BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BLAINE HANSON,

Claimant,

vs.

WEST UNION CHEVROLET-BUICK-PONTIAC,

Employer,

and

FARM BUREAU PROPERTY AND CASUALTY INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5022594

REVIEW-REOPENING

DECISION

Head Note Nos.: 1803; 2905; 2907

STATEMENT OF THE CASE

Blaine Hanson, claimant, filed a review-reopening petition seeking workers' compensation benefits against West Union Chevrolet-Buick-Pontiac, employer, and Farm Bureau Property and Casualty Insurance Company, insurance carrier, arising out of a stipulated work injury of March 29, 2005.

This case was heard on May 19, 2015, in Des Moines, Iowa, and considered fully submitted on the same.

The evidence in this case consists of the testimony of the claimant, Krisinda Hanson, and Daniel Hanson, claimant's exhibits 1-20 and defendants exhibits B-D. Exhibit A was objected to as untimely and the objection was sustained.

ISSUES

1. Whether there has been a change of condition since the agreement for settlement approved on June 4, 2008, that might entitle claimant to additional permanent partial disability under a review-reopening and, if so,

2. The extent of claimant's industrial disability.

STIPULATION OF FACTS

The parties stipulate claimant sustained an injury on or about March 29, 2005. At the time of his injury, his gross weekly wages were $897.75. He was married and entitled to four exemptions. The parties believe the weekly benefit rate to be $576.86.

FINDINGS OF FACTS

Claimant is a 55 year old person at the time of the hearing. The parties stipulate that the claimant sustained a crush injury to both legs arising out of and in the course of his employment on March 29, 2005. In the original petition, claimant asserted injury to both legs, nervous system, as well as depression and post-traumatic stress disorder.

Currently, claimant is self employed in an auto repair business. He also makes crafts which he sells on eBay.

Initially Kenneth McMains, M.D., believed that claimant would be able to return to his pre-injury state. (Exhibit 5, page 6) This did not come to fruition. Instead, claimant deteriorated.

On February 1, 2006, Craig P. Sullivan, DPM, determined that claimant's right foot would likely continue to worsen but that claimant's current condition warranted a 9 percent whole body disability. (Ex. 4, p. 16) Dr. Sullivan wrote:

> It is my best medical opinion that this pain will continue with this individual and will continue to impair him on a permanent basis. It is also my opinion that his foot will continue to degenerate, making his ratings continually worse.

(Ex. 4, p. 33)

In a March 1, 2006, visit at the University of Iowa Hospitals and Clinics, claimant reported feeling moderate to severe pain and the likelihood he would not be able to do his previous job.

> Blaine is seen in f/u. He had his MRI. We have spent a long time talking about the MRI, the issues about his life and his job, how this relates to his injury and a variety of other things. His symptoms continue to be increasing pain, pain going up and down stairs, a feeling of locking, difficult start up in the morning, inability to do the job he used to do. As far as he got back, was working 5 hours at what he used to do, this became very painful, he acknowledges to be that he does not think he can do the job he used to do anymore. He does imply that there has been psychological difficulties and other problems.

(Ex. 2, p. 44)

JL Marsh, M.D., placed claimant at maximum medical improvement at this time.

> I think the best thing for him is to go in the direction of getting a new job, this would mean MMI permanent restrictions and we have talked about the issues leading to that today. He wants to go in that direction. Therefore, from my point of view he is MMI. I am offering him a PRN f/u. I think he will be permanently restricted from doing the type of job he used to do. I do hope he can be rehabilitated to do other things. His work comp carrier is going to get an MMI from the OT physician that has been following him. They will also supply the impairment rating. From my surgical perspective, I do not think he is looking at TKR or other major reconstructive procedures with any early time frame in the next few years or even in the next 10 years after his injury.

