BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES HARRELL, Claimant, vs. DENVER FINDLEY & SONS, INC., Employer, and WEST BEND MUTUAL INS. CO., Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 5066742 A R B I T R A T I O N D E C I S I O N Head Notes: 1402.20, 1802, 1803, 1803.1, 1804, 3200

STATEMENT OF THE CASE

James Harrell, claimant, filed a petition in arbitration seeking workers' compensation benefits from Denver Findley & Sons, Inc. (Denver Findley) as a result of an alleged cumulative injury he sustained on either April 15, 2018, April 23, 2018 or June 1, 2018 that allegedly arose out of and in the course of his employment. This case was heard in Des Moines, Iowa on September 24, 2019, and fully submitted on November 1, 2019. The evidence in this case consists of the testimony of claimant, Joint Exhibits 1-6, Defendants' Exhibits A–E, the Second Injury Fund of Iowa (Fund) Exhibits AA-CC and Claimant's Exhibits 1-8. All parties submitted briefs.

Claimant submitted a link to a newspaper article and attached a copy of the article to his brief. The article was not submitted at the hearing and was not admitted as an exhibit. No request was made to take official notice of the newspaper article by claimant at the arbitration hearing. The newspaper article will not be considered and is excluded from the record.

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

1. Whether claimant sustained a cumulative injury on April 15, 2018, April 23, 2018 or June 1, 2018, which arose out of and in the course of employment;
2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;
3. Whether the alleged injury is a cause of permanent disability and, if so;
4. The extent of claimant's disability.
5. Whether claimant's impairment is to a scheduled member or as a body as a whole.
6. The gross weekly income to be used in determining claimant's weekly workers' compensation rate.
7. Whether claimant is entitled to payment of certain medical expenses.
8. Whether claimant is entitled to payment of an independent medical examination.
9. Whether claimant has a first qualifying injury to his right eye and left leg for Fund liability.
10. Commencement date for any permanent partial disability benefits payable by the Fund.
11. Assessment of costs.

FINDINGS OF FACT

The deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

James Harrell, claimant was 71-years-old at the time of the arbitration hearing. Claimant graduated from high school. Claimant has no additional formal education. Claimant's vocational history has primarily been as a truck driver, although he has for relatively short times worked in a warehouse, as a laborer or has performed other work. (Exhibit D, page 21)

Claimant has worked for Denver Findley two different time periods. Claimant worked from approximately 1991 until 1999. Claimant said he hauled a lot of gravel for

county roads at this time. In 1999 claimant had a heart attack and stopped working and received Social Security Disability in 2001 through approximately 2013 or 2014. (Transcript p. 20) Claimant returned to work for Denver Findley at that time. (Tr. p. 20) When claimant returned to work at Denver Findley his employer had lost the contract to haul gravel for a county, and he would haul dirt, concrete, asphalt and items off job sites. (Tr. p. 21) Claimant's only job for Denver Findley was driving. (Tr. p. 21)

Claimant said Denver Findley was a small company that had less than five employees. Claimant said there was not a set work schedule or guarantee of 40 hours of work for Denver Findley. (Tr. pp. 21, 40) Claimant said there would be weeks he would work less than 40 hours, and some weeks he would work more than 40 hours and that in his experience that was typical for his type of work. (Tr. p. 22) Claimant said when he was working for Denver Findley in 2018 he was working as many hours as other drivers. (Tr. p. 22) Claimant testified in his deposition that he was working "Part-time on call" (Ex. E, Depo. p. 19) and that his work was seasonal. (Ex. E, Depo. p. 49) Some weeks he could work all seven days. (Ex. E. Depo. p. 20) Claimant testified that before his heart attack in 1999 he worked full time for Denver Findley. (Ex. E. Depo. p. 48)

The work rules for Denver Findley state in part,

1. We do not guarantee that any employee will get in 40 hours a week. All employees are considered to be part time employees. There is [sic] no full time employees in regard to construction business.

(Ex. 4, p. 20)

Claimant testified that in the spring of 2018 he noticed his feet were getting "hot and sweaty." (Tr. p. 22) Claimant said the wet socks and friction caused blisters on his feet. Claimant said his feet would sweat, which caused his socks to get wet. (Tr. p. 25) Claimant testified that it was hot and the heat both outside and inside the truck caused his feet to sweat. The weather from the first part of April 2018 appears a little lower than normal, and the last two weeks of April appears hotter than normal. The first day above 80 degrees was on May 5, 2018. (Ex. B, p. 8) Claimant said he had friction on his left foot due to using the clutch on his truck. (Tr. p. 23) Claimant said the cab in the truck was hot due to the design of the truck and hot water circulating through the heater. (Tr. p. 23) Claimant testified that April and May were warm in 2018. (Tr. p. 28) Claimant said that before 2018 he had not developed blisters on his feet. (Tr. p. 25) Claimant is diabetic and was first diagnosed in 1999. (Tr. p. 27) Claimant testified he has Type I diabetes and needs insulin twice a day. (Tr. p. 40) The medical records state that claimant has Type 2 diabetes. Claimant admitted he has had problems in controlling his diabetes and at times it has been uncontrolled. (Tr. p. 40) Claimant admitted that when he saw a physician in February 2018 he had not been administering his insulin shots for two months. (Tr. p. 41) Claimant agreed that when his blood sugars were off he would get sweaty. (Tr. p. 41)

