BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BRIAN AULWES,	:	
Claimant,	:	File No. 5065781
vs.	:	A R B I T R A T I O N
JOHN DEERE DUBUQUE WORKS OF DEERE & COMPANY,	:	D E C I S I O N
Employer, Self-Insured, Defendant.	:	Head Note Nos.: 1803, 4000.2

STATEMENT OF THE CASE

Brian Aulwes, claimant, filed a petition in arbitration seeking workers' compensation benefits from John Deere Dubuque Works as a result of an injury he sustained on March 26, 2015 that arose out of and in the course of his employment. This case was heard in Des Moines, Iowa and fully submitted on August 22, 2019. The evidence in this case consists of the testimony of claimant, Christine Aulwes, James Wolter, Joint Exhibits 2 – 4 and 6 – 11, Defendant's Exhibits A - H and Claimant's Exhibits 1 - 5. Both parties submitted briefs.

Claimant moved to amend his petition to include a sequela injury to the left foot and a mental injury for this file at the hearing. Defendant had no objection and the motion to amend was granted at the hearing and in a ruling issued on July 1, 2019.

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

The extent of claimant's disability.

Whether penalty should be assessed.

Assessment of costs.

FINDINGS OF FACT

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

Brian Aulwes, claimant, was 47 years old at the time of the hearing. Claimant graduated from high school and has had some community college courses over the years in welding, hydraulics and electrical for his work. (Transcript page 19)

Claimant started working at the age of 8 or 9 in his father's construction business and has continued to work throughout his life. Claimant worked full time while still in high school. (Tr. p. 20)

Claimant began working for John Deere Dubuque Works (John Deere) in October 2000. (Tr. p. 22) Claimant has had a number of jobs at John Deere. For the first two years he was in a pool of workers and assigned to positions on an as-needed basis. Claimant then went to backhoe fabrication, which included a lot of welding from 2002 through 2009. (Tr. p. 24) Claimant went to an assembly job after there was a company-wide layoff. In 2004 claimant worked on knuckle boom loaders (KBL) in the forestry department. The KBL is used to load logs onto trucks.

On March 26, 2015, claimant was climbing down from a KBL and fell. (Tr. p. 30) Claimant injured his lower back on the left side and his right elbow and hip. (Tr. p. 31) Claimant's elbow healed and he had no permanent injury to his elbow. (Tr. p. 37)

Claimant has received extensive treatment after this injury and agreed that the summary of treatment in claimant's exhibits was an accurate summary. (Tr. p. 33)

Claimant was initially having bladder issues as a result of his fall. Claimant was referred to a pain center in May 2016 where he had epidural steroid injections (ESI) and SI injections. (Tr. p. 37) Claimant had physical therapy. In August 2015, Dr. Segal talked to claimant about nerve ablation and a provocative discogram at a pain clinic. (Tr. p. 38) The claimant was unable to finish the discogram and experienced pain into his left foot after the procedure. Claimant testified he has had left foot pain since the procedure. (Tr. pp. 39, 40) Claimant continued his work at John Deere up to this time.

Claimant started to see David Segal, M.D., for back pain on March 28, 2015. Dr. Segal referred claimant for injections and recommended discogram, which was positive. (See Exhibit 7) On September 22, 2015, Dr. Segal recommended surgery. (JE 6, p. 8) Dr. Segal performed a microlumbar discectomy and foraminotomy L4-L5 on September 25, 2015. (Tr. p. 40; JE 8, p. 1) Dr. Segal originally recommended claimant to be off work for September 25, 2015 through October 25, 2015. (JE 6, p. 9) He amended the restriction to allow claimant to work four hours a day. (JE 6, p. 11) Claimant testified that he had surgery on a Friday and by the next Wednesday, September 30, 2015, John Deere had a taxi take him to work. Claimant would remain

in the plant for 4 hours and be taken home by taxi. (Tr. p. 42) While claimant was not performing work at John Deere, he was required to attend four hours a day.

