BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JACOB AGNEW,	:	
Claimant,	:	File No. 5067383
vs.	:	
OWEN INDUSTRIES,	:	ARBITRATION DECISION
Employer,	:	
Insurance Carrier,	:	Head Note Nos: 1402.30, 2502, 2907
Defendant.	:	

STATEMENT OF THE CASE

Claimant, Jacob Agnew, filed a petition for arbitration against Owen Industries, a self-insured employer. This case came before the undersigned for an evidentiary hearing on August 17, 2021, via CourtCall.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 4, Claimant's Exhibits 1 through 8, and Defendant's Exhibits A through S. Claimant testified on his own behalf. Defendant called Ronald DeBord to testify. The evidentiary record closed at the conclusion of the evidentiary hearing on August 17, 2021.

Counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on September 24, 2021. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury on May 23, 2018, that arose out of and in the course of his employment;

2. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent partial disability benefits;

3. Claimant's average gross weekly earnings on the alleged date of injury and the corresponding weekly worker's compensation rate at which any benefits should be awarded; and

4. Costs.

FINDINGS OF FACT

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

Jacob Agnew alleges he sustained an injury to his left foot and ankle as a result of his work duties as a welder for Paxton & Vierling Steel, a division of Owen Industries, on May 23, 2018. On the date of injury, Mr. Agnew worked his regular shift from 3:00 PM until 12:00 AM. Towards the end of his shift, Mr. Agnew was walking around a beam when he stepped on a crack in the concrete floor, twisted his ankle, and stumbled forward. There were no witnesses to the alleged injury. (Hearing Transcript, pages 29-30; see Exhibit 3; Exhibit 4)

Claimant reported the injury to his lead, Rory Belmudez, shortly after it occurred on May 23, 2018. (Exhibit S, Deposition page 48; Hr. Tr., p. 30) At hearing, claimant insinuated that Mr. Belmudez did not want to report claimant's injury. (See Hr. Tr., p. 30) Claimant testified that Mr. Belmudez asked him if he was sure he wanted to report an injury. (Hr. Tr., p. 30) Claimant further testified that one week after the date of injury, Mr. Belmudez approached him and complained about having to report the injury. (Ex. S, Depo. p. 49) In any event, claimant completed an Employee Statement of Injury on May 30, 2018. (Ex. B, p. 2)

Despite formally reporting the injury on May 30, 2018, claimant did not request medical treatment until June 6, 2018. On June 6, 2018, claimant approached his supervisor, Roy Bunch, and requested medical treatment. Mr. Bunch subsequently drove claimant to Urgent Care clinic at Ortho Nebraska. (See Ex. S, Depo. p. 51)

Jeremy Vanicek, PA-C conducted the initial evaluation of claimant. (JE1, p. 3) Claimant described the alleged work injury and reported pain in his midfoot and lateral ankle. (JE1, p. 3) On examination, Mr. Vanicek noted minimal swelling over the lateral aspect of claimant's left ankle. (JE1, p. 4) Claimant's range of motion was limited in all planes. (Id.) Diagnostic imaging of the left foot and ankle revealed significant joint space narrowing of the talonavicular joint and what appeared to be some collapse of the navicular. (Id.) Mr. Vanicek diagnosed claimant with a left foot and ankle injury, a possible navicular fracture, and talonavicular osteoarthritis. (Id.) Mr. Vanicek restricted claimant from working and provided him with a CAM boot and crutches. (JE1, p. 5)

Orthopedic surgeon Michael Thompson, M.D., reviewed claimant's x-rays and ordered a CT scan of claimant's foot and ankle on June 7, 2018. (JE1, pp. 6-7) The CT scan confirmed a complete fracture of the navicular bone. (JE2, p. 19; see JE1, p. 11)

After reviewing the images, Dr. Thompson diagnosed claimant with a stress fracture of the left tarsal navicular, with degenerative changes at the talonavicular joint. (JE1, p. 11) Dr. Thompson opined that the stress fracture had "the appearance of a stress fracture which has been brewing for some time." (Id.) Given the degenerative changes on both sides of the joint, Dr. Thompson recommended surgical intervention consisting of a combination of ORIF of the navicular fracture, and a talonavicular arthrodesis. (Id.)

On June 13, 2018, defendant requested a causation opinion from Dr. Thompson. (See JE1, pp. 17-18; Ex. C, p. 3) Dr. Thompson explained that claimant's stress fracture did not result from an isolated injury at work. Rather, it had been developing for "at least many months" and "It has been going on long enough to create degenerative or arthritic changes focally at the site of the fracture with degenerative cysts on the talus side of the talonavicular joint." (Ex. C, p. 3)

On June 20, 2018, Dr. Thompson discussed his causation opinion with claimant. (JE1, p. 17) According to Dr. Thompson, claimant became very angry and insisted that his fracture occurred at a specific time and on a specific day while at work. (See JE1, p. 17) Dr. Thompson told claimant, "I don't doubt that he sensed the onset of pain at a specific time. Perhaps that was the completion of the developing stress fracture." (JE1, p. 17) Dr. Thompson concluded the conversation by suggesting claimant obtain a second opinion. (Id.)

Following Dr. Thompson's suggestion, Mr. Agnew presented to Nicholas Wegner, M.D. for a second opinion on July 9, 2018. (Ex. 1, p. 1) Claimant described a dull ache with the occasional sharp, stabbing, throbbing, and shooting pain. (Id.) During the interview portion of the examination, claimant stressed to Dr. Wegner that he did not have any pain in the left foot or ankle region prior to the alleged work injury. (Id.) He further reported that he was able to function at a high level without any significant difficulty prior to the date of injury. (Id.) During testing, claimant's left foot and ankle demonstrated decreased active range of motion. (Ex. 1, p. 3) After examining claimant and reviewing the diagnostic imaging, including the CT scan from Ortho Nebraska, Dr. Wegner assessed claimant with a stress fracture of the navicular and a sprain of the left ATFL. (Ex. 1, p. 4) Dr. Wegner explained,

> We explained that we think really two things are going on now. He has evidence of an old stress fracture of his navicular bone that is chronic in nature. We explained to him that the cystic changes and sclerosis present on imaging paint towards that chronic process. However, we also explained to Jacob that his twisting injury at work could have very likely aggravated the preexisting talonavicular arthritis that he has present as well as the preexisting stress fracture that he has present. In addition to that, we also think that he has sprained his left ATFL due to his injury at work in May.