(Ex. 2, p. 45)

Dr. McMains agreed claimant should look for a job outside his previous occupation and claimant was to seek some counseling at a local college for job retraining. Dr. McMains believed that claimant would eventually be able to return to an eight-hour work day so long as he could sit, stand and walk without spending prolonged periods either standing or walking. (Ex. 5, p. 10)

Claimant opened his own auto mechanic shop and began selling items on eBay. In October 2006, Dr. McMains assigned a 27 percent lower extremity impairment rating but nothing for the PTSD which Dr. McMains believed would resolve without long-term issues. (Ex. 5, p. 13)

Claimant developed DVT's in his legs and there was significant blockage to the left distal femoral artery and popliteal artery. (Ex. 1, p. 6) Claimant's pain in his left leg was so severe that he had difficulty walking and there was some concern by the staff at Palmer Lutheran Health Center that he might lose his leg. (Ex. 1, p. 5) Ultimately, he had bypass surgery. (Ex. 2, p. 67)

In January 2007, Dr. McMains opined that claimant should have restrictions of 35 pounds lifting on an occasional basis and avoid kneeling or squatting with the right lower extremity. (Ex. 5, p. 18) Claimant continued to have problems walking or standing but as of the January 2007 date, it appeared his PTSD had resolved. (Ex. 5, p. 18) Dr. McMains anticipated claimant needing a total joint replacement if claimant's conditions worsened. (Ex. 5, p. 18)

Claimant had complications in February 2007, underwent thrombolysis as well as angioplasty. (Ex. 2, p. 103) He then sought a second opinion regarding his right knee and underwent surgery on September 24, 2007, where he underwent a number of procedures. (Ex. 10, p. 39)

In the documentation attached to the proposed settlement agreement that was accepted on June 4, 2008, Michael D. Jackson, M.D., opined that claimant sustained right tibial plateau fracture and a crush injury of the left thigh resulting in permanent injuries with a 20 percent whole person impairment rating based on the fracture, shortened leg length following fracture, bilateral peripheral nerve injuries, and muscle atrophy in the right thigh. (Ex. 15) After a functional capacity evaluation, Dr. Jackson recommended work restrictions for claimant including functional limitations of no lifting over 40 pounds and no kneeling or squatting. Claimant could occasionally work standing, stooping or crouching and occasionally climb and crawl. This was considered to be light to medium physical demand category with an eight-hour work week. (Ex. 15, p. 11) The FCE performed on April 14, 2008, placed claimant in the light duty range:

> Based on the results of testing the client is capable of exerting up to 20 pounds of force occasionally, and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly (Constantly: activity or condition exist 2/3 or more of the time) to move objects. Physical demand requirements are in excess of those for Sedentary Work. Even though the weight lifted may be only a negligible amount, a job should be rated Light work: (1) when it requires walking or standing to significant degree; or (2) when it requires sitting most of the time but entails pushing and/or pulling of arm or leg controls; and/or (3) when the job requires working at a production rate pace entailing the constant pushing and/or pulling of materials even though the weight of those materials is negligible.

(Ex. 10, p. 18)

Dr. McMains stated that "by history" claimant had been functioning more in the medium category of work.

> Since Mr. Hanson's injury and extensive recovery, he has learned to accommodate many of his previous work activities so that he no longer works on his knees, due to the fact that the is unable to squat or kneel except using a golfer's kneel, keeping his right knee up and his left knee down, which he does in a proper manner. As noted on page 4 of the FCE, Mr. Hanson should not work kneeling and should avoid repetitive squatting.

(Ex. 5, p. 51)

In the fall of 2008, claimant had a worsening of his right lower extremity claudication. He underwent an endovascular repair of the right superficial femoral artery and right popliteal artery occlusions with GORE Viabahn endograft on September 5, 2008. (Ex. 10, p. 47) In October 31, 2008, claimant underwent thrombectomies of the right common femoral artery, right popliteal artery, right anterior tibeal artery and right tibial peripheral trunk. (Ex. 10, p. 42) In May 2009, claimant underwent cryoplasty and angioplasty of the right lower extremities. (Ex. 10, p. 56) On

June 3, 2009, he underwent scar contracture surgery with Mark A. Barnard. (Ex. 10, p. 61, Ex. 16) On August 27, 2009, claimant was 12 weeks post operative and had full range of motion and returned to full duty work by Dr. Barnard. (Ex. 16, p. 3) He was also returned to full work with no restrictions by E. Anthony Otoaedese, M.D., who performed a number of the arterial surgeries. (Ex. 14, p. 49)