The surgery corrected the bladder issue claimant was having. Claimant's foot pain and numbness in his leg improved, but he started to have pain in his left calf. (Tr. p. 44) Claimant also has pain from a lump at the incision site. Claimant is provided a lidocaine patch by John Deere for this condition, which he uses every day. (Tr. p. 45) Claimant had an infection at the incision site for a long time after the surgery that eventually was cleared up. Claimant testified he still has low back pain and a painful lump. (Tr. p. 48)

Claimant was provided a TENS unit that he initially used on his lower back and is now using on his left leg. (Tr. p. 50) Claimant said that he has three areas that did not respond to his surgery; his SI joint, left thigh pain that returned after surgery and left calf pain. (Tr. p. 50; JE 6, p. 22)

Claimant was referred to the University of Iowa Hospital and Clinics (UIHC) Spine Clinic and received treatment with Joseph Chen, M.D., in May 2016. Dr. Chen increased the number of hours claimant could work from four to six hours. (Tr. p. 53) Claimant said that at that time he went from sitting in the medical office for four hours to doing some paperwork for the forestry department. (Tr. p. 53) On June 20, 2016, Dr. Chen released claimant to work eight hours. Claimant did not return to physical work until August 2016 and was still being driven to work in a taxi. (Tr. pp. 53, 54)

Claimant participated at the UIHC spine program from July 11, 2016 through July 22, 2016. Claimant testified that he received a good psychological benefit from the program. (Tr. p. 54) In a letter of July 22, 2016, Dr. Chen congratulated claimant for the completion of the two-week Spine Rehabilitation Program. Dr. Chen released claimant with lifting restrictions of occasionally lifting 35 pounds and repetitively lifting 17 1/2 pounds and removed driving restrictions. (Tr. p. 55)

Claimant returned for a follow-up appointment with Dr. Chen on August 29, 2016. Dr. Chen noted claimant had a limp and increased back pain. (JE 9, p. 34) Dr. Chen provided a 10 percent impairment rating and the following permanent restrictions,

> He is able to lift 40 pounds on an occasional basis (defined as up to 1/3 of a workday).
> He is able to lift 20 pounds on a repetitive basis (defined as 1/3 to 2/3 of a workday).
> He should be allowed a short 1-2 minute stretch break every 60 minutes in order to change positions and do specific stretches for pain management.

(JE 9, p. 35)

Claimant returned to his job of inside and outside testing of the KBL machines on September 1, 2016. (Tr. p. 58) Claimant testified that on the first date back he torqued his back and reported this injury. (JE 9, p. 42) Claimant was referred to the pain clinic at UIHC and received injections and recommendation for a referral to a pain psychologist. (Tr. p. 59; JE 9, pp. 52, 53)

On March 20, 2017, a functional capacity examination (FCE) was conducted by Daryl Short, DPT. The FCE made recommendations for an eight-hour day of sedentary to light lifting (up to 10-15 pounds on an occasional basis of physical demand). (Ex. 1, p. 3)

On April 28, 2017, Mark Taylor issued an independent medical examination (IME) report. Dr. Taylor's diagnoses were,

1. Right elbow contusion with traumatic bursitis, now resolved.
2. Low back injury with chronic lumbago and left lower extremity symptoms.
3. Chronic left sacroiliac pain.

(Ex. 2, p. 8) Dr. Taylor assigned a 13 percent whole body impairment rating. (Ex. 2, p. 9) Dr. Taylor recommended restrictions of,

> I would recommend 30 pounds on a rare basis, or up to one lift per hour. I would also further note that that type of lifting should preferentially occur at waist level, or at least between knee and chest level whenever possible. Below knee level, or above shoulder level, I recommend no more than 15-20 pounds (similar to the FCE).

(Ex. 2, p. 9) Dr. Taylor issued a second IME on November 26, 2018. His diagnoses at that time were,

1. Low back injury with chronic lumbago and left lower extremity pain and paresthesias.
2. Chronic left sacroiliac pain.
3. Status post surgery at L4-L5 in September 2015 with Dr. Segal.
4. Placement of spinal cord stimulator on June 29, 2018, with Dr. Wilson.