Claimant testified that the heater in Mack Truck 109 was stuck so that it was always blowing hot air across both his feet. Claimant reported the problem and an attempt was made to fix the heater, but the heater was not fixed. (Ex. E, Depo. p. 40) Claimant bought a fan to use in the truck, which made it worse. (Ex. E, Depo. p. 41)

Claimant's testimony that the heater in the truck cab was broken was unrefuted and credible. I find that the heater did cause claimant's feet to sweat while operating Mack Truck 109 when he worked in March and April 2018.

Claimant said he developed gangrene in his toe and it was amputated. Claimant said that two other toes developed gangrene and he had to have his left foot amputated. (Tr. p. 29) Claimant was in the hospital for two to three weeks after the foot amputation and then in a nursing home for two to three weeks. (Tr. p. 29) Claimant did not return to work at Denver Findley after his first amputation. (Tr. p. 30)

Claimant went to Mercy East Family Practice & Urgent Care Clinic (Mercy East) on May 14, 2018. Claimant was seen for a sore on his left second toe that claimant reported showed up about three weeks prior. Claimant reported to the clinic his shoes made the sore and he had switched shoes, but the sore would not heal. (Tr. p. 26; JE 5, p. 80) Claimant testified that the sore developed while he was wearing his winter shoes, which he had worn for three to four years. (Tr. p. 26) Based upon this medical report, I find the date of claimant's left foot injury to be April 23, 2018: This is three weeks before the visit to Mercy East.

Claimant testified that he went to Mercy South Family Practice & Urgent Care on February 26, 2018. During that visit he told the clinic he had no sores on his feet and checked his feet nightly. (Tr. p. 27; JE 2, p. 12)

Claimant testified that he cannot see light with his right eye. (Tr. p. 31) Claimant said he got hit by an arrow playing Cowboys & Indians, and he was totally blind in the right eye. (Tr. p. 32) Claimant has been able to work with this limitation. Due to federal regulations he is now no longer able to drive over the road (interstate commerce). (Tr. pp. 32, 59) Claimant has not had a DOT physical for 10–15 years, as he does not drive commercially out of state. (Ex. E, Depo. p. 44)

Claimant said that since his amputation he has no balance and has nerve pain. Claimant uses a cane when he walks. (Tr. p. 35) Claimant described nerve pain that he feels like is in his left foot big toe and makes his left foot jump. (Tr. p. 33) Claimant no longer has a big toe on his left foot. (Tr. p. 34) Claimant also described pain in the left big toe and occasionally his left little toe. (Tr. 34) Claimant will occasionally take Tylenol for the foot pain. (Tr. p. 35) Claimant has not discussed the phantom pain condition with Bryan Trout, DPM, his foot surgeon. (Tr. p.35)

I find that the phantom pain is contained to the left foot. There is no medical diagnosis that would support a holding that the phantom pain extends beyond the foot.

Claimant said he can perform activities at home, but he is not able to put a sock over his left foot. (Tr. p. 36) Claimant is able to use a riding lawn mower at home. Claimant said he is unable to operate a clutch and does not believe he could operate a truck. (Tr. p. 37) Claimant said if he had a truck with an automatic transmission he could still drive. (Tr. p. 38)

Claimant agreed that he was the "low man on the totem pole" as far as being an on-call driver for Denver Findley. (Tr. p. 39) Claimant's truck he generally drove for Denver Findley was a Mack Truck and was number 109. Claimant had no other duties at Denver Findley other than as a driver. (Tr. p. 43) Claimant returned to work after a winter lay-off around March 2018. (Tr. p. 46) Claimant agreed that he was on call while working at Denver Findley, like other employees. (Tr. p. 61)

Claimant had a total left knee replacement in 2006 or 2009. (Ex. E Depo. p. 68; Tr. p. 41) Claimant said the pain in his knee was worse after the replacement. (Tr. p. 41) Claimant testified that he had winter shoes and summer shoes. The winter shoes were insulated high-top sneakers, and the summer shoes were low-top sneakers. Claimant would switch from the high-tops to the low-tops in the spring. (Tr. p. 44) Claimant said he would wear the shoes until they were worn out. (Tr. p. 45)

Claimant testified that in mid-April 2018 he started seeing blisters on his feet. (Tr. p. 27) Claimant said he reported his blisters to Glenda Findley at his work place. (Tr. p. 47) Claimant said it was towards the last part of April 2018 that the blisters would not heal. (Tr. p. 48)

Claimant started receiving Social Security Disability in 2001 due to a heart attack. Claimant was receiving Social Security Retirement at the time of the hearing. (Tr. p. 59; Ex. E, Depo. p. 4; Ex. AA, p. 36) Claimant has not looked for work since leaving Denver Findley and would only consider going back with Denver Findley. (Tr. p. 65) In his deposition claimant agreed that he was retired. (Ex. E, Depo. p. 53)