(Id.) Claimant was fitted for an ankle brace and instructed to transition out of the CAM boot if his pain significantly improved over the next few weeks. (Id.) Dr. Wegner referred claimant to physical therapy and explained to claimant that if conservative

measures did not return him to his baseline status, surgical intervention for the navicular stress fracture was an option. (Id.)

After receiving the causation opinions of Dr. Thompson and Dr. Wegner, defendant accepted liability for the sprained ankle, but denied liability for the navicular stress fracture. (See Ex. K)

Claimant participated in physical therapy from July 13, 2018, to October 30, 2018. (JE4, pp. 47-84) During this time, claimant made significant improvements with respect to his ankle. (See JE3, pp. 22-23; JE4, p. 61) Unfortunately, claimant continued to experience pain and instability in his foot. (See JE4, p. 70) Dr. Wegner eventually recommended and performed a corticosteroid injection in the hopes that it would "really be able to calm down the aggravation he had from his previous stress fracture and likely arthritic changes." (JE3, pp. 30-32)

On September 11, 2018, claimant reported no pain to his physical therapist, despite going to the gym prior to his appointment. (JE4, p. 74) Claimant reported he felt, "pretty good overall except for soreness with activity in the front of the foot and over to the side of the foot and ankle at times." (Id.) Claimant further reported he was no longer wearing his boot. (JE4, p. 76)

On September 19, 2018, claimant reported to Dr. Wegner that his left ankle pain had "basically completely resolved" and he had only mild pain over the dorsal aspect of his foot. (JE3, p. 36) Dr. Wegner's physical exam supports claimant's statements. (See JE3, p. 38) According to Dr. Wegner's notes, claimant reported that he was ready to return to work. (JE3, p. 38) Dr. Wegner felt he had done a good job of treating the aggravation of claimant's talonavicular joint arthritis. He opined that claimant may still require some type of intervention in the future; however, he believed that the arthritis existed prior to claimant's date of injury. (Id.)

Dr. Wegner released claimant to return to full-duty work on September 24, 2018. (Id.) Claimant subsequently returned to the same position and paygrade he held prior to the May 23, 2018, work injury. (See Ex. K, p. 26; JE3, p. 41)

After working for approximately one month, claimant returned to physical therapy for a final evaluation. (See JE4, p. 82) Claimant reported he was doing okay walking on his ankle and tolerating work activities; however, he was still experiencing quite a bit of stiffness after work, and popping with stretching in the evenings. (JE4, p. 82) Claimant tolerated all measurements and demonstrated progress with regard to range of motion. (JE4, p. 83) However, the medical record also provides claimant was still lacking in strength throughout his left ankle. (Id.)

Dr. Wegner placed claimant at maximum medical improvement for the left ankle injury on October 24, 2018. (JE3, p. 43)

In a January 17, 2019, letter to claimant's counsel, Dr. Wegner diagnosed

claimant with a sprain of his ATFL and an aggravation of pre-existing talonavicular arthritis and navicular stress fracture. (Ex. 1, p. 6) Dr. Wegner assigned 13 percent foot impairment, or 9 percent lower extremity impairment, due to claimant's range of motion deficits. He did not place any permanent restrictions on claimant with respect to his left ankle. (Ex. 1, p. 7) Dr. Wegner opined that he did not anticipate claimant needing any additional medical treatment for the left ankle injury. (Id.) He did, however, note that the aggravation of talonavicular arthritis and navicular stress fracture may require treatment in the future. (Id.) Dr. Wegner further opined said underlying conditions were the result of a preexisting injury. (Id.)

Claimant did not present for any additional medical treatment related to his left foot and ankle until May 21, 2021, when he was seen by David Inda, M.D., to establish care. (Ex. 1, p. 8) Despite not seeking medical treatment for over 18 months, claimant reported daily pain and expressed his belief that he never returned to baseline following his work injury. (Id.; Ex. 1, p. 11) Dr. Inda obtained updated x-rays and a CT scan of claimant's left lower extremity. (See Ex. 2, p. 1) The CT revealed a nonunited comminuted fracture lateral navicular bone and degenerative changes in the talonavicular and navicular cuneiform joints. (Ex. 2, p. 1) He ultimately diagnosed claimant with talonavicular arthrosis left hindfoot. (Ex. 1, p. 10)

On June 1, 2021, Dr. Inda opined that the arthrosis in claimant's navicular and talonavicular joints had progressed over the past three years. (Ex. 1, p. 14) Dr. Inda discussed nonsurgical options with claimant and performed injections. (Id.; Ex. 1, p. 16)

Owen Industries initially accepted claimant's injury as compensable and voluntarily paid temporary disability benefits, medical benefits, and wages in lieu of compensation. (See Ex. K; Ex. O) However, the focus of this case shifted in February 2019, when an individual by the name of Jon Schoening ("Jon") contacted Owen Industries and reported that claimant did not injure his left foot and ankle at work. (See Ex. H, p. 18)

Defendant introduced text messages between Jon Schoening and Melissa Kallsen, a former Human Resources Manager with defendant. (Ex. H) The text messages are not dated. In the text messages, Jon told Ms. Kallsen that claimant admitted to a group of people that he actually injured his foot on May 22, 2018, one day "prior to him 'injuring' it at PVS." (Ex. H, p. 20) In addition to asserting claimant faked his work injury, Jon essentially reported that claimant was not following the restrictions set out by his treating physician. (Ex. H, p. 20) More specifically, Jon reported claimant was (1) not wearing his CAM boot; (2) loading and unloading his fishing boat into the back of his truck (3) walking over 150 yards to go fishing; and (4) working out at Anytime Fitness. (Id.)