(Ex. 3, p. 6) Due to the placement of the spinal cord stimulator (SCS), Dr. Taylor increased claimant's whole body rating to 15 percent. He also recommended the following restrictions,

> With regard to restrictions, I still recommend that he avoid lifting more than 30 pounds on a rare basis, at or above knee level. Between knee and chest level, I would recommend no more than 20 pounds on an occasional basis which is basically what the FCE recommended. Below knee level or

> above shoulder level, I would recommend 15 pounds or less on a rare basis.

(Ex. 3, p. 6)

Claimant saw Valerie Keffala, Ph.D., a psychologist at the UIHC on April 29, 2019; May 6, 2019 and May 28, 2019. (JE 9, pp. 146, 150, 153) Dr. Keffala has diagnosed claimant with adjustment disorder with mixed anxiety and depressed mood. She identified the causation of this condition to his work injury and noted that claimant would need mental health services in the future. (JE 10, pp. 24, 25)

Claimant testified that he had two nerve ablations at the UIHC and that they would last up to five or six months. (Tr. p. 60) The first was on February 8, 2017 and the second on August 22, 2017. (JE 9, pp. 78, 91)

Claimant was provided information about an SCS on January 24, 2018. (JE 9, p. 100) Dr. Wilke of the UIHC, on April 20, 2018, recommended claimant have an SCS trial. (Tr. p. 62) Dr. Wilke's diagnoses at that time were,

1. Lumbar radicular pain . . . .
2. Failed back surgical syndrome . . . .
3. Neuropathic pain . . . .
4. Other chronic pain . . . .

(JE 9, p. 110) The trial SCS was placed on May 25, 2018. (JE 9, p. 117) A permanent SCS was implanted on June 29, 2018. (JE 9, p. 126)

Claimant testified that he received relief from pain in three of his five toes with the SCS. (Tr. p. 63) Claimant testified that he always has pain in two toes which makes walking on inclines, steps, and uneven ground difficult. (Tr. p. 64) Claimant had a permanent SCS implanted on June 29, 2018 at the UIHC. (JE 9, p. 126) Claimant testified that the permanent SCS took away the pain in his left thigh and groin. (Tr. p. 67) Claimant keeps his SCS on all of the time. Claimant returned to his regular job testing the KBL on August 13, 2018.

Claimant testified that Dr. Hunt, on September 21, 2018, provided a limitation of working no more than ten hours per day as well as the permanent restrictions he had previously provided. (Tr. p. 69; JE 2, p. 16) Claimant was given additional restrictions by Dr. Hunt of no kneeling or climbing effective October 3, 2018. (Tr. p. 70; JE 2, p. 16)

With the additional restrictions, claimant's job went out to bid in the plant and he was replaced. Claimant testified that now he helps other people in the forestry department. Claimant said that that he was also provided restrictions of not working

overhead due to his SCS around December 2018. (Tr. p. 72) Claimant testified that Amanda Addison, NP, on December 12, 2018, made the no overhead work restriction permanent. (JE 2, p. 16)

On January 29, 2019, claimant was transferred to the small crawler department doing engine subassembly. Claimant testified that John Deere has provided modification in his work so he can perform the subassembly. (Tr. pp. 77, 78) Claimant said it was difficult for him to stay on his feet all day doing the subassembly and was provided restrictions by NP Addison of being able to rest one hour out of four. Claimant was replaced on the subassembly job in late April 2019 until June 2019 due to his restrictions. In June 2019 he was informed he could return to his subassembly job with rest one out of four hours. (Tr. p. 83) On June 24, 2019, John Deere medical provided additional restrictions of working two hours and rest for one half hour. (Tr. p. 85)

At the time of the hearing claimant was taking 2,400 mg of gabapentin a day. He also takes Flexeril and tizanidine and uses a Lidoderm patch for 12 hours a day. Additionally, claimant does home physical therapy, takes over-the-counter pain medicine, and uses the TENS unit and SCS on a daily basis. (Tr. pp. 105, 106)