Records from Mercy South Family Practice & Urgent Care Clinic show that claimant had uncontrolled diabetes in October 2015, January 2017 and March 2017. (JE 2, pp. 4, 7, 11)

On February 26, 2018 claimant was seen at Mercy South Family Practice & Urgent Care Clinic for a medication check. The notes of that visit state claimant has uncontrolled diabetes with neuropathy. Claimant stopped seeing his endocrinologist eight to nine months before this visit, and claimant had been out of insulin for the last one to two months. (JE 2, p. 12) Claimant denied any sores or lesions on his feet and said he checked his feet every night. (JE 2, p. 12) A visual exam of the claimant's feet was performed at that visit. (JE 2, p. 13) There was no notation of any problems with his feet during the visual inspection. Claimant was urged to go for an eye examination, as he has only one working eye. (JE 2, p. 13)

Claimant went to Mercy East Family Practice & Urgent Care Clinic on May 14, 2018 with a sore on his left second toe that claimant said showed up about three weeks prior. Claimant reported that his shoes made the sore, and he has switched shoes but the sore would not heal. Claimant reported that the way his shoes rubbed him caused the sore. (JE 5, p. 80) Sabrina Taylor, D.O. assessed claimant with "Gangrene of toe of left foot" and referred claimant for a podiatry evaluation. (JE 5, p. 81)

On May 14, 2018 claimant was seen by Dr. Trout at Iowa Ortho, for left foot pain. Dr. Trout assessed claimant with gangrene of the left foot and pain in unspecified limb. Dr. Trout recommended removal of the distal end of the left second toe. (JE 4, p. 28) On June 1, 2018 Dr. Trout performed:

1. Open amputation, left 2nd toe.
2. Incision and drainage, left foot.
3. Sharp excisional debridement, full-thickness skin, subcutaneous tissue, deep fascia, and muscle.

(JE 6, p. 89) Dr. Trout's postoperative diagnoses was,

1. Gangrene, left 2nd toe.
2. Gas gangrene, left forefoot.

(JE 6, p. 89)

Claimant's employment with Denver Findley was terminated on May 18, 2018. (Ex. BB, p. 6) The parties have stipulated that claimant was off work from June 1, 2018 through May 30, 2019. (Hearing Report, p. 1)

Claimant had a second foot surgery on June 11, 2018 due to gangrene in his third left toe. Dr. Trout performed a transmetatarsal amputation of the left foot. (JE 6, p. 93) On August 3, 2018 Dr. Trout performed a "Sharp excisional debridement, full-thickness skin, subcutaneous tissue, deep fascia and muscle, left foot wound." (JE 6, p. 100)

On September 24, 2018 claimant saw Dr. Trout due to an increase of pain after claimant's nurse probed the amputation site. Dr. Trout wrote, "The location of the wound is the Left foot. The patient describes it as Diabetic ulcer and pressure ulcer. The context consists of Diabetes, friction/rubbing and obesity. Treatment consists of debridement of the necrotic tissue." (JE 4, p. 55) On February 5, 2019 Dr. Trout noted claimant was able to ambulate full weight bearing with a cane and has returned to normal shoe wear. (JE 4, p. 41) On March 5, 2019 Dr. Trout noted claimant's wound on his left foot was completely healed and he was to be fitted for a filler for his left shoe. (JE 4, p. 75)

On December 11, 2018 claimant's counsel wrote Dr. Trout concerning causation of his condition. (Ex. 1, pp. 1, 2) In response to the letter on January 7, 2019 Dr. Trout wrote,

> Mr. Harrell is diabetic with peripheral neuropathy, which puts him at high risk for development of such problems. I do feel, however, that the environment in which Mr. Harrell was working increased his risk. I believe that within a reasonable degree of medical certainty, the high temperatures, perspiration, and need to utilize the foot for working a clutch, along with the preexisting diabetes and peripheral neuropathy, led to the condition and subsequent partial foot amputation.

(Ex. 1, p. 3)

On January 23, 2019 defendants' attorney wrote Dr. Trout after an in-person conference with Dr. Trout. In the January 23, 2019 letter defendants' counsel wrote,

> Mr. Harrell was seen at Mercy East on May 14, 2018 complaining of a sore on his left second toe that had been present for a period about 3 weeks. He reported that the sore had developed because of the way his new shoes had rubbed on his foot. He reported that the sore did not seem to be healing.

