disability caused by his shoulder injuries. However, defendants should only be required to compensate claimant for the disability resulting from the 2016 injury, under Iowa Code section 85.34(7)(b).

Claimant sustained a 70 percent industrial disability as a result of the original 2011 injury, the review-reopening of the 2011 injury, and the June 2016 injury. Claimant sustained a 65 percent industrial disability as a result of the review-reopening. Claimant sustained a 70 percent industrial disability as a result of the July of 2016 injury. As a result, defendants are only required to pay an additional 25 weeks of permanent partial disability benefits regarding File No. 5065944 (Date of injury, July 28, 2016).

The next issue to be determined is if defendants are liable for costs associated with claimant's IME's and FCE's.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need

not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Regarding the IME, the Iowa Supreme Court provided a literal interpretation of the plain-language of Iowa Code section 85.39, stating that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

Iowa Code section 85.39 limits an injured worker to one IME. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842 (Iowa 2009).

The Supreme Court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an independent medical examination (IME), a claimant can still be reimbursed at hearing the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847.

On August 4, 2016, Dr. Stoken issued an IME opinion following a July 26, 2016 examination concerning claimant's review-reopening claim. There is no evidence an employer-retained physician issued a rating of impairment prior to the August 4, 2016 report regarding the review-reopening. Based on this record, claimant is not due reimbursement for the August 4, 2016 IME from Dr. Stoken under Iowa Code section 85.39.

Exhibit 12, page 141 indicates Dr. Stoken charged $800.00 for the report for the August 4, 2016 IME. Defendants shall reimburse claimant $800.00 for the preparation of Dr. Stoken's August 4, 2016 report, under 876 IAC 4.33.

Regarding claimant's second injury, in an August 7, 2017 letter, Dr. Meis gave his opinions regarding claimant's permanent impairment. On September 8, 2017, Dr. Stoken issued a report regarding claimant's permanent impairment. Defendants are liable for the cost of Dr. Stoken's IME report dated September 8, 2017.

Rule 876 IAC 4.33 indicates, in relevant part:

> Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and

practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

Rule 4.33 allows for the taxation of reasonable costs associated with obtaining two reports of medical providers. The relevant inquiry with regard to taxation of the FCE costs in question is whether the FCE was required by a medical provider as necessary for the completion of a medical report. In this instance, if the FCE was ordered by a physician to evaluate claimant's permanent disability and need for restrictions, the cost is a reasonable cost under Rule 876 IAC 4.33. If it is not, taxation of costs of the FCE is inappropriate.

Dr. Stoken did not order the FCE's at issue. The FCE's do not fall under a reimbursable cost under Rule 876 IAC 4.33. Given this, claimant is not due reimbursement for the FCE's.

ORDER

THEREFORE, IT IS ORDERED:

Regarding File No. 5033035, (Date of injury September 10, 2009) – Review-Reopening Decision:

That defendants shall pay claimant an additional twenty-five (25) weeks of permanent partial disability benefits at the rate of four hundred eighty-six and 04/100 dollars ($486.04) commencing on June 20, 2017.

That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits as ordered above and set forth in Iowa Code section 85.30.

That defendants shall pay costs, including eight hundred and no/100 dollars ($800.00) for the preparation of Dr. Stoken's IME as detailed above.

Regarding File No. 5065944, (Date of injury July 28, 2016) – Arbitration Decision:

That defendants shall pay claimant three hundred fifty (350) weeks of permanent partial disability benefits at the rate of four hundred fifty-three and 86/100 dollars ($453.86) per week commencing on July 20, 2017.

That defendants shall receive a credit of three hundred twenty-five (325) weeks of permanent partial disability benefits paid under Iowa Code section 85.34(7)(b) as discussed above.

That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendants shall reimburse claimant for Dr. Stoken's IME of August 15, 2017 as detailed above.

That defendants shall pay costs.

Regarding both File Nos. 5033035 and 5065944:

That defendants shall file subsequent reports of injury as required by this agency under rule 876 IAC 3.1(2).

Signed and filed this 19th day of April, 2018.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

James C. Byrne
Attorney at Law
1441 – 29TH Street, Suite 111
West Des Moines, Iowa 50266
jbyrne@nbolawfirm.com

Timothy Clausen
Attorney at Law
Mayfair Center, Upper Level
4280 Sergeant Rd, Ste 290
Sioux City, IA 51106
clausen@klasslaw.com

JFC/kjw

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