Claimant testified that since he transferred out of the KBL job to the small crawler subassembly his pay had decreased by about a third, primarily due to the fact he does not earn as much CIPP bonus money. (Tr. pp. 110, 111) Claimant testified that he would not be able to perform his work prior to his work at John Deere due to his restriction, without accommodation. (Tr. pp 114, 115) Claimant was asked if he thought John Deere could come up with a job he could perform with his conditions and he testified he hopes John Deere could. (Tr. pp. 122, 124)

Claimant's testimony was consistent as compared to the evidentiary record and his demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. Claimant is found credible.

James Wolter, claimant's current supervisor, was called to testify by claimant. Mr. Wolter said that claimant was a hard worker at John Deere. Mr. Wolter testified that claimant's job on the small crawler subassembly is currently is not a good fit for claimant. Mr. Wolter said,

> A. It just, he's struggling. He has to be on his feet. Even with the restrictions, it seems to be a hard job for him.

(Tr. p. 130) Mr. Wolter said that he has asked for a replacement for claimant and was told it was not possible until his restrictions were made permanent. (Tr. p.132; Ex. H, Deposition pp. 13, 14) Mr. Wolter said the restriction of two hours of work with one half-hour of rest was temporary. (Tr. p. 133) Mr. Wolter has seen claimant wincing in pain and his difficulty in just getting around; he struggles at work. (Ex. H, Depo. pp 8, 9) Mr. Wolter agreed that even with accommodation, claimant's work was dangerous for

the claimant. (Tr. p. 134) Mr. Wolter has had discussions with claimant about what tasks hurt him. (Ex. H, Depo. p. 5)

At the time of the hearing, claimant had been assigned both temporary and permanent restrictions.

Claimant had temporary restrictions assigned by Dr. Hart on April 24, 2019 of being able to sit and rest for one hour every four hours. (Ex. B, p. 2) NP Addison modified the restrictions to rest for one half hour every two hours on June 24, 2019. (Ex. C, p. 4)

The first permanent restrictions were assigned on August 31, 2016. Additional permanent restrictions were issued on September 21, 2018; October 3, 2018 and December 12, 2018. John Deere recorded the temporary and permanent restrictions in the following chart;

Start Date	Restriction	Notes	Occupational
December 12, 2018	Limited use of arm/hand (see details)	No lifting of either arm/shoulder higher than 65 degrees no more than 3x/day.	X
October 3, 2018	Other #2 (see notes)	No kneeling or climbing.	X
September 21, 2018	Other (see notes)	May not work over 10 hours a day.	X
August 31, 2016	Other (see notes)	No lifting, carrying or equivalent pushing or pulling over 40 pounds for up to 1/3 of the work day. No lifting, carrying or equivalent pushing or pulling over 20 pounds for up to 2/3 of the work day. Must be allowed a 1-2 minute stretch break every hour.	X

(Ex. C, pp. 4, 5)

On September 6, 2016, John Deere informed claimant that based upon the impairment rating and other industrial factors claimant would receive 75 weeks (15 percent body as a whole) permanent partial disability (PPD). (Ex. D, p. 6) Claimant was sent his first PPD check on September 20, 2016 and his last PPD check on February 15, 2018. (Ex. G, pp 35, 37) Claimant was paid at a higher and incorrect rate so that claimant, in essence, received 85.16 weeks of PPD benefits. (Defendant's Brief p. 6; Claimant's Brief p. 14)

I find that the claimant's mental health condition, left foot, and left lower extremity conditions are permanent impairments. The injuries arose out of his fall at work on March 26, 2015.

Claimant has requested reimbursement of costs for the filing fee of $100.00, the FCE report of $900.00, and the report of Dr. Keffala of $320.00 (Attachment to Hearing Report). The FCE expense broken down shows $550.00 was for the FCE and $350.00 was the cost of the report.