(Ex. A, p. 1) Dr. Trout was also provided information concerning the weather in April 2018. In his February 5, 2018 response to defendants' letter Dr. Trout noted a new wound created by a change in shoe wear. Dr. Trout concluded that claimant's condition developed due to the preexisting underlying diabetes, the use of new shoes and overall due to non-occupational factors. (Ex. A, p. 3) The new shoes are actually the summer shoes that he switched into and were a couple of years old. (Tr. p. 63)

On June 7, 2019 John Kuhnlein, D.O. wrote a report based upon a records review. (Ex. 2, p. 4–6) Dr. Kuhnlein noted that claimant's feet were examined in February 2018 at Mercy South and there were no open sores or lesions and his diabetes was considered uncontrolled at the time. (Ex. 2, p. 4) Dr. Kuhnlein noted that claimant started using the "new" shoes only after the sore developed. (Ex. 2, p. 5) Dr. Kuhnlein did not believe the temperature in the truck cab or shoes contributed to his condition. Dr. Kuhnlein wrote,

> Based on what I reviewed, I doubt that the shoes, ambient temperature, and sweating had anything significant to do with this problem. Mr. Harrell had an uncontrolled diabetic condition with peripheral neuropathy, and 'you take them as you get them' in Iowa Worker's Compensation law, as I understand it. As a truck driver, he used his left foot to double clutch while driving, based on the currently available record, and would abuse the clutch regardless of what shoes he was wearing – it appears that he was wearing older shoes when the lesion developed, and only pressures the new shoes after the lesion was already present. This would produce friction or pressure on the toes when he pushed on the clutch and, given the diabetes, he would be more likely than other individuals to develop a blister from the work-related activities in the context of the diabetes. In

> essence, he would be at more risk because he was diabetic to develop the blistering problem from the work-related activities than a nondiabetic employee.
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> . . . .
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> Even if he developed the blister because of the diabetes, pushing the clutch and driving the truck were substantial more than minor factors in producing the blister that led to the left second toe gangrene and infection that led to the amputation, based on what is currently known.
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> Even if the diabetes and other nonoccupational factors were a more substantial and prominent factor in the development of the blister on the left second toe, the work activities were also a substantial more than minor factor in producing the stressors to the left foot while driving the truck that produced the blister that in the context of the diabetes produced the milieu in which the gangrene and infection developed, leading to the left second toe amputation performed by Dr. Trout.

(Ex. 2, pp. 5, 6)

On August 1, 2019 Dr. Trout responded in check-box form to a series of questions from defendants' attorney. Dr. Trout reviewed Dr. Kuhnlein's IME and disagreed that the blister on the left second toe was caused or materially aggravated by the friction or pressure on his toes due to using a clutch on his work truck. Dr. Trout checked that the cause of claimant's blisters was due to preexisting underlying uncontrolled diabetes, improper foot wear and other non-occupational factors. (Ex. A. p. 6) Dr. Trout checked that clutching a truck was not the cause or a substantial contributing factor to materially aggravating, accelerating, worsening or lighting up claimant's condition. (Ex. A. p. 7)

On August 23, 2018 Sunil Bansal, M.D. issued an independent medical examination (IME) report. (Ex. 3, pp. 7–19) Dr. Bansal opined that the internal heat in the truck cab with thick socks and work shoes created a hot and moist environment and that claimant developed a blister over his second left toe that became gangrene requiring surgeries. (Ex. 3, p. 18) Dr. Bansal assigned a 40 percent lower extremity impairment for the transmetatarsal amputation. (Ex. 3, p. 18) Dr. Bansal assigned a 100 hundred percent loss to claimant's right eye. (Ex. 3, p. 19)

Claimant's trauma to his right eye, due to being shot with an arrow, was mentioned in a June 20, 2013 visit to the Wolfe Eye Clinic when claimant went for vision difficulty in his left eye. (JE 1, p. 1)

Denver Findley considered claimant a part-time employee and calculated his weekly gross income by taking all earnings for the past 12 months and dividing them by 50. Denver Findley's calculation resulted in claimant's weekly wage to be $219.22,

which is under the 35 percent statewide average weekly rate the claimant would be entitled to the minimal weekly wage rate, and his resulting weekly workers' compensation rate, with four dependents, was $219.22. (Ex. C, p. 9) The wage records submitted by the parties show claimant working 16 1/4 hours for the week of March 23, 2018, 5 1/2 hours for the week of March 30, 2018, 40 hours for the week of April 6, 2018, 33 1/2 hours for the week of April 13, 2018, 6 3/4 hours for the week of April 20, 2018, 19 hours for the week of April 27, 2018, 42 1/2 hours for the week of May 4, 2018 and 52 hours for the week of May 11, 2018. (Ex. C, pp. 13, 15, 17, 19; Ex. 6, pp. 27 - 30) Claimant calculated claimant's weekly workers' compensation rate by using eight weeks of employment and an hourly rate of $16.00 per hour. The claimant's calculation was,

Employment Start Date: 03/19/2018

Week Ending:	Hours:	Wages at $16.00 per hour:
03/23/18	16.25	$260.00
03/30/18	5.5	$88.00
04/06/18	42.75	$684.00
04/13/18	33.5	$536.00
04/20/18	6.75	$108.00
04/27/18	19	$304.00
05/04/18	42.5	$680.00
05/11/18	52	$832.00

Total Wages: $3,492.00

Total weeks: 8

AWW: $436.50

M+4 = $313.07

(Ex. 6, p. 26)

Claimant has incurred medical expenses for his left foot condition. As of July 3, 2019 Coventry, a Medicare plan, had paid $44,954.15 on behalf of the claimant. (Ex. 7, p. 31)

Claimant has requested reimbursement for various costs.