Defendant also introduced a sworn affidavit from Jon Schoening. (Ex. I, p. 22) The affidavit revisits several of the statements Jon made in his text messages to Ms. Kallsen. Notably, the affidavit does not address Jon's initial claim that claimant faked his work injury. The affidavit only addresses the assertion that claimant was not

following the restrictions set out by his treating physician. (See id.)

According to the affidavit, claimant asked Jon for permission to use his land to access a levy for fishing on "three or four occasions" between May 2018 and August 2018. (Id.) The affidavit further provides that claimant would have to walk over 150 yards to access the levy in question. The affidavit infers, but does not expressly provide, that Jon witnessed claimant using his property in such a way. Jon asserts he did not observe claimant using a waking boot on these three or four occasions. (Id.) Lastly, the affidavit provides, "Between May 2018 and August 2018, I heard Jacob Agnew say he was going to Anytime Fitness in Glenwood, IA to lift weights for what he described as 'leg day.'" (Id.) Without additional information it is difficult to assign much weight to Jon's final statement. Without observing claimant at Anytime Fitness, Jon would not know whether claimant followed through with the planned "leg day" or if he even presented to Anytime Fitness at all. Additionally, the range of dates provided in the affidavit leaves open the possibility that claimant only told Jon that he was going to Anytime Fitness to complete "leg day" workouts prior to the date of injury. Perhaps most importantly, the affidavit does not specify how many times Jon heard claimant say he was going to Anytime Fitness to lift weights for what he described as "leg day."

Defendant did not call Jon as a witness at the evidentiary hearing. He was not subject to cross-examination. As such, the undersigned had no significant ability to assess the credibility of Jon Schoening.

Despite initiating the conversation with defendant, the evidentiary record does not support a finding that Jon had any firsthand knowledge of claimant's alleged fraudulent activities. For instance, in what appears to be his first message to Ms. Kallsen, Jon definitively asserts that he has information about an employee who faked his work injury. Despite this assertion, there is no evidence that Jon ever described a non-work-related injury to Ms. Kallsen. There is also no evidence that Jon ever explained how claimant faked his injury at work. Instead, Jon makes a number of statements about what other people reportedly knew. As an example, Jon told Ms. Kallsen that claimant admitted to a group of people that his foot was injured outside of work on May 22, 2018; however, when asked for the names of the individuals in the group, Jon did not provide his own name. (Ex. H, p. 21)

After receiving Jon's messages, defendant opened an investigation into claimant's alleged fraudulent activity. (See Ex. K) As part of its investigation, Ron DeBord, vice president of human resources, contacted Jon's younger brother, Chris Schoening ("Chris") "to determine whether he could substantiate any of what Mr. Jon Schoening told us." (Hr. Tr., p. 89; see Ex. K) At the time of the alleged injury, Chris was claimant's roommate and friend. (See Ex. S, Depo. pp. 53-55) This was no longer the case when Chris spoke with defendant.

After being interviewed by defendant, Chris was asked to provide a sworn affidavit. (See Ex. J) The February 26, 2019, affidavit provides:

> On or about May 22, 2018 or the morning of May 23, 2018, Jacob Agnew told me that he injured his left foot while squatting several hundred pounds at the gym. He also told me that he could not afford surgery or treatment, so he would have to say the injury occurred at work. He told me that he intended to report his left foot injury as being work-related, so that his employer, Owen Industries, would pay for his medical treatment.

(Ex. J, p. 24) The remainder of the affidavit confirms several of the assertions made by Jon Schoening. (Ex. J, pp. 24-25) Chris was later deposed as part of defendant's lawsuit against claimant for fraudulent misrepresentation and unjust enrichment. (Ex. 6; see Hr. Tr., p. 92)

Based solely on the allegations asserted by Jon and Chris Schoening, Owen Industries made the decision to terminate claimant's employment. (See Ex. K, p. 26) On April 5, 2019, Mr. DeBord met with claimant and provided him with a termination letter that outlined the allegations made against him by Jon and Chris Schoening. (See Ex. K, p. 26) According to Mr. DeBord, Owen Industries terminated claimant for (1) making a false report of injury; (2) exceeding his work restrictions; and (3) animal cruelty. (Hr. Tr., p. 96) At hearing, Mr. DeBord confirmed he did not interview claimant as part of his investigation. (Hr. Tr., p. 100)

Defendant similarly asserts there is ample evidence to corroborate the Schoenings' report that claimant injured his left ankle while performing squats of several hundred pounds at the gym. However, outside of a login sheet (Ex. M) showing claimant went to the gym on May 23, 2018, defendant's assertion that claimant injured his foot at Anytime Fitness is wholly dependent upon the credibility of Jon and Chris Schoening.

As previously alluded to, it is difficult to assign any weight to the affidavit of Jon Schoening. Jon Schoening possessed little to no firsthand knowledge of the allegations being made against claimant, his affidavit is largely unhelpful, and he was not deposed in this matter or called to be a witness at the evidentiary hearing. Therefore, I assign no weight to Jon Schoening's affidavit.

Mr. Agnew similarly challenges the credibility of Chris Schoening. Again, defendant did not call Chris as a witness to testify live at the evidentiary hearing. While Chris did provide testimony via deposition, the undersigned had no significant ability to assess his demeanor and credibility. (Ex. 6) As such, the undersigned assessed Chris' credibility by comparing his affidavit and deposition testimony to the evidentiary record as a whole.