I find claimant's gross earnings were $1,154.43, that he was married and entitled to 5 exemptions and his weekly workers' compensation rate is $747.23.

RATIONALE AND CONCLUSIONS OF LAW

Extent of Disability

The defendant has stipulated that claimant has a work related injury and is entitled to PPD. The parties have not agreed as to the extent of his impairments.

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.

In assessing an unscheduled, whole-body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

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Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Thilges, 528 N.W.2d 614, 617. Ending a prior accommodation is not a change of condition warranting a review-reopening of a past settlement or award. U.S. West v. Overholser, 566 N.W.2d 873 (Iowa 1997). However, an employer's special accommodation for an injured worker can be factored into an award determination to the limited extent the work in the newly created job discloses that the worker has a discerned earning capacity. To qualify as discernible, employers must show that the new job is not just "make work" but is also available to the injured worker in the competitive market. Murillo v. Blackhawk Foundry, 571 N.W.2d 16 (Iowa 1997).

The willingness to make work accommodations for claimant by John Deere is laudable, however, I must consider claimant's industrial disability in the context of the general labor market, not just with his current employer.

John Deere was making accommodations for claimant's impairments, even before his most recent temporary restrictions of 2019 were imposed. There was no evidence that the accommodations John Deere provides are available in the general labor market. The limited lifting above shoulder, no kneeling and crawling as well as the lifting limitations are very significant limitations.

In considering claimant's industrial disability, I consider the claimant's permanent restrictions. While claimant had temporary restrictions at the time of the arbitration hearing they were not considered for the extent of industrial disability evaluation.

I find the restrictions on lifting that Dr. Taylor made in his November 26, 2018 IME to be claimant's lifting restrictions. They are supported by the FCE. These restrictions more accurately reflect claimant's lifting ability than those provided by Dr. Hunt and Dr. Chen. The record showed that when using the upper limit of Dr. Chen's restrictions claimant would aggravate his conditions. I find the restrictions in Exhibit C, page 5, as to no work over 10 hours, no kneeling or climbing and no lifting his arm/shoulder higher than 65 degrees three times a day to be his restrictions.

Claimant has a high school diploma. He is not able to perform his past work that required him to be on his feet all day or work that exceeds his work restrictions. Claimant has shown extremely strong motivation to keep working for John Deere. And

John Deere tried to keep claimant employed. However, no job that claimant is capable of performing full time without accommodations has been identified.

Claimant works in significant pain. He is on medication, uses the SCS all the time, uses a TENS unit and does home physical therapy, receives counseling, participated in a two-week program at the Spine Rehabilitation Program, and had nerve ablations, injections, and acupuncture.

Considering all of the factors of industrial disability I find claimant has a 70 percent loss of earning capacity. Claimant has a 70 percent industrial disability, entitling him to 350 weeks of PPD. If claimant were not still employed at John Deere the extent of PPD would be greater.

Penalty

The claimant has requested penalty for the failure of the defendant to pay claimant more than 15 percent PPD.

Iowa Code section 86.13 states, in part:

> 4. *a.* If a denial, a delay in payment, or a termination of benefits occurs without reasonable or probable cause or excuse known to the employer or insurance carrier at the time of the denial, delay in payment, or termination of benefits, the workers' compensation commissioner shall award benefits in addition to those benefits payable under this chapter, or chapter 85, 85A, or 85B, up to fifty percent of the amount of benefits that were denied, delayed, or terminated without reasonable or probable cause or excuse.
>
> *b*. The workers' compensation commissioner shall award benefits under this subsection if the commissioner finds both of the following facts: (1) The employee has demonstrated a denial, delay in payment, or termination of benefits. (2) The employer has failed to prove a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits.

A reasonable basis exists for denial of policy benefits if the insured's claim is "fairly debatable." Christensen v. Snap-On Tools Corp., 554 N.W.2d 254, 260 (Iowa 1996). Defendants have a duty to re-evaluate the claim as the medical evidence is made available. See Nielsen v. Finley Hospital, File No. 5011434 (December 28, 2006) (affirming penalty award because "[d]efendants were under a duty to re-evaluate their denial of benefits as the claim progressed and they failed to do so.").