- $100.00 filing fee
- $13.34 for certified mail service
- $2,947.00 for Dr. Bansal's IME and report
- $380.00 for the report of Dr. Kuhnlein
- $179.45 for a copy of claimant's Deposition

Claimant's total request for costs is $3,646.79. (Ex. 8, p. 37)

RATIONALE AND CONCLUSIONS OF LAW

CAUSATION

The first issue to determine is whether claimant has proven the condition on his left foot that resulted in the partial amputation arose out of and in the course of his employment with Denver Findley.

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

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).

The medical record is clear that claimant had poor adherence to treatment of his diabetes. From at least 2015 the medical records show that medical professionals considered his diabetes to be uncontrolled. Regardless of his non-adherence to recommended treatment or if his shoes were ill fitting, the critical issue is whether claimant's work activities were a significant cause or aggravation for claimant's left foot condition.

Dr. Trout in his February 5, 2019 letter opines that claimant's condition developed due to the preexisting underlying diabetes, the use of new shoes and overall due to non-occupational factors. On August 21, 2019 Dr. Trout's opinion was that non-occupational factors were the cause of claimant's left foot condition including his uncontrolled diabetes and improper footwear.

There is no mention in the office visits to Mercy South or Mercy East in February and March 2018 that claimant's footwear was improper.

The portion of Dr. Trout's opinion concerning causation of February 2019 mentions claimant developing blisters after switching to new shoes. The note of the visit to Mercy East Family Practice & Urgent Care Clinic of May 14, 2018 stated that claimant's blisters started before he switched into his summer shoes.

There is contradictory testimony about when claimant switched to his summer shoes and if that contributed to his left foot condition. On direct examination, claimant stated that the blister developed while wearing his winter shoes, and he switched to the summer shoes, but that did not help his condition. (Tr. p. 26) On cross-examination he said the blisters developed after he switched to summer shoes. (Tr. p. 51) The May 14, 2018 report of Mercy East Family Practice & Urgent Care Clinic of May 14, 2018 recorded that claimant switched his summer shoes after he developed blisters that would not heal.

As the May 14, 2018 record is closest to the event I find that to be the most convincing evidence concerning this fact. Claimant's condition developed while wearing his winter shoes and did not develop due to his new or summer shoes.

Dr. Bansal concluded claimant's partial amputation was the result of blisters he developed while driving for Denver Findley. He opined that the increased temperature in the cab of the truck caused claimant's feet to sweat, which caused the blisters, which became gangrene.

Dr. Kuhnlein opined that the friction of the claimant using the clutch caused the blisters that then developed gangrene. He did not believe the sweating caused the blisters, but the friction of the claimant using the clutch with his left foot. He also opined that even if the diabetes caused the blisters, work was a substantial and more than minor factor that produced the blisters that became gangrene. I find Dr. Kuhnlein's opinion to be the most convincing concerning causation.

Claimant had his feet examined in February and they were in good shape. Claimant experienced the blisters after he returned to work in March 2018. Claimant had been wearing the same shoes all winter when he was laid off from work and only developed the blisters after driving for Denver Findley.

I find claimant has proven by a preponderance of the evidence that he sustained an injury to his left foot that arose out of and in the course of his employment at Denver Findley.

SCHEDULED MEMBER OR INDUSTRIAL DISABILITY

The next issue to decide is whether the injury is to a scheduled member or an industrial disability.

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).

Claimant has a partial amputation to his left foot, which is clearly a scheduled member foot injury. While claimant has some problems walking, it is due to a left knee issue and is not related to the foot injury.

Claimant asserts due to phantom pain his foot injury is an industrial disability. While this agency has held that phantom pain can be an industrial disability, we have also held that the injury is a scheduled injury.

There is no medical diagnosis of phantom pain in the record. I do find claimant credible that he experiences phantom pain; however, it is confined to the left foot. Claimant cites Dowell v. Wagler, 509 N.W.2d 134 (Iowa App. 1993) as support for his claim that his phantom pain should be compensated industrially, but the holding in this case does not mandate an award of industrial disability. The court in Dowell reasoned as follows:

> Iowa classifies psychological, mental, and nervous conditions as unscheduled injuries compensable under paragraph (u). Deaver, 170 N.W.2d at 466; Coughlan, 164 N.W.2d at 853; Gosek, 158 N.W.2d at 737. We believe the phantom pain which sometimes occurs after amputation is more akin to these types of injuries than it is to a scheduled physical trauma. At least two other jurisdictions have held phantom pain which is severe enough to require medical treatment may be an independent, unscheduled, compensable injury if it causes disability.
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> The Court of Appeals of New Mexico stated "incapacitating pain can be an impairment separate and distinct so as to remove a disability from the scheduled injury section of the statute." Gordon v. Dennisson Doors, Inc., 114 N.M. 767, 770, 845 P.2d 861, 864 (App.1992). The claimant had an index finger and part of a thumb amputated and suffered from severe, phantom pain. He was awarded scheduled benefits from the amputation and permanent partial disability benefits from the pain. The court noted:
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> > Where, as here, there is evidence that the injury sustained by claimant gave rise to severe pain requiring that he receive medical treatment . . . this evidence is sufficient to permit the [agency] to find that claimant's pain is disabling in nature.
>
> Id. at 770, 845 P.2d at 864. The court determined that disabling pain is compensable, but not all pain is sufficient to be a separate and distinct impairment. Id. at 769, 845 P.2d at 863.

