BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JONATHAN L. BULLOCK, Claimant, vs. MARNOH DELIVERY & MOVING COMPANY, LLC, Employer, Defendant.	:	File No. 5059496 ARBITRATION DECISION (DEFAULT PROCEEDINGS) Head Notes: 1803, 2507, 3000, 3002, 4000

FILED
APR 27 2018
WORKERS' COMPENSATION

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Jonathan L. Bullock, filed his original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on August 28, 2017. Claimant alleged he sustained a work-related injury on March 20, 2017. (Original notice and petition)

A copy of the original notice and petition and a notification were sent by certified mail with domestic return receipt requested. The documents were sent to:

Marnoh Delivery and Moving Company

129 Harbet Ave. N.W., #7

Cedar Rapids, IA 52405

According to the domestic receipt, a person signed for the documents on August 26, 2017. A copy of the domestic receipt was filed with the Iowa Division of Workers' Compensation. (Administrative file)

Defendant did not file an answer nor did any attorney file an answer on behalf of defendant. No other responsive pleading was filed on behalf of defendant.

As a result, On October 20, 2017, claimant's attorney filed a notice of intent to file a written application for default. In the notice of intent to file written application for default, claimant stated in relevant portion:

IMPORTANT NOTICE: October 12, 2017

> YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT WITHIN TEN DAYS FROM THE DATE OF THIS NOTICE, A DEFAULT JUDGMENT WILL BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD SEEK LEGAL ADVICE AT ONCE.

(Notice of Intent to File Written Application for Default)

A certificate of service was attached to the document with the date of October 17, 2017 and the copy was sent to: Marnoh Delivery & Moving Company, LLC, 129 Harbert Ave. N.W., #7, Cedar Rapids, IA 52405.

On November 8, 2017, claimant filed a Motion for Entry of Default with the Iowa Division of Workers' Compensation. Claimant stated in the Motion:

1. A worker's compensation claim was filed on the Claimant's behalf on August 28, 2017. Marnoh Delivery & Moving Company LLC signed a receipt for the Original Notice and the Worker's Compensation Petition on August 26, 2017 (a copy of which is attached hereto).

2. The Defendant has not filed an answer or other responsive pleading within 20 days, as required by the Iowa Rules of Civil Procedure.

3. Pursuant to Iowa Rules of Civil Procedure 1.971 and 1.972, Notice was given of the Claimant's intention to file a written application for default against Defendant Marnoh Delivery & Moving Company LLC LLC [sic] (a copy of which is attached hereto).

4. The claimant requests an order of the Workers' Compensation Commissioner finding the Defendant in default.

(Motion for Entry of Default)

On December 1, 2017, the undersigned filed an entry of default and an order setting the case for a telephone hearing. The entry of default provided in relevant portion:

> Claimant filed a contested case proceeding in arbitration under Iowa Code chapters 85 and 17A. Defendants were properly served with original notice as shown by proofs on file, but have not filed an appearance, motion, answer or other pleading.
>
> Claimant now moves for default in compliance with Iowa Rules of Civil Procedure 1.971 et seq. Notice of intent to file this motion was properly given pursuant to Iowa R. Civ. P. 1.972(3).

Default is hereby entered against defendant Marnoh Delivery & Moving Company, LLC.

The hearing administrator scheduled the case for a telephone hearing on April 12, 2018. The hearing was recorded by digital means. The undersigned appointed Ms. Marla Happel, as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on his own behalf. Claimant offered Exhibits 1 through 4. The exhibits were admitted as part of the official record. The case was deemed fully submitted on April 12, 2018.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant at hearing, and after judging his credibility, plus after reading the evidence, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Claimant is 40 years old and single. He is right-hand dominant. Claimant smokes tobacco products. Due to problems as a child, claimant dropped out of ninth grade. He basically lived on the streets of Fort Madison, Iowa. Claimant tried to pick up odd jobs such as raking leaves or detasseling corn. His first real job was working as a gas station attendant. When he turned 18 years old, claimant began working for his uncle in the family business. The business was engaged in providing contract services to Case Manufacturing. Several family members began feuding and claimant decided to leave the fracas behind.

Claimant commenced his career as a relocation specialist in the moving industry. A relocation specialist is a person who knows how to wrap furniture carefully, move furniture without hitting walls, employs proper techniques when using shrink wrap, and is able to maneuver furniture around corners and through narrow passageways.