The claimant has shown that there was a denial of benefits and therefore it is the defendant's burden to prove that the denial was reasonable or with probable cause or excuse. If the defendant had a reasonable basis to contest the employee's entitlement to benefits, there is no penalty awarded.

There is a mandatory timeline that the defendant must follow to escape penalty.

First, the employer's excuse for the termination must have been *preceded* by an investigation. Id. Iowa Code § 86.13(4)(c)(1). Second, the results of the investigation were "*the actual basis* . . . *contemporaneously*" relied on by the employer in terminating the benefits. Third, the employer "*contemporaneously* conveyed the basis for the. . . termination of benefits to the employee *at the time of the . . . termination.*" Pettengill v. American Blue Ribbon Holdings, 875 N.W.2d 740, 747 (Iowa Ct. App. 2015). (emphasis added.)

A denial of benefits that is found to be reasonable at one point in time does not automatically immunize all of the accrued benefits from a claim for penalty benefits if the delay continues after that point. Simonson v. Snap-On Tools, 588 N.W.2d 430, 437 (Iowa 1999). An employer has an ongoing duty to evaluate a denial of benefits in order to determine whether a continued denial is reasonable. See, e.g., Squealer Feeds v. Pickering, 530 N.W.2d 678, 683 (Iowa 1995) (" . . . a continued delay in payment may be unreasonable even though the original denial was not.")

In the present case, there has been no showing that defendant reevaluated the claim as additional evidence became available to them. The defendant had notice of ongoing and significant medical issues after they decided to pay a 15 percent industrial rating in August 2016.

The defendant recorded and accepted claimant's additional permanent restrictions on September 21, 2018; October 3, 2018 and December 12, 2018. (Ex. C, p. 5) There was no evidence presented defendant evaluated claimant's PPD after receiving additional permanent restrictions. Defendant's last payment of PPD was on February 15, 2018. Defendant, at a minimum, should have reconsidered the extent of claimant's PPD when new permanent restrictions were acknowledged by defendant. There is no evidence of such evaluation. I find that since September 21, 2018 through the date of the hearing, defendant has failed to conduct a reasonable investigation and to contemporaneously convey the results of the of the investigation to claimant. This is a time period of 39 weeks. Defendant could be assessed a 50 percent penalty for this entire time period.

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 v. Snap-On Tools Corp., 555 N.W.2d at 238 (Iowa 1996). The purpose is to set an amount of penalty to deter the defendant from engaging in such claim handling practices in the future. As defendant made some PPD payments to claimant as well as temporary partial disability and temporary total disability, I assess a penalty of less than the maximum of 50 percent. Considering all of the appropriate factors in assessing the amount, I award a penalty in the amount of $10.000.00 to deter such conduct in the future.

Defendant shall pay interest on the penalty benefits from the date of this decision. See Schadendorf v. Snap On Tools, 757 N.W.2d 330, 339 (Iowa 2008).

Costs

The last issue is assessment of costs.

As the claimant has generally prevailed, I award claimant costs. Pursuant to rule 876 IAC 4.33 I award the filing fee of $100.00, the FCE report of $350.00 and Dr. Keffala's report of $320.00. Claimant is awarded $770.00 in costs.

ORDER

Defendant shall pay three hundred fifty weeks of permanent partial disability benefits at the weekly rate of seven hundred forty-seven and 23/100 dollars ($747.23) commencing on August 29, 2016.

Defendant shall have credit for benefits previously paid.

Defendant shall pay claimant costs in the amount of seven hundred seventy and 00/100 dollars ($770.00).

Defendant shall pay claimant a penalty of ten thousand and 00/100 dollars ($10,000.00).

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all 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 shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this _____15th_____ day of November, 2019.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mark Sullivan (via WCES)
Dirk Hamel (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.