He then had another thrombectomy of the right posterior tibial artery and a bypass graft. (Ex. 10, p. 63) In May 2011, claimant suffered a hematoma and possible MRSA infection. Claimant asserts that was related to his previous injury. Dr. McMains disagreed saying that it appeared spontaneously. (Ex. 5, p. 25)

Claimant was seen at the Allen Pain Clinic in the fall of 2012 for pain in the right leg following a determination by Dr. Otoadese that claimant's current symptoms were not related to thrombosis but rather chronic pain. He was treated in the fall of 2012 at Allen Pain Clinic and his condition was largely unchanged from the beginning to the end of the care. (Ex. 17, p. 4)

In March 2013, claimant developed bone pain from the tibial plateau fracture. (Ex. 5, p. 26) Given claimant's vascular complications and the past MRSA infection, a total joint replacement was a risky proposition. Dr. McMains placed claimant at his previous permanent work restrictions. (Ex. 5, p. 27)

In June of 2013, claimant began to see Matthew J. Bollier, M.D., at the University Hospitals and Clinics (UIHC). (Ex. 2, p. 130) Claimant reported ongoing pain. The pain had been temporarily relieved by an injection proximal to the infra patellar branch of the saphenous nerve. (Ex. 2, pp. 130, 159) Dr. Bollier performed a saphenous nerve neurectomy in September 2013. (Ex. 2, p. 141) Despite receiving 100 percent relief from the injection, claimant maintained after the surgery that he was in even greater pain. (Ex. 2, p. 141)

On October 3, 2013, the FCE indicated that claimant should not kneel or repetitively squat but otherwise work within the DOL's medium physical demand category. (Ex. 2, pp. 139, 170) The claimant should also be allowed to use a cane to ambulate or traverse uneven surfaces and should be allowed to sit for 20 minutes for every hour of walking or standing.

He began to improve by the end of 2013 with full range of motion of the knee and claimant was returned to work with his previous restrictions but limited to four hours a day. (Ex. 2, p. 146)

> Mr. Hanson may work within his previous permanent restrictions. He may work up to 4 hours per day for the next 2 weeks. On Friday, December 20, 2013, he may work up to 6 hours per day. On Friday, January 3rd, 2014, he may work up to 8 hours per da,y. [sic] On Friday, January 17th, 2014, he may work within his permanent restrictions without any restriction on his hours.

> He will be at maximum medical improvement on Friday, January 17th, 2014.

(Ex. 2, p. 172)

In February 2014, claimant returned to UIHC with a new vascular complaint of progressively worse pain in his left foot. (Ex. 2, p. 140). Dr. McMains believed this was associated with claimant's previous injury. There was no specific treatment ordered but claimant was instructed to continue with aspirin and warfarin and try to stop smoking. Later, his toenails needed to be surgically debrided to reduce thickness and length. (Ex. 12, p. 11)

Claimant was also diagnosed with PTSD and depression in December 22, 2005. He received treatment for this mental injury in 2006 and 2007. On April 17, 2008, Abdur Rahim, M.D., opined claimant had a "marked impairment" from his PTSD and that "due to problems with depression, PTSD and his injury he is not capable of competitive employment in any field." (Ex. 6, p. 2)

On February 25, 2015, Dr. Jackson authored another report. Dr. Jackson opined that claimant developed two new conditions:

> Since my April 17, 2008 IME he now additionally has a saphenous peripheral neuropathy and the lower extremity peripheral vascular disease with residual atherosclerosis.

(Ex. 15, p. 30) Further, he believed that claimant's previous conditions had worsened.

> Yes. The tibial plateau fracture has resulted in arthritic changes of the right knee. The lower extremity contusions contributed to the peripheral neuropathies, as well as arterial insufficiency. While the peripheral neuropathies have progressed slightly, most of the concern revolves around the peripheral vascular disease which continues to progress. Unfortunately, at this point in time Mr. Hanson has been told that there are no more treatments for his lower extremities, and he is hoping that they do not progress any further due to the fact that he may ultimately end up with amputations of the lower extremities.