As previously mentioned, Chris is a former roommate and friend of Mr. Agnew. (See Ex. S, Depo. pp. 53-55) Claimant lived with Chris from approximately December 2017 until sometime in November 2018. (Ex. J, p. 24; see Ex. 6, Depo. p. 15) The house currently belongs to the parents of Brandt Hopp, one of Chris' childhood friends. (See Ex. 6, Depo. pp. 14-15; Ex. S, Depo. p. 60)

There is some dispute as to why claimant moved out of the house in November 2018. According to the Schoening brothers, Chris kicked claimant out of his house because claimant strangled and beat his dog in front of Chris, his friend Nick Conn, and Nick's kids. (Ex. 6, Depo. pp. 51-52; see Ex. H, p. 19) Claimant denies these allegations and asserts he voluntarily moved out after a discussion with Chris about Chris not helping to pay bills escalated. (See Hr. Tr., p. 40; Ex. S, Depo. pp. 10, 54) The evidentiary record contains circumstantial and character evidence that would support both versions of events. (Ex. S, Depo. pp. 61-63; Ex. 6, Depo. pp. 11, 17-20) I find it likely the truth lies somewhere in the middle of these two assertions.

It is unknown whether the move was the first domino to fall, but it appears claimant's friendship with Chris rapidly deteriorated shortly thereafter. (See Hr. Tr., p. 42) According to Chris, "[O]nce I kicked Jake out, he went out for my ex-wife and ended up dating my ex-wife." (Ex. 6, Depo. p. 28) Claimant confirmed the same at hearing and at his deposition. (Hr. Tr., p. 42; Ex. S, Depo. p. 10) Claimant further asserts that Chris and his ex-wife were "in the middle of a custody battle" at the time, and his name "kept getting brought up" because he could speak to things he had witnessed as Chris' roommate. (Hr. Tr., p. 42; Ex. S, Depo. p. 10)

Claimant asserts that Chris has lied about everything in this case because he was intimate with Chris' ex-wife. (Ex. S, Depo. p. 62) Admittedly, the timing of the Schoening brothers' reporting is concerning. According to the evidentiary record, Chris kicked claimant out of his/Brandt's house in November 2018. (Ex. J, p. 24) Shortly thereafter, claimant started dating Chris' ex-wife. (See Ex. 6, Depo. p. 28; Ex. S, Depo. p. 10) Then, in February 2019, the Schoening brothers contacted defendant and reported that claimant faked his work injury. It could reasonably be argued that this timeline supports the revenge narrative asserted by claimant.

It should be noted that the parties dispute when Chris first learned of claimant's relationship with his ex-wife. Claimant testified that he started seeing Chris' ex-wife before Chris contacted the defendant. (Ex. S, Depo. pp. 10-11) Chris initially testified claimant started dating his ex-wife shortly after moving out of his house; however, he would later change his testimony and assert that the two started dating after he signed his affidavit for the employer. (Ex. 6, Depo. p. 52) After having his memory refreshed as to the date of his affidavit, Chris testified he could not remember whether claimant started dating his ex-wife before or after he signed the affidavit. (Ex. 6, Depo. pp. 53, 58)

Circumstantial evidence exists to suggest Chris knew of the relationship at the time he reached out to defendant. At his deposition, claimant testified that approximately one month prior to his date of termination, Chris' ex-wife showed him a text she had received from Chris asserting that claimant was going to lose his job. (See Ex. S, Depo. pp. 87, 91-92) ("And [he] was like, yeah, haha, he's about to lose his job.") I would typically discount such a statement as unreliable hearsay; however, Chris testified to sending a similar, seemingly spiteful, text to his ex-wife around this time.

(See Ex. 6, Depo. p. 28) At his deposition, Chris testified, "I'm pretty sure I texted her because her and Jake – once I kicked Jake out, he went out for my ex-wife and ended up dating my ex-wife." (Ex. 6, Depo. p. 28) He further testified to the contents of the text message: "I said have fun having your friend getting sued for 25- or $50,000, whatever it was." (Id.) Chris also described the very moment in which he learned that claimant was dating his ex-wife. (Ex. 6, Depo. p. 58) It is difficult to imagine Chris knew how, but not when, he learned of claimant's relationship with his ex-wife.

One shortcoming of claimant's argument is the fact that it was Jon, not Chris, that first reached out to defendant. With this information, it could be argued that Chris was not seeking revenge as he was only brought in to confirm the information Jon provided to defendant. That being said, it is not as though a completely neutral third party contacted defendant prior to Chris' involvement. Moreover, based on his limited knowledge of the situation, it is difficult to believe Jon contacted defendant on his own accord. To this end, Chris testified that he was unsure of whether Jon contacted the employer on his own accord. When asked if he told Jon to text defendant's representative, Chris replied, "I think he did it on his own accord […] I might have. I don't know. I might have asked him to get ahold of her so I could get ahold of her." (Ex. 6, Depo. p. 54)

While concerning, the timing of the Schoening brothers' communications alone does not render their testimony wholly untrustworthy.

Chris' deposition testimony does little to bolster his overall credibility as several of the statements made in his sworn affidavit did not hold up at deposition. For instance, Chris asserted in his affidavit that claimant "told me that he injured his left foot while squatting several hundred pounds at the gym." At deposition, Chris was asked whether claimant told him he was "lifting several hundred pounds" when he injured his foot. Chris replied, "He didn't tell me." (Ex. 6, Depo. p. 60) He was later definitively asked if claimant told him he was squatting hundreds of pounds at the gym. Chris replied, "No." (Ex. 6, Depo. p. 61)

Further, the affidavit provides that claimant told Chris "he could not afford surgery or treatment, so he would have to say the injury occurred at work. He told me he intended to report his left foot injury as being work-related, so that his employer, Owen Industries, would pay for his medical treatment." (Ex. J, p. 24) At his deposition, Chris revealed that it was actually his idea that claimant fabricate a story and tell his employer that the injury occurred at work. He testified that claimant was worried about what he was going to do for money given the fact that he would not be able to work with an injured foot. (See Ex. 6, Depo. pp. 29-31) He then testified, "I told him to figure it out because he needed to pay rent. You know, he needed to pay bills. I straight up told him to go to work and say you did it there." (Ex. 6, Depo. p. 29) While the statements in Chris' affidavit could still be true, they are, at the very least, misleading. Additionally, Chris' willingness to allegedly help claimant defraud his employer reflects poorly on his propensity for truthfulness and diminishes his overall credibility.