> Pennsylvania also found phantom pain could be disabling. Penn Mar Foundries, Inc. v. Workmen's Compensation Appeal Bd., 76 Pa. Cmwlth. 565, 567, 464 A.2d 670, 671 (1983). The psychological problems and phantom pain from the foot injury were sufficient "to support the findings that Claimant is totally disabled as a result of disabling conditions due to the original injury but extending to parts of the body other than the injured [part]." Id. at 567, 464 A.2d at 672. In this case the phantom pain and psychological condition were so severe that the claimant was declared totally disabled. Id. at 568, 464 A.2d at 672.
>
> We find these cases instructive and their reasoning persuasive. We believe the approach to phantom pain taken by these courts is in line with the language and intent of our statutory workers' compensation scheme. We therefore hold that phantom pain syndrome or phantom limb syndrome **may** be compensable under Iowa Code section 85.34(2)(u) as an unscheduled disability. . . .

509 N.W.2d at 137–38 (emphasis added).

I found no evidence in the record that claimant received specific treatment for his phantom symptoms, and I found no evidence in the record that claimant's phantom symptoms extended beyond his foot. Thus, while phantom pain may extend an injury into the body as a whole in some cases, claimant has not proven it in this case. I conclude claimant failed to satisfy his burden to prove his phantom pain extended his injury beyond his foot.

I find that claimant's April 23, 2019 injury is an injury to the foot, a scheduled member injury.

EXTENT OF DISABILITY

The only rating of this injury is by Dr. Bansal. He provided a 40 percent impairment rating to the lower extremity. Table 17-32 of the AMA Guides to the Evaluation of Permanent Impairment, 5th Ed., page 545, provides that a transmetatarsal amputation is a 40 percent lower extremity and a 57 percent foot impairment rating. I find claimant has a 57 percent impairment to his left foot. I find that defendants Denver Findley and West Bend Mutual Insurance Company must pay claimant 85.5 weeks of permanent partial disability benefits [150 x 57% = 85.5]. These permanent partial benefits commence on May 30, 2019.

HEALING PERIOD BENEFITS

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing

period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

June 1, 2018 was the date of the claimant's first surgery on his left foot. The parties have stipulated claimant was off work from June 1, 2018 and was at maximum medical improvement on May 30, 2019. Claimant has not returned to work and was not capable of returning to substantially similar work during this time.

I find claimant is entitled to healing period benefits from June 1, 2018 through May 29, 2019.

RATE

The next issue to decide is the claimant's weekly workers' compensation rate. The defendants have asserted that claimant's rate should be calculated pursuant to Iowa Code section 85.36(9) (2018)[1]. Claimant asserts that claimant's rate should be calculated pursuant to Iowa Code section 85.36(7)(2018).[2]

Claimant testified that he was part-time, that he worked seasonal and that he worked more than 40 hours a week sometimes and less than 40 hours per week sometimes. Denver Findley work rules state that all employees are considered part time and that there is no full time employment in the construction business. The Fund argued that claimant's wages should be compared to minimum wage to determine if he was part time.

The Iowa Supreme court has provided guidance as to determine when to use Section 85.36(9) in Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129 (Iowa 2010).

The Supreme Court held:

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[1] 9. If an employee earns either no wages or less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality, the weekly earnings shall be one-fiftieth of the total earnings which the employee has earned from all employment during the twelve calendar months immediately preceding the injury. Iowa Code Ann. § 85.36 (West).

[2] 7. In the case of an employee who has been in the employ of the employer less than thirteen calendar weeks immediately preceding the injury, the employee's weekly earnings shall be computed under subsection 6, taking the earnings, including shift differential pay but not including overtime or premium pay, for such purpose to be the amount the employee would have earned had the employee been so employed by the employer the full thirteen calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation. If the earnings of other employees cannot be determined, the employee's weekly earnings shall be the average computed for the number of weeks the employee has been in the employ of the employer. Iowa Code Ann. § 85.36 (West).

> Before utilizing this methodology, however, the commissioner must make a preliminary factual finding that the employee either (1) earns no wages or (2) earns "'less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality.'" *King v. City of Mt. Pleasant,* 474 N.W.2d 564, 566 (Iowa 1991) (quoting Iowa Code § 85.36(10) (1987) (now § 85.36(9))).

Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 134 (Iowa 2010). The court further said,

> Whether an employee works a forty-hour week is not the sole criterion for determining whether that employee "earns less" than similar laborers in his field. *Id.* The language in section 85.36(9) distinguishes full- and part-time employees on the basis of weekly earnings, not the number of hours worked per week.

Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 135 (Iowa 2010).