(Ex. 15, p. 30, 31)

Based on the new diagnoses, Dr. Jackson only added use of a cane to his previous restrictions:

> I agree with his previous restrictions. He should permanently avoid kneeling or repetitive squatting. He should be allowed to sit/stand as tolerated. He may occasionally stoop or crouch. He should be allowed to use a cane and should be only exposed to sedentary work. Upon further review, the use of the cane is an additional restriction; however, the others

were indicated at the time I performed the April 17, 2008, independent medical evaluation.

(Ex. 15, p. 32) No new impairment rating was offered either.

On September 20, 2014, Joseph Breitenstein, Ph.D., performed a mental status evaluation at the request of the Social Security Disability Determination Bureau. (Ex. 18, p. 1) The report concludes that claimant has ongoing psychological distress that precludes him from any form of employment. (Ex. 18, p. 4) This diagnosis is no different than the one set forth by Dr. Rahim on April 17, 2008.

The vocational rehabilitation report by B. Scott Mailey concluded that claimant belonged in the sedentary category of work based on the reports of Dr. Jackson. Therefore, there were no jobs claimant could compete for in the labor market. (Ex. 19, p. 4) The report of Mr. Mailey was issued on April 15, 2015. It appears that Mr. Mailey did not consider the reports of Dr. Conte or claimant's treating physicians such as Dr. Bollier or Dr. McMains. Mr. Mailey does acknowledge that sedentary work could include parking lot attendant, security guard-stationary, or cashier, but presumed that claimant's need to sit and stand would eliminate those positions as viable alternatives. (Ex. 19, p. 5) Mr. Mailey also concluded that claimant's labor marketability would be impaired by his "income restriction due to social security disability benefits." (Ex. 19, p. 5) Mr. Mailey's report is merely a number of conclusory statements arrived upon by reliance on Dr. Jackson's opinions. There is little analysis or methodology included that is helpful.

According to the income summary, claimant returned to near preinjury earnings in 2008, after the settlement, with a slight decline in 2009 followed by increases in 2010, 2011, and 2012. In 2013 and 2014, his income sharply declined. (Ex. 20)

Claimant and his family testified that he cannot work in the automotive business and claimant believes that there is no work for him within his restrictions. He testified that he had a job offer but when he came forward with his restrictions "something happened." The implication was that the job was withdrawn but no specifics were given.

Claimant's wife testified that he loses balance easily and that he is angry and frustrated because he has to have people help him. Ms. Hanson believed that work started to slow down and gradually worsen, from 2010 and on. Claimant began to rely more frequently on his son. Claimant had several surgeries between 2010 and 2012 include the bypass in the right leg, the MRSA, the scar tissue release, and the pain clinic visits. Ms. Hanson admitted that she has been largely confined to the house given her own illness but claimed that they were limited by claimant's injury. Claimant is easily frustrated and confused.

Claimant's son, Daniel Hanson, testified. Mr. Hanson worked in his father's automotive shop from 2010-2014. He noted that around 2011, claimant's behavior began to get really poor due to his increasing physical difficulties. Mr. Hanson left his father's shop to find employment that offered health insurance. He agreed that automotive work was not consistent with his father's current physical condition.

Claimant seeks taxation of costs for the report of Michael Jackson, M.D., ($4,475.00), the report of Scott Mailey ($1,535.75) and the report of Matthew Boiler, M.D., ($750.00). Jackson's costs are divided into $3,975.00 for the IME and $1,500.00 for the impairment rating. Scott Mailey's costs include professional time of $384.00, travel time of $688.00 and mileage of $143.75. Dr. Bollier's costs are $750.00 for a consultation. There is no report.

CONCLUSIONS OF LAW

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).