Claimant introduced screenshots of a conversation he had with Chris via text message that further diminishes Chris' credibility. (Ex. 5) Chris confirmed his participation in the text exchange during his deposition on November 16, 2020. (Ex. 6, Depo. p. 42)

It is important to note that the messages contained in Exhibit 5, pages 1 through 6, are out of order. When the messages are rearranged, it becomes clear the entire conversation took place on June 7, 2018. (See Ex. 5, p. 5) When properly rearranged, it is evident that claimant started taking screenshots of the June 7, 2018 conversation at 6:15 PM. He took the last screenshot one minute later at 6:16 PM. (Ex. 5, pp. 1, 5)

For transparency, it is notable that the string of text messages submitted into evidence clearly excludes the first screenshot claimant took of his conversations with Chris. More specifically, Exhibit 5 is missing printed page 4 of 7, or "4/7." (See Ex. 5, pp. 3-4) It appears the excluded screenshot was captured at 6:14 PM, and contained text messages exchanged between Thursday, May 24, 2018, and Sunday, May 27, 2018. (See Ex. 5, pp. 3-4) It is possible the exclusion of this screenshot was a strategic decision, as claimant e-mailed 7 pages of screenshots, but only submitted 6.

The screenshots detail the following conversation:

Jake (2:20 PM): I'm gunna get fucked on this ordeal

Chris (2:22 PM): Why do you think that?

Jake (2:23 PM): Cause he was saying it has been like that for a year it's a stress fracture or some shit. And that I can do light duty work and more than likely will have to get surgery. So I'm thinking pvs is gunna say work didn't cause it cause it's been like for awhile and I'm gunna get stuck paying for surgery out of pocket.

Chris (2:24 PM): That sounds fucked

Jake (2:25 PM): Paul jay i talked to him he said he talked to the doctor earlier today…

Chris (2:25 PM): I want to know how he can tell it's been broke for a year? You would have know if it was broken before

Jake (2:26 PM): He's an expert

Yeah ik. I wouldn't been limpin around for a fuckin year not 2 weeks

Chris (2:27 PM): Lawyer up.

Why would Paul Jay talk to your doctor? It's called patient doctor privacy

Jake (2:31 PM): No fucking idea

Dude i can't afford that shit

Chris (2:32 PM): It happened at work so I wouldn't worry about it.

Jake (2:34 PM): They're gunna say I'm lying or some shit. And that work didn't cause this injury….watch

Chris (2:35 PM): There are cameras everywhere at that place

Jake (2:35 PM): Yeah ik. But probably no footage ….ya knw

[…]

Jake (8:38 PM): So roy told me paul jay is trying to prove that it didn't happen here

Chris (8:45 PM): Wyd! That dude is a fuck

Jake (8:46 PM): Roy actually stood up for me

Chris (9:50 PM): Good. Paul Jay is a fuck

The above conversation is clearly detrimental to Chris' assertion that claimant faked his injury. Chris attempted to provide alternative explanations for his messages at his deposition. He first addressed the following exchange:

Chris (2:32 PM): It happened at work so I wouldn't worry about it.

Jake (2:34 PM): They're gunna say I'm lying or some shit. And that work didn't cause this injury….watch

Chris (2:35 PM): There are cameras everywhere at that place

Jake (2:35 PM): Yeah ik. But probably no footage ….ya knw

(See Ex. 6, Depo. p. 44) According to Chris, by stating, "There are cameras everywhere at that place" he was giving claimant advice; telling claimant he should trip or have something fall on his foot, that way there would be video evidence of a work injury. (See Ex. 6, Depo. p. 44) Such an explanation would only make sense if the alleged injury had not yet occurred when the text messages were sent. With the

knowledge that the text conversation in question occurred on June 7, 2018, and that claimant's response indicates the two were discussing an injury that had already occurred, the undersigned is confident in concluding this alternative explanation is not credible.

Chris next asserted that the text exchange was intended to serve as a paper trail for claimant. (Ex. S, Depo. p. 46) Such an assertion strains credulity and contradicts Chris' initial explanation. Chris' initial explanation, if accepted as true, would support a finding that claimant faked his injury. Conversely, in order for the text exchange to serve as a paper trail, the conversation would need to support claimant's assertion that he sustained an injury at work. Chris' first and second explanations cannot both be true. Additionally, it is notable that the conversation occurred on June 7, 2018, as this was the date of claimant's first appointment with Dr. Thompson, where he was diagnosed with a stress fracture. (JE1, p. 6) Claimant relayed said diagnosis and his frustrations regarding the same to Chris shortly after the appointment concluded. While possible, it is unlikely claimant would learn of his diagnosis and immediately scheme up a plan to leave a paper trail. Again, I find the above text exchange is detrimental to Chris' overall credibility.

Defendant attempts to mitigate Chris' credibility issues by pointing out that claimant listed Chris as a reference on his application for employment with Owen Industries. (Ex. F) I do not find this argument to be particularly convincing. By listing Chris as a reference, claimant was not declaring that Chris was, or always would be, a credible individual. At the time, Chris and claimant were friends, Chris worked at Owen Industries, and, having previously worked with claimant, Chris could speak to claimant's competency as a welder. Listing Chris as a reference was a declaration, limited in scope, that Chris could speak to claimant's competency with respect to the position for which claimant was applying.

Defendant similarly challenges Mr. Agnew's credibility. Defendant first asserts that claimant has been inconsistent when describing how he was injured on May 23, 2018. I do not reach the same conclusion. The May 30, 2018, Employee Statement of Injury described the injury as:

> I was in area F32 cleaning welds and didn't see hole/crack in floor next to skid. My foot caught in crack and twisted weird while walking around beam.