Claimant began working in the moving industry in 1997 or 1998. He worked for a variety of companies in eastern Iowa. Claimant also worked driving a tow truck for several different towing companies. He also worked for one year as a window washer.

In early March of 2017, claimant began working for Marnoh Delivery & Moving Company, LLC in Cedar Rapids, Iowa. Claimant was hired to work 25 hours per week. He earned $13.00 per hour. Claimant testified his gross earnings were $325.00 per week. Claimant was single with one exemption. His weekly benefit rate calculates to be $215.42.

Claimant testified that on March 20, 2017, he and Mr. Marnoh, the owner of the company, were moving furniture in North Liberty, Iowa. The two men were carrying a couch and trying to maneuver it through a doorway. Claimant had one end of the couch on his left shoulder. Mr. Marnoh was carrying the other end of the couch. Without warning to claimant, Mr. Marnoh rolled the couch over onto claimant's left shoulder. The couch caused claimant's left shoulder to twist and fold into the upper portion of his left shoulder.

Claimant explained he had numbness, pain, and he felt an immediate pop in his left shoulder. Mr. Marnoh told claimant to continue moving the furniture, despite the pain in claimant's left shoulder. Claimant informed Mr. Marnoh that he required medical treatment. For whatever reason, Mr. Marnoh did not designate an authorized treating physician.

On May 17, 2017, claimant presented to Lisa M. Coester, M.D., at Physician's Clinic of Iowa with complaints of pain in the left shoulder and lateral epicondylitis. (Exhibit 1, page 1) Claimant provided the following history to Dr. Coester:

> REASON FOR VISIT
>
> Visit for: Left Shoulder Pain, weakness, loss of motion, grinding, catching and popping that's been going on since March 22, 2017. On that day he had an injury. On that day he was making a delivery and moving furniture. The owner twisted the couch the wrong way without telling him that he was turning and it hurt his shoulder. He's not sure if it's work related. He has tried physical therapy. He's had x-rays. The pain is located all around the shoulder girdle. The pain radiates down to his fingertips. The upper arm down to his fingers is numb and tingling in the morning and afternoon and at bedtime. The pain is sharp, dull, burning, aching and constant. It does keep him up at night. He's having difficulty reaching behind his back and across his body and driving. He has half the strength he normally does and has numbness. It does not feel unstable. He was referred by Dr. Arand for consultation.

(Ex. 1, p. 1)

Dr. Coester diagnosed claimant with "Rotator cuff tendonitis – left impingement syndrome with possible RC or labral tear." (Ex. 1, p. 3) Dr. Coester administered a corticosteroid injection into the subacromial bursa on the left. (Ex. 1, p. 3)

Claimant returned to Dr. Coester on July 3, 2017. The orthopedic surgeon had reviewed the results of claimant's magnetic resonance imaging. The test showed claimant had a left glenoid labrum SLAP tear and a partial biceps tear. (Ex. 1, p. 5) Dr. Coester recommended arthroscopic surgery of the left shoulder with repair of the left lesion. The surgeon also recommended a left carpal tunnel injection at the time of the left shoulder surgery. (Ex. 1, p. 6)

On August 8, 2017, Dr. Coester performed the following:

1. Left shoulder arthroscopic evaluation with extensive debridement of rotator cuff tear and SLAP tear followed by SLAP repair with two Arthrex PushLocks. This was followed by bursectomy and acromioplasty.

2. Left carpal tunnel injection.

(Ex. 1, p. 9)

Subsequent to the completion of the surgical procedures, the surgical team discovered claimant had tolerated the procedures well. Claimant was placed in the recovery room. (Ex. 1, p. 10) He remained off work.

Claimant presented to Dr. Coester on March 28, 2018 for a post-surgical examination. (Ex. 4) Claimant returned to the surgeon because he was experiencing pain in the left shoulder. The pain was located near the collarbone. (Ex. 4, p. 1) Dr. Coester found some mild tenderness along the distal clavicle. (Ex. 4, p. 1) However, there was no obvious abnormality. (Ex. 4, p. 1) Dr. Coester saw no reason for claimant to need work restrictions. (Ex. 4, p. 2) Dr. Coester injected claimant's subacromial space with 80 mg depomedrol and 2cc 2% lidocaine. Claimant tolerated the procedure well without any complications. (Ex. 4, p. 2)

Claimant testified he returned to work on April 6, 2018. He was only able to obtain part-time employment. He is working one day a week until his employer enters into a busier season. Claimant plans to work until it is no longer possible for him to do so.