In this case I have no information in the record concerning the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality. The fact that the employer work rules state claimant was part time is not dispositive. The Iowa Court of Appeals rejected the argument of an employer that classified an employee as part time, working four hours a day. The Court of Appeals required the record to show the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality. The Court of Appeals held in part:

> In *Swiss Colony,* the commissioner found that a claimant who worked an average of thirty hours a week was a part-time employee because "the vast majority of all industries in this state view 40 hours a week as full-time." *Id.* at 135. The court rejected this rationale, reasoning that "in section 85.36(9), the legislature necessarily recognized that the forty-hour week is not the standard for every industry within the state by making 'earnings' the operative factor." *Id.* The court stated "section 85.36(9) distinguishes full- and part-time employees on the basis of weekly earnings, not the number of hours worked per week." *Id.* Based on a plain reading of the statute, the court determined the commissioner was obligated to make "a preliminary factual finding that the employee either (1) earns no wages or (2) earns less than the usual weekly earnings of the regular full-time adult laborer in the line of industry in which the employee is injured in that locality." *Id.* at 134 (citations omitted).
>
> That preliminary finding was not made here. The agency simply found that Jones, "who worked four hours per day, was clearly a part time worker, as shown by Menards's own records." Based on *Swiss Colony,* this finding was not enough to support the application of section 85.36(9). *Cf. Stines*

> *v. Farmers Lumber & Supply Co.*, 100 N.W.2d 415, 415–16 (Iowa 1960) (affirming wage calculation under what is now section 85.36(9) where parties stipulated to "the usual daily wage or earning of an adult day laborer in the locality and industry in which the decedent ... was employed"); *accord* Shuttleworth v. Interstate Power Co., 251 N.W. 727, 728–29 (Iowa 1933).
>
> In reaching this conclusion, we acknowledge that Jones's argument has logical appeal, as a reasonable fact finder could assume that an employee who was semi-retired and was paid on an hourly basis, as Jones was, earned less than Menards's full-time laborers. Indeed, in a similar situation, this court upheld the commissioner's application of section 85.36(9) based only on a finding that a "semi-retired worker would earn less than a person who is available full-time." *See* Lopez v. Midstates Horse Shows, Inc., No. 08–1714, 2009 WL 3337614, at *6 (Iowa Ct. App. Oct. 7, 2009). However, the court did not have the benefit of *Swiss Colony*. In addition to its other pronouncements, quoted above, the court in *Swiss Colony* stated, "[T]he principle of liberal construction does not vest this court with an editor's pen with the power to add or detract from the legislature's handiwork. Had the legislature intended to establish the forty-hour week as standard for full-time employment it could have done so." 789 N.W.2d at 135.
>
> The district court correctly determined there was no evidence in the record of the usual weekly earnings of regular full-time adult laborers in Jones's field. Accordingly, we affirm the court's reversal of the agency's rate calculation under section 85.36(9). We also affirm the court's decision to remand the issue to the agency to calculate Jones's benefits under section 85.36(7). *See* ***Id.*** **at 136.**

Menard, Inc. v. Jones, 822 N.W.2d 122 (Table) (Iowa Ct. App. 2012) (footnote omitted) (See also 15 Ia. Prac., Workers' Compensation § 12:9).

Based upon the lack of evidence in the record I cannot apply 85.36(9). The correct section to apply is 85.36(7). I find that claimant's calculation of rate in Exhibit 6 is correct. Claimant's weekly workers' compensation rate is $313.07.

FUND LIABILITY

Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

Claimant is blind in his right eye. This is a first qualifying injury for Fund liability purposes. Claimant's partial foot amputation qualifies as the second qualifying injury for fund liability purposes.

I find claimant has proven entitlement to benefits from the Fund.

EXTENT OF FUND LIABILITY

Disabilities when there is Fund liability are analyzed as to the body as a whole, industrial disabilities.

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 was 71 years old at the time of the hearing. While over his lifetime claimant had performed a number of jobs, his vocational relevant work has been as a truck driver. With his amputated foot he can no longer drive. Claimant is blind in one

eye, has uncontrolled diabetes and will not be able to pass a DOT physical so he could drive a truck in interstate commerce. It is unknown whether his heart condition would affect his ability to pass a DOT physical. Claimant has a high school education. Claimant's age and education are not positive factors for employment. His need to use a cane limits his mobility. The partial amputation of claimant's foot is a significant injury.

Claimant has shown motivation to work. Claimant was receiving Social Security Disability and Social Security Retirement and decided to continue his work. In considering claimant's age and work history, I find that claimant would have continued to work for the foreseeable future. He would still be driving today, but for the amputation. Based upon claimant's shown motivation for work, I find that claimant would work for more than ten years from his last day of work.

Considering all of the factors of industrial disability, I find claimant has a 100 percent loss of earning capacity. I find claimant is permanently and totally disabled.

CREDITS FOR THE FUND

Dr. Bansal rated the eye injury as a 100 percent loss to the eye. I accept this rating. Pursuant to 85.34(2)(p) the loss of an eye is 140 weeks. The Fund shall receive credit of 140 weeks for this injury.

Pursuant to 85.34(2)(n) and the rating of a 57 percent impairment in this decision the Fund is entitled to a credit of 85.5 weeks for the injury to the claimant's left foot.

The Fund has also requested a credit for the total left knee claimant had. There is no rating by any physician or medical provider in this record. The Fund argues that it is entitled to a credit for the minimum rating for a knee replacement as set out in Table 17-33 for a total knee replacement with good results.