(Exhibit B, page 2) Claimant further provided that the cause of the accident was, "Foot getting caught in crack/tripping." (Id.) Defendant asserts claimant described a new mechanism of injury when he presented to his physician's assistant and reported that he stepped in a hole and inverted his ankle. (JE1, p. 3) The undersigned fails to see how stepping in a hole and inverting an ankle is a significantly different description when compared to claimant stating his foot got caught in a hole/crack and twisted. Defendant further asserts claimant changed his story when he told his physical therapist that he "caught his work boot in one of these holes and ended up twisting his ankle." (JE4, p. 47) Again, I fail to see how a description of the footwear claimant was wearing, as

opposed to just referencing his foot, qualifies as a significant deviation from the original description. Lastly, defendant asserts that claimant provided inconsistent testimony about whether he tripped or fell as part of the work injury. According to defendant, claimant definitively testified at his deposition that he did not trip. While it is true that claimant initially answered, "No" when asked if he tripped, defendant's assertion leaves out the fact that his very next statement was, "I stumbled forward, yes." (Ex. S, Depo. p. 45) At hearing, claimant clarified that he was confused by how defendant was wording the question. (See Hr. Tr., p. 51) In the instant case, it was not unreasonable for Mr. Agnew to use trip, fall, or stumble interchangeably. I find claimant's testimony describing how the work injury occurred is consistent with the contemporaneous medical records.

Defendant next highlights the fact there were no witnesses to the alleged workplace injury. Ironically, defendant also asserts claimant sustained foot and ankle injuries at Anytime Fitness, but offers no witnesses to the alleged non-work-related injury. While it is true there were no witnesses to claimant's injury, this fact alone does not make claimant's claim any more or less credible. This agency routinely hears cases involving unwitnessed injuries. Additionally, claimant has repeatedly testified that he reported the injury to Rory Belmudez immediately after it occurred. Defendant did not call Mr. Belmudez or otherwise dispute claimant's testimony. It is also worth noting that claimant's injury occurred toward the end of his shift. Defendant did not call any witnesses, or produce any video evidence, that claimant appeared injured while working between 3:00 p.m. and 11:45 p.m. on May 23, 2018.

Defendant next takes issue with claimant's repeated assertions that he was nervous about his workers' compensation case. Defendant maintains that claimant would have no need to be anxious unless he was being dishonest about his work injury. I do not find defendant's argument convincing. There are a number of alternative explanations as to why claimant would appear nervous. As highlighted in the text conversation above, claimant was reasonably concerned that defendant would deny liability for his work injury given Dr. Thompson's opinion on causation. (See Ex. 5) His concern would prove to be valid when his safety director – someone claimant could reasonably assume had the ability to influence the compensability of his claim – asserted that the injury occurred outside of the workplace. Additionally, filing for workers' compensation benefits alone can be a stressful endeavor for injured workers, particularly for those individuals unfamiliar with the process.

Defendant also discussed a number of relatively insignificant instances in which claimant provided inconsistent testimony to questions involving whether he had ever played volleyball at a bar, whether he had ever smoked marijuana, and whether he was ever best friends, friends, or simply acquaintances with Jon Schoening. I am not concerned with the trivial statements highlighted by defendant as they have little to no impact on claimant's propensity for truthfulness.

I similarly assign no weight to the Unemployment Insurance Decision denying benefits to claimant for dishonesty in connection with his work. (Ex. L) These initial

unemployment decisions are limited in scope, based on limited information, and are not binding on this Agency. Moreover, these initial decisions do not indicate whether the claimant even participated in the fact-finding interview. (Id.)

Defendant next detailed how claimant failed to produce relevant evidence in this matter, including photos and video recordings, in his possession. (Hr. Tr., pp. 52-56) Claimant's failure to disclose is concerning to the undersigned, and certainly detracts from his overall credibility.

The undersigned is also concerned with claimant's testimony regarding his termination. When notified that he was being terminated due to allegations that he faked his injury and abused his dog, claimant did not dispute either of the allegations. According to claimant, he simply said, "okay." (Ex. S, Depo. pp. 86-87, 88) It cannot be said that claimant failed to respond to the allegations because he was caught off guard. As previously mentioned, claimant testified that approximately one month prior to his termination, Chris' ex-wife showed him a text she had received from Chris asserting claimant was going to lose his job. (See Ex. S, Depo. pp. 87, 91-92) Claimant also testified that he told "Seth," a co-worker, that Chris was going to lie to Human Resources to try to get him fired. (Ex. S, Depo. p. 87) According to claimant, Seth made the reasonable recommendation that he should talk to HR about his concerns. (Id.) Claimant chose not to act in the month leading up to his termination because he "had faith in HR." (Id.) Claimant could have been caught off guard about what Chris told the employer, but he was at least aware of the fact Chris was attempting to get him fired.

While I do not find either Chris or claimant to be particularly credible individuals, I nevertheless find claimant's version of events to be significantly more credible than Chris' assertions regarding the same. This is not to say claimant is an entirely credible witness; however, I ultimately find that claimant's testimony on matters material to his case were generally credible.

From the beginning, claimant consistently reported that he sustained an injury to his foot and ankle when he stepped in a hole/crack and twisted his ankle at work on May 23, 2018. While claimant's actions in exceeding his temporary restrictions were ill advised, no physician has opined that claimant's actions caused or significantly worsened his work-related injury. Additionally, no physician has opined that the completion of claimant's stress fracture or his sprained ankle could result from squatting several hundred pounds. Conversely, Dr. Wegner has definitively opined that claimant sustained a permanent left ankle injury as a result of the May 23, 2018, work injury. Moreover, Dr. Thompson and Dr. Wegner seemingly agree that claimant aggravated his preexisting talonavicular arthritis and preexisting stress fracture as a result of his work injury on May 23, 2018.