Claimant testified he cannot lift objects over his left shoulder. He experiences sharp pains in his collarbone which travel down his left shoulder, left arm and into his left hand. Claimant stated he can only withstand so much pressure on his left hand. If there is too much pressure on his left hand, he drops objects from his hand. Claimant testified he tries to work through his pain, as he has no other choice. Claimant indicated it is no longer possible for him to take his dog to the park and throw the Frisbee disk with him.

RATIONALE AND CONCLUSIONS OF LAW

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). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4)(b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

The weight to be given an expert opinion may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. St. Luke's Hospital v. Gray, 604 N.W.2d 646 (Iowa 2000).

Expert testimony may be buttressed by supportive lay testimony. Bradshaw v. Iowa Methodist Hospital, 251 Iowa 375, 380; 101 N.W.2d 167, 170 (1960).

The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence. Together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

It is the determination of the undersigned deputy workers' compensation commissioner; claimant has successfully established he sustained an injury to his left shoulder which arose out of and in the course of his employment as a result of a work injury on March 20, 2017. Claimant described the mechanism of injury in detail during the course of his arbitration hearing. Claimant testified in a credible manner.

The only medical opinion in the case is the opinion of Dr. Coester. She does not dispute claimant's rendition concerning the mechanism of injury.

Claimant is requesting healing period benefits. Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

Claimant was off work from the date of claimant's left shoulder surgery on August 8, 2017 through April 5, 2018. This is a period of 24.429 weeks of healing period benefits. Said benefits shall be paid at the rate of $215.42 per week.

The next issue for resolution is the nature and extent of claimant's right shoulder injury. When disability is found in the shoulder, a body as a whole situation may exist.

Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Comm'r. Report 281 (App. 1982), a torn rotator cuff was found to cause disability to the body as a whole.

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 has a permanent partial disability due to his left shoulder injury. He was a surgical candidate. He is not able to lift objects above the level of his left shoulder. He has always engaged in heavy physical labor. He does not have a high school diploma. He has no other formal education. Claimant has no computer skills. Retraining is unlikely. Claimant's left shoulder injury impacts his employability. It is the determination of the undersigned; claimant has a permanent partial disability in the amount of thirty (30) percent. Defendant shall pay unto claimant 150 weeks of permanent partial disability benefits commencing on April 6, 2018 and payable at the rate of $215.42.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Claimant supplied Exhibit 3. It details all of the medical costs incurred in this claim. Many of the costs were paid by United Healthcare Community Plan on behalf of the State of Iowa. Defendant shall reimburse the United Healthcare Community

Plan/State of Iowa for the medical expenses incurred as a result of the work injury. If claimant incurred any transportation expenses to travel to or from medical appointments, then defendant shall reimburse claimant for those transportation expenses.

In Christensen v. Snap-on Tools Corp., 554 N.W.2d 254 (Iowa 1996), and Robbennolt v. Snap-on Tools Corp., 555 N.W.2d 229 (Iowa 1996), the supreme court said:

> Based on the plain language of section 86.13, we hold an employee is entitled to penalty benefits if there has been a delay in payment unless the employer proves a reasonable cause or excuse. A reasonable cause or excuse exists if either (1) the delay was necessary for the insurer to investigate the claim or (2) the employer had a reasonable basis to contest the employee's entitlement to benefits. A "reasonable basis" for denial of the claim exists if the claim is "fairly debatable."
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> Christensen, 554 N.W.2d at 260.
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> The supreme court has stated:
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> (1) If the employer has a reason for the delay and conveys that reason to the employee contemporaneously with the beginning of the delay, no penalty will be imposed if the reason is of such character that a reasonable fact-finder could conclude that it is a "reasonable or probable cause or excuse" under Iowa Code section 86.13. In that case, we will defer to the decision of the commissioner. See Christensen, 554 N.W.2d at 260 (substantial evidence found to support commissioner's finding of legitimate reason for delay pending receipt of medical report); Robbennolt, 555 N.W.2d at 236.
>
> (2) If no reason is given for the delay or if the "reason" is not one that a reasonable fact-finder could accept, we will hold that no such cause or excuse exists and remand to the commissioner for the sole purpose of assessing penalties under section 86.13. See Christensen, 554 N.W.2d at 261.
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> (3) Reasonable causes or excuses include (a) a delay for the employer to investigate the claim, Christensen, 554 N.W.2d at 260; Kiesecker v. Webster City Meats, Inc., 528 N.W.2d at 109, 111 (Iowa 1995); or (b) the employer had a reasonable basis to contest the claim—the "fairly debatable" basis for delay. See Christensen, 554 N.W.2d at 260 (holding two-month delay to obtain employer's own medical report reasonable under the circumstances).