Claimant's injury in this case is governed by the law changes that became effective on July 1, 2017. The law in evaluating scheduled member injures was amended to prohibit the use of lay opinion or the use of agency expertise in determining the extent of a scheduled member injury[3].

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[3] x. 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 Ann. § 85.34 (West)(emphases supplied).

Prior to the amendments to Iowa Workers' Compensation laws effective July 1, 2017, the agency was to consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Agency rule 876 IAC 2.4 allows the agency to consider factors other than the AMA Guides in determining functional disability. The AMA Guides were not controlling. That has changed as of July 2017.

In a recent case the commissioner did apply AMA Guides in a manner that the Fund has asked this agency to do so in this case. In Myron v. Second Injury Fund, File No. 5057325 (App. November 25, 2019) The commissioner held:

> I agree with the Fund's contention that for this agency to not allow the Fund to assert a credit for claimant's left leg disability which pre-existed the June 10, 2015, work injury because of a lack of an impairment rating would create an unfair double standard against the Fund because impairment ratings have not been required for claimants in finding qualifying first injuries:
>
> A medical impairment rating is not an absolute legal requirement. A deputy can properly find a qualifying loss from other evidence such as the fact of a surgery, a medically advised job change or a loss of job. If the employee is found to be credible, medical records are not required. So long as a prior loss of use is established and some measure of degree can be placed upon it, even if only by judgment of the deputy, a qualifying first loss can be established.
>
> George v. Second Injury Fund of Iowa, File No. 5001966 (App. Nov. 1, 2004. See also Vandekamp v. Second Injury Fund of Iowa, File No. 5023229 (Arb. August 25, 2008, affirmed App. May 21, 2009) (finding qualifying first injury through lay testimony by claimant of prior surgeries and reduced ability to run and stand for prolonged periods of time, despite no physicians assigning impairment).

(Myron, p. 4)

The Myron decision was decided based upon a date of injury before the change in the law which prohibited lay testimony or agency expertise. I find there is not sufficient evidence that is permissible to use in determining a credit for the left knee replacement. The Fund receives no additional credit for the left knee.

I understand that this is a somewhat usual result given past agency decisions but is required under the current law. There is no reason why the Fund did not obtain a rating of the claimant's left knee replacement. The Fund could have chosen to do so but did not do so.

I find the Fund is entitled to a credit of 225.5 weeks for the first and second qualifying injuries.

Interest accrues on unpaid Second Injury Fund benefits from the date of the decision. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990).

COSTS

Claimant has requested various costs.

Claimant has requested reimbursement of Dr. Bansal's IME. Dr. Bansal charged $509.00 for the medical examination and $2,384.00 for the report for a total of $2,974.00.

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. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

There is no rating by a physician retained by the defendants in the record. Claimant is not entitled to the cost of the IME.

Claimant is entitled to the costs of up to two medical reports. Dr. Kuhnlein charged $380.00 for his report.

Dr. Bansal charged $2,384.00 for his report. I find that Dr. Bansal's charges for the report in this case are not completely reasonable. The number of the records and complexity of claimant's condition did not warrant a $2,384.00 cost. Based upon the facts of this case, I award $1,250.00 for Dr. Bansal's' report. In total, I award $1,630.00 for medical reports.

I award claimant's filing fee of $100.00, service costs of $13.34 and deposition charges of $179.45.

The total of all costs awarded to claimant is $1,922.79. I assess the costs against defendants Denver Findley and West Bend Mutual Insurance Company. No costs are assessed against the Fund.

ORDER

Defendants Denver Findley and West Bend Mutual Insurance Company shall pay claimant healing period benefits from June 1, 2018 through May 29, 2019 at the weekly rate of three hundred thirteen and 07/100 dollars ($313.07).

Defendants Denver Findley and West Bend Mutual Insurance Company shall pay eighty-five point five (85.5) weeks of permanent partial disability benefits at the weekly rate of three hundred thirteen and 07/100 dollars ($313.07) commencing May 30, 2019.

The Second Injury Fund of Iowa shall pay permanent total disability benefits for so long as the claimant is totally disabled at the weekly rate of three hundred thirteen and 07/100 dollars ($313.07).

The Fund shall pay benefits after receiving credit for two hundred twenty-five point five (225.5) weeks of credit.

Defendants Denver Findley and West Bend Mutual Insurance Company shall pay accrued weekly benefits in a lump sum together with interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendant Fund shall pay interest on any accrued amounts at the same rate as defendants Denver Findley and West Bend Mutual Insurance Company and commencing as of the date of this decision.

Defendants Denver Findley and West Bend Mutual Insurance Company shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Defendants Denver Findley and West Bend Mutual Insurance Company shall pay claimant costs of one thousand nine hundred twenty-two and 79/100 dollars ($1,922.79).

Defendants Denver Findley and West Bend Mutual shall file subsequent reports of injury as requested by this agency.

Signed and filed this 6th day of January, 2020.

James F. Elliott

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Ballard (via WCES)
Sarah Timko (via WCES)
Joseph Powell (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 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.