In total, two physicians have provided causation opinions in this matter. Dr. Thompson examined claimant and reviewed diagnostic imaging of claimant's left foot and ankle. Ultimately, Dr. Thompson diagnosed claimant with a stress fracture of the

left tarsal navicular, with degenerative changes at the talonavicular joint. (JE1, p. 11) Dr. Thompson opined that claimant's stress fracture did not result from an isolated injury at work. Rather, it had been developing for "at least many months" and had been "going on long enough to create degenerative or arthritic changes focally at the site of the fracture with degenerative cysts on the talus side of the talonavicular joint." (Ex. C, p. 3)

Dr. Wegner agreed with Dr. Thompson's diagnosis, but added that claimant also sustained a sprained ankle on the date of injury. (JE1, p. 4) Like Dr. Thompson, Dr. Wegner opined that the twisting injury at work, "could have very likely" aggravated the pre-existing talonavicular arthritis and pre-existing stress fracture. (Id.) In a January 17, 2019, letter to claimant's counsel, Dr. Wegner confirmed that claimant sustained a sprain of his ATFL and sustained an aggravation of preexisting talonavicular arthritis and navicular stress fracture. (Ex. 1, p. 6) Dr. Wegner assigned 13 percent foot impairment, or 9 percent lower extremity impairment, for claimant's range of motion deficits, and opined he would not place any permanent restrictions on claimant with respect to his left ankle. (Ex. 1, p. 7) Dr. Wegner opined that he did not anticipate the need for any additional medical treatment for the left ankle injury. (Id.) He did, however, note that the aggravation of talonavicular arthritis and navicular stress fracture may require treatment in the future. (Id.)

Importantly, neither physician expressed an opinion that the May 23, 2018, work injury materially and permanently aggravated claimant's preexisting talonavicular arthritis and navicular stress fracture. Dr. Thompson, "acknowledged that that event at work may have precipitated pain emanating from this chronic stress fracture nonunion affecting his talonavicular joint." He also told claimant, "I don't doubt that he sensed the onset of pain at a specific time. Perhaps that was the completion of the developing stress fracture." (JE1, p. 17) Nevertheless, it cannot be said that either of these statements amount to Dr. Thompson expressing an opinion to a reasonable degree of medical certainty.

Dr. Wegner opined that claimant "sustained an aggravation of preexisting talonavicular arthritis as well as a navicular stress fracture." (Ex. 1, p. 6) Dr. Wegner did not clarify whether the aggravation was temporary or permanent in nature. He did not assign a permanent impairment rating or permanent restrictions relating to the aggravation of the preexisting talonavicular arthritis and navicular stress fracture. He also provided that claimant's talonavicular joint condition returned to baseline following the cortisone injection claimant received in August, 2018. (Ex. 1, p. 7) The evidentiary record as a whole supports a finding that Dr. Wegner considered claimant's aggravation to be temporary in nature.

Further, even if the undersigned found Dr. Wegner's opinions amounted to a finding of permanent aggravation, no physician assigned a permanent impairment rating to the aggravated talonavicular arthritis or navicular stress fracture. Dr. Wegner only assigned permanent impairment to claimant's ankle and hindfoot, which would not include the talonavicular arthritis or navicular stress fracture.

In his brief, claimant asserts that Dr. Inda also related claimant's injuries to the circumstances that occurred at Owen Industries on May 23, 2018. I do not reach the same conclusion. Dr. Inda offered no causation opinions in this case.

When considering the medical opinions in this case, I note the opinions of Dr. Thompson and Dr. Wegner are largely consistent with one another. Nevertheless, I find the opinions offered by Dr. Wegner to be most credible and convincing in this record. Dr. Wegner was claimant's treating physician and had the advantage of examining claimant on multiple occasions. His opinions compliment and expand upon Dr. Thompson's initial findings. Therefore, I accept the opinions of Dr. Wegner.

Having accepted claimant's testimony regarding the work injury as credible, and having accepted the expert medical opinions of Dr. Wegner with respect to causation and permanency, I find that claimant carried his burden of proving he sustained a left ankle injury arising out of and in the course of his employment on May 23, 2018. While there is evidence to suggest claimant sustained an aggravation of his preexisting talonavicular arthritis and navicular stress fracture, I cannot find that claimant permanently or materially aggravated the same without relying on experience and/or agency precedent. As such, I find that claimant has failed to prove he sustained a permanent aggravation of his preexisting talonavicular arthritis and navicular stress fracture.

Dr. Wegner is the only physician to offer an opinion as to claimant's level of permanent impairment. Utilizing claimant's range of motion measurements and the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Wegner assigned 13 percent left foot impairment, or 9 percent left lower extremity impairment. (Ex. 1, p. 7) On the Hearing Report, the parties stipulated that if the injury was found to be a cause of permanent disability, the disability is a scheduled member disability to the left foot. I accept the impairment rating of Dr. Wegner and find claimant sustained 13 percent left foot impairment as a result of the May 23, 2018, work injury.

Claimant asserts an average weekly wage of $768.54, while defendant asserts an average weekly wage of $748.61. The parties did not submit claimant's wage records into the evidentiary record. It appears the parties dispute whether wages earned during the pay period ending on April 7, 2018, fairly reflect claimant's customary earnings and should be included in the calculation of gross weekly wages. Claimant's exhibit does not provide what claimant received for pay the week of April 7, 2018. Instead, it is simply labeled, "Short Week." (Ex. 7) The exhibit notes that claimant received $1,390.62 for "Bonus or Other Pay" during the April 7, 2018, pay period. (Id.) Interestingly, despite noting the pay period ending on April 7, 2018, included a "Short Week" and was therefore unrepresentative, claimant still included the $1,390.62 of "Bonus or Other Pay", as well as the wages from the proposed alternative pay period ending January 27, 2018, in his rate calculation. Claimant did not address the inclusion of the $1,390.62 in his post-hearing brief. Claimant similarly did not address whether the $1,390.62 was a bonus or why it should be included in the rate calculation. Without

additional information, it is difficult to accept claimant's rate calculation.