> (4) For the purpose of applying section 86.13, the benefits that are underpaid as well as late-paid benefits are subject to penalties, unless the employer establishes reasonable and probable cause or excuse. Robbennolt, 555 N.W.2d at 237 (underpayment resulting from application of wrong wage base; in absence of excuse, commissioner required to apply penalty).
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> > If we were to construe [section 86.13] to permit the avoidance of penalty if any amount of compensation benefits are paid, the purpose of the penalty statute would be frustrated. For these reasons, we conclude section 86.13 is applicable when payment of compensation is not timely . . . or when the full amount of compensation is not paid.
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> Id.
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> (5) For purposes of determining whether there has been a delay, payments are "made" when (a) the check addressed to a claimant is mailed (Robbennolt, 555 N.W.2d at 236; Kiesecker, 528 N.W.2d at 112), or (b) the check is delivered personally to the claimant by the employer or its workers' compensation insurer. Robbennolt, 555 N.W.2d at 235.
>
> (6) In determining the amount of penalty, the commissioner is to consider factors such as the length of the delay, the number of delays, the information available to the employer regarding the employee's injury and wages, and the employer's past record of penalties. Robbennolt, 555 N.W.2d at 238.
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> (7) An employer's bare assertion that a claim is "fairly debatable" does not make it so. A fair reading of Christensen and Robbennolt, makes it clear that the employer must assert facts upon which the commissioner could reasonably find that the claim was "fairly debatable." See Christensen, 554 N.W.2d at 260.
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> Meyers v. Holiday Express Corp., 557 N.W.2d 502 (Iowa 1996).

Weekly compensation payments are due at the end of the compensation week. Robbennolt, 555 N.W.2d 229, 235.

Penalty is not imposed for delayed interest payments. Davidson v. Bruce, 593 N.W.2d 833, 840 (Iowa App. 1999). Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008).

When an employee's claim for benefits is fairly debatable based on a good faith dispute over the employee's factual or legal entitlement to benefits, an award of penalty benefits is not appropriate under the statute. Whether the issue was fairly debatable turns on whether there was a disputed factual dispute that, if resolved in favor of the

employer, would have supported the employer's denial of compensability. Gilbert v. USF Holland, Inc., 637 N.W.2d 194 (Iowa 2001).

Claimant is also entitled to penalty benefits. Defendant has shown an utter disregard for the workers' compensation system. He has ignored the benefits to which his employee is entitled.

Defendant has acted unreasonably, and without any regard for his injured employee. Therefore, it is the determination of the undersigned; defendant shall pay unto claimant seventy-five weeks of penalty benefits at the weekly rate of $215.42 per week.

The final issue is the matter of costs. Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

Claimant is entitled to the following costs:

$100.00 filing fee

Service fees

Court Reporting fees

Cost of obtaining medical records

A copy of this decision is being provided to the workers' compensation commissioner to determine whether further action should take place under Iowa Code section 87.19 for failure to have workers' compensation insurance.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay unto claimant one hundred fifty (150) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of two hundred fifteen and 42/100 dollars ($215.42) and commencing from April 6, 2018.

Defendant shall also pay unto claimant twenty-four point four two nine (24.429) weeks of healing period benefits at the rate of two hundred fifteen and 42/100 dollars ($215.42) for the periods from August 8, 2017 through April 5, 2018.

All past due benefits shall be paid in a lump sum together with interest as allowed by law.

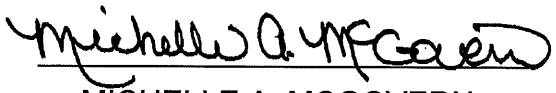
Defendant shall also pay unto claimant seventy-five (75) weeks of penalty benefits pursuant to Iowa Code section 86.13, and said benefits shall be paid at the rate of two hundred fifteen and 42/100 dollars ($215.42) per week.

Defendant shall pay medical benefits as detailed in the body of the decision.

Defendant shall pay the costs as detailed in the decision.

Defendant shall file all reports as required by law

Signed and filed this 27th day of April, 2018.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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MAM/sam

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.