Claimant sustained a serious injury on March 29, 2005, resulting in disabilities to both his lower extremities. He also was diagnosed with depression and possible PTSD. In 2006, he was declared at MMI for the purposes of his then current position of auto mechanic for defendant employer. He returned to work with permanent restrictions by Dr. Jackson in April of 2008 and was placed at the moderate to light duty demand level with a 20 percent whole person impairment rating. Over time, his condition worsened, as expected. Claimant underwent additional surgeries in 2009, 2010, and 2011. In August of 2013, Dr. Bollier returned claimant to his previously stated work restrictions in the medium physical demand category but this changed in September 2013 when it was recommended claimant be placed in the sedentary work category only. Gradually, claimant was returned to the medium physical demand level by Dr. Bollier in December 2013 with a full release to previous permanent restrictions on January 17, 2014.

Much of the non party testimony was about claimant's mental status—his shortness with individuals, his confusion, his frustration. However, the clearest evidence from the medical professionals is regarding claimant's mental state. Claimant's mental condition is no different today than it was in 2008 before the

settlement. In 2008, Dr. Rahim concluded claimant was not capable of competitive employment in any field and Dr. Breitenstein arrived at the same conclusions in 2014. There appears to be no change or worsening of his mental condition. Per the mental health expert in 2008, claimant was unemployable.

Therein lies the largest problem in this case. The medical experts agreed in 2008 that claimant should find a new avocation. He indicated that he would consult with a local community college about job retraining but this was apparently not done. His work restrictions imposed by Dr. Bollier in 2013 were essentially the same as the ones imposed in 2008. Even Dr. Jackson, the expert retained by claimant, provided essentially the same restrictions as his April 2008 report adding in only the use of a cane although Dr. Jackson in the 2015 IME places claimant in the sedentary work category whereas the 2008 report placed claimant in the medium demand work category.

The FCE performed with the UIHC staff in October 2013, placed claimant again in the "medium" physical demand category. It was also recommended that he walk or stand up to an hour at a time followed by a sit for 20 minutes and to apply ice as needed with elevation of his right knee above the heart if necessary.

Claimant had multiple post settlement surgeries and ongoing pain and discomfort but those were contemplated at the time of the original settlement. Dr. Sullivan on February 1, 2006, said that, "it is my best medical opinion that this pain will continue with this individual and will continue to impair him on a permanent basis. It is also my opinion that his foot will continue to degenerate, making his ratings continually worse." (Ex. 4, p. 33) Dr. McMains believed that claimant would need a total knee replacement if conditions worsened—which they did. Dr. Conte believed that these subsequent surgeries were "an expected occurrence due to his well established vascular disease and ischemic sensory neuropathy." (Ex. A, p. 1) As a result, despite other complications following the settlement, Dr. Conte did not believe claimant presented with an "unexpected or substantial change in his condition from what would be expected." (Ex. A, p. 2)

Despite the foregoing, the evidence supports a finding that claimant's condition has worsened and deteriorated since the 2008 settlement. He has undergone multiple surgeries and suffered complications from surgeries such as scar tissue contracture and MRSA. In Kohlhaas v. Hog Slat, Inc., 777 N.W.3d 387, 391 (Iowa 2009), the Supreme Court said that the test is whether the condition in question has already been determined by an award or settlement. If so, the condition should not be subject to a review-reopening.

The Kohlhaas court went on to say that the commissioner (and its deputies) must determine a case on the facts as they stand at the time of the hearing and not speculate about the future course of the claimant's condition. At the time of the 2008 settlement, while it was known that claimant's condition was going to deteriorate and necessitate

new surgeries and treatments, the extent of the deterioration was unknown. In 2008, claimant was able to return to some employment as a self-employed individual.

In the past couple of years, claimant's ability to earn income has dropped dramatically. His son, whom claimant relied on heavily, left the family automotive repair business to seek employment elsewhere.

Based on the foregoing, it is found that claimant has sustained a substantial change in at least his economic if not his physical condition as well such that a review-reopening is warranted.

The next question is the extent of claimant's industrial disability.

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).

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Claimant is a 55 year old person. He is a high school graduate and extensive experience as an automotive mechanic. At some point, he achieved ASE certification as a Master Auto Technician. His past relevant work history is an automotive mechanic.