Defendant's exhibit provides claimant received a total of $2,380.62 for the pay period ending on April 7, 2018. (Ex. P) Presumably, this means claimant's regular earnings totaled $990.00. Again, it is unclear whether the $1,390.62 was vacation pay, holiday pay, or a bonus. If, for the sake of argument, it is a bonus, there is no indication whether the bonus was regular or irregular. Given this lack of information, the fact claimant's wage records were not submitted into evidence for the undersigned to accurately calculate claimant's average weekly wage, and an insufficient explanation as to why the pay period ending April 7, 2018, should be excluded, I accept defendant's calculation as an accurate representation of claimant's average weekly wage.

Defendant paid claimant $2,289.44 in wages paid in lieu of compensation and $4,686.69 in healing period benefits. (Hearing Report)

Claimant was successful in his workers' compensation claim. Costs will be addressed in the Conclusions of Law section.

CONCLUSIONS OF LAW

The initial disputed issue is whether claimant carried his burden of proving he sustained an injury arising out of and in the course of his employment with defendant on May 23, 2018.

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" refer 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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Having found he possessed little to no firsthand knowledge to support the assertions he was making, I rejected the affidavit of Jon Schoening. Having found inconsistencies between his deposition testimony and the evidentiary record, I similarly rejected the testimony of Chris Schoening. While I did not find claimant to be a particularly credible witness overall, his testimony regarding the alleged work injury is consistent with the contemporaneous medical records. Following a review of the evidentiary record, I ultimately found that claimant proved he sustained a work injury on May 23, 2018. Therefore, I conclude that claimant carried his burden of proof to establish a compensable work injury on May 23, 2018.

Having accepted the medical opinions of Dr. Wegner as most convincing in the evidentiary record, I also found that claimant proved a causal connection between his claim of permanent disability and the May 23, 2018, work injury. Having found claimant failed to prove he sustained a permanent aggravation of his preexisting talonavicular arthritis and navicular stress fracture, claimant's permanent disability is limited to the left ankle.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or for loss of earning capacity under section 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502

N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American Medical Association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity. Iowa Code section 85.34(2)(x)

On the Hearing Report, the parties stipulated that if the injury was found to be a cause of permanent disability, the disability is a scheduled member disability to the left foot. Having found the 13 percent impairment rating offered by Dr. Wegner to be most accurate and convincing, I conclude that claimant is entitled to an award of permanent partial disability benefits equivalent to 13 percent of the left foot.

The Iowa legislature has established a 150-week schedule for foot injuries. Iowa Code section 85.34(2)(o). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of his foot. Iowa Code section 85.34(2)(w). Thirteen percent of 150 weeks is 19.5 weeks. Claimant is, therefore, entitled to an award of 19.5 weeks of permanent partial disability benefits against defendant. Iowa Code section 85.34(o), (w).

The next issue for consideration is Mr. Agnew's compensation rate. Neither party specified which Iowa Code subsection they used in determining claimant's average weekly wage. However, it is apparent both parties utilized Iowa Code section 85.36(6).

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Iowa Code section 85.36(6). In calculating gross weekly earnings over the previous 13 weeks, weeks should be excluded from the calculation which are not representative of hours typically or customarily worked during a typical or customary full week of work, not whether a particular absence from work was anticipated. Exclusion of weeks during an expected plant shutdown was appropriate. Jacobson Transp. Co. v. Harris, 778 N.W.2d 192 (Iowa 2010); Griffin Pipe Products Co. v. Guarino, 663 N.W.2d 862 (Iowa 2003).

The parties did not submit claimant's wage records. As such, I could not determine the typical, representative week for claimant. Given this finding, I cannot exclude any pay periods as unrepresentative. Claimant offered no explanation with respect to the "Bonus or Other Pay" included in his rate calculation. Claimant offered no evidence on the potential bonus other than including it in his calculation. Claimant bears the burden of proof to show why a bonus should be utilized in the calculation of

his rate. He failed to meet that burden. This finding resulted in the acceptance of defendant's rate calculation as most accurate.

Defendant's average gross weekly earnings of $748.61 yields a weekly compensation rate of $459.54 according to the published Workers' Compensation Manual for a date of injury on May 23, 2018. Permanent Partial Disability benefits shall be paid at this rate.

Finally, Mr. Agnew seeks an award of costs. Claimant seeks the costs of his filing fee and the cost of Dr. Wegner's January 17, 2019, medical report. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. Claimant brought a successful petition in arbitration. I conclude it is appropriate to assess costs in some amount.

The cost of the filing fee is appropriate and assessed pursuant to 876 IAC 4.33(7).

Agency rule 4.33(6) permits the assessment of the reasonable costs of "obtaining no more than two doctors' or practitioners' reports." Exhibit 8 provides that Dr. Wegner charged $600.00 for his report. Exercising my discretion, I conclude that it is appropriate to assess the costs associated with Dr. Wegner's report pursuant to 876 IAC 4.33(6).

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay claimant nineteen point five (19.5) weeks of permanent partial disability benefits commencing on October 24, 2018, at the weekly rate of four hundred fifty-nine and 54/100 dollars ($459.54).

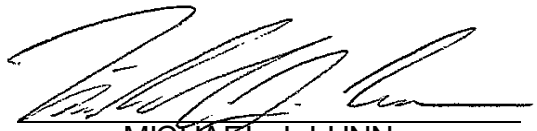
Defendant shall be entitled to credit for all weekly benefits paid to date.

Defendant shall pay accrued weekly benefits in a lump sum together with interest 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, as required by Iowa Code section 85.30.

Defendant shall pay costs of seven hundred and 00/100 dollars ($700.00).

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

Signed and filed this ____21st____ day of March, 2022.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Jacob Peters (via WCES)

Jordan Glaser (via WCES)

Brody Swanson (via WCES)

Brian Moore (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.