Mr. Mailey's computer program which analyzes transferable skills identified a few non skilled positions that claimant could do with his functional restrictions. Claimant's functional restrictions include:

No lifting over 40 pounds

No kneeling or squatting

Occasional work standing, stooping or crouching

Occasional climb and crawl.

Dr. Jackson would also allow the claimant use of a cane.

The UIHC recommended that claimant be allowed to sit for 20 minutes following every 60 minutes of walking or standing. The non skilled positions identified included cashier, sedentary guard position, or parking lot attendant. Claimant has not looked for alternate employment. There was no evidence that he sought job retraining. He is able to do some automotive repair, but not much. He makes small crafts which he sells on eBay.

Mr. Mailey felt that claimant's Social Security benefits would impair his employability in the marketplace. It is presumed that Mr. Mailey is suggesting that the income level at which claimant must reach to be competitive with his benefits would require employment in skilled labor although that is not precisely stated, nor is there sufficient evidence to support that claim.

The claimant's physical and mental restrictions imposed in 2013 and 2014 by the various doctors and therapists including Dr. Jackson are not significantly different than what was imposed and recommended in 2006 and 2008. Dr. Bollier and the UIHC staff placed claimant in the medium work category following his multiple surgeries. His mental status is unchanged. He was deemed unemployable in 2006 as a result of his mental issues and the same diagnosis was given in 2014.

In 2006, it was recommended claimant not return to the automotive repair business; however, claimant opened his own shop following his crush injury. He has made few attempts to seek employment outside the automotive repair business but does appear motivated to work.

Based on the FCE restrictions of 2013 by Dr. Bollier and the UIHC staff (which is not substantially different than that of Dr. Jackson who states that the only new restriction would be the addition of a cane), claimant's industrial loss is 80 percent. There is not sufficient evidence to find that claimant is totally and completely disabled.

The final question is that of costs. Claimant seeks reimbursement of the IME pursuant to rule 876 IAC 4.33. The IME of Dr. Jackson would not be permitted under Iowa Code section 85.39 because there was no prior rating by a doctor retained by the defendants that claimant asserted was too low. Dr. Jackson's report was obtained on February 25, 2015 whereas Dr. Conte's report was dated May 10, 2015.

Pursuant to Des Moines Area Regional Transit Authority v. Young, No. 14-0231. June 5, 2015 (Iowa 2015), rule 871 IAC 4.33 allows only for the taxation of costs "incurred in the hearing." A physician's report becomes a cost incurred in a hearing when it is used as evidence in lieu of the doctor's testimony. The underlying medical

expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition.

> We 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.

Only the costs associated with the preparation of the written report can be assessed at hearing. Therefore, a report of Dr. Jackson would be allowed but not the examination. There is a discussion of claimant's condition, a review of the medical records, and evaluation of claimant's post 2008 injury. It is found that the $1,500.00 relates to the report written rather than any impairment rating and the $1,500.00 is deemed taxable. The meeting with Dr. Bollier is not taxable as it was not used in lieu of testimony. There was no written report charge by Dr. Bollier. Finally, Mr. Mailey's travel time and mileage are not taxable as costs. His "professional time" is deemed to be costs associated with the preparation of the report given that Mr. Mailey reviewed the medical report, took an employment history, and ran a computer analysis of claimant's transferable skills.

In total, claimant is entitled to a reimbursement of $1,500.00 for the report of Dr. Jackson and $384.00 for the report of Mr. Mailey.

ORDER

THEREFORE, it is ordered:

That defendants are to pay unto claimant four hundred (400) weeks of permanent partial disability benefits at the rate of five hundred seventy-six and 86/100 dollars ($576.86) per week.

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

That defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

That defendants are to be given credit for benefits previously paid.

That defendant shall pay one thousand five hundred and no/100 dollars ($1,500.00) for the report of Dr. Jackson and three hundred eighty-four and no/100 dollars ($384.00) for the report of Mr. Mailey pursuant to rule 876 IAC 4.33

Signed and filed this 25th day of August, 2015.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.