BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ROBERT BAILEY, Claimant, vs. CEMEN TECH INC., Employer, and ACCIDENT FUND NATIONAL INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5064181 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1803, 2907, 4000

STATEMENT OF THE CASE

Robert Bailey, claimant, filed a petition in arbitration seeking workers' compensation benefits from employer, Cemen Tech, Inc. (Cemen) and insurance carrier, Accident Fund National Insurance Company (Accident Fund), as a result of an alleged injury he sustained on August 24, 2017 that allegedly arose out of and in the course of his employment. This case was heard August 13, 2019 in Des Moines, Iowa and fully submitted on September 16, 2019. The evidence in this case consists of the testimony of claimant, Ryan LeRoque, Joint Exhibits 1 - 3, Defendants' Exhibits A - H and Claimant's Exhibits 1 - 4. Both parties submitted briefs.

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 an injury on August 24, 2017 which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of permanent disability and, if so; whether the injury is to the right finger or right hand.

3. The extent of claimant's disability.

4. Whether claimant provided timely notice of an injury to the defendants.

5. Whether claimant is entitled to payment of certain medical expenses.

6. Whether claimant is entitled to payment for an independent medical examination and, if so, what is the correct amount to be reimbursed.

7. Whether penalty should be assessed.

8. Assessment of costs.

FINDINGS OF FACT

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

Robert Bailey, claimant, was working for Cemen, employer, on August 24, 2017. Claimant was a welder/fabricator for Cemen. (Transcript page 11) Claimant testified on Thursday August 24, 2017,

> A. I was welding the inside of an ag bin and about 3-, 4-foot weld. And when I sat down, the wire had poked through my welding glove and poked my skin. And I just cut the wire, took my glove off and went up and told my lead supervisor what happened.

(Tr. p. 12) Claimant testified that he had a little pain from the poke, nothing major, but it got infected a few days later.

Claimant testified that he told his lead supervisor, Bo Seidenkranz as soon as he got the wire out of his finger and his welding glove off and the next day Gary Neer, the production manager was notified. (Tr. p. 13) Claimant testified that he spoke to Mr. Neer and said:

> Q. And did you tell anybody at Cemen Tech about how your injury got worse?
>
> A. Gary was - - I believe on that Friday he came and talked to me about it because Bo had brought it to his attention, and he said he had notified Michelle since it was a work-related injury and to let him know if there was anything else that I needed.
>
> Q. Who was Michelle"

A. Michelle Eggleston. She runs the HR. She's in the HR department for Cemen Tech.

(Tr. p. 15) Claimant informed Mr. Seidenkranz and Mr. Neer on Friday August 25, 2017 he was going to see a doctor if the infection in his finger did not get better. (Tr. p. 16) Claimant went to a UnityPoint clinic on August 26, 2017 and received some antibiotics.

Claimant returned to work on Monday and his infection was worse. Claimant asked for permission to leave work early that day to see a doctor and the employer gave him permission to do so. Claimant returned to the UnityPoint clinic and was referred to a hand surgeon, Shane Cook, M.D. on that day.

Dr. Cook performed surgery to remove the infection in claimant's hand and finger on August 29, 2017. (Joint Exhibit 2, pp. 5, 6; Ex. 4, p. 2) Claimant returned to work the day after the surgery with his right hand and right index finger bandaged. (Ex. 4, p. 3) Claimant said that Mr. Seidenkranz saw his bandaged hand. Claimant also spoke to Ms. Eggleston. Claimant testified,

Q. And did Michelle - - and I assume that's an HR person:

A. Yes. She came down that weekend. She asked what happened. Told her I notified Bo the day it happened. I told her I had just got poked with a wire from the welding gun. I notified Bo the same day. She said that Gary had notified her that I was going to the doctor. And I didn't know what else to do, but reported it to her, tell her what happened. And she said that if I had to go back and see the doctor to let her know. That way they could pay me for the time off, and I wouldn't have to use PTO time. I didn't know what else to do or say other than report an injury to them.

Q. It looks like we've introduced into the exhibits Claimant's Exhibit 2-1, which is an email from Michelle Eggleston. Is that what you're referring to as to did she inform you that when you went to the doctor that you should stay on the clock?

A. Yes, that was - - that was the week after - - the week that I had the surgery done, sometime Wednesday, Thursday, or Friday of that week she had told me if I had to go back to the doctor to let her know. That way they could pay me company, on company time rather than using my PTO time since it was a work-related incident.

(Tr. pp. 19, 20)

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.

On September 5, 2017, Ms. Eggleston, Human Resources Manager at Cemen, sent an email stating that claimant was leaving for a doctor's appointment due to his finger at about 1:45 and that his time should be entered to the end of the day at 4:30. (Ex. 2, p. 1)

Claimant incurred medical expenses form his injury and infection that are listed in Joint Exhibit 3. The billing summary states that claimant's bills were paid with Medicaid and that the hospital bill of $20,083.11 has not been paid. (JE 3, p. 1)

I find that these medical bills are related to the injury of August 24, 2017. I also find that the treatment was reasonable and necessary and the costs were reasonable.

Claimant was terminated by the employer in February 2018 for matters unrelated to his hand/finger injury. Claimant did not tell his doctor that he had a work injury when he went to his doctor on July 24, 2017 [sic]. (Tr. p. 27) Claimant testified under cross-examination:

> Q. Now, isn't it true that when your employer noticed you had a bandage on your hand, you told HR you didn't want to report a work injury?
>
> A. No.
>
> Q. So you're saying you went to the HR, you said this is a work injury. I want to treat under work comp?
>
> A. She came to me and asked me what happened. I told her what happened, and she said if I needed - - I told her that I already had the surgery done, and she said if I needed anything else to go to see doctors that they would pay for it. It would be covered, and I wouldn't have to use vacation or PTO time.
>
> Q. And she, who is she?
>
> A. Michelle Eggleston. I thought that reporting an injury at work was all I had to do.
>
> Q. So you were offered medical treatment under work comp if it was, indeed, a work injury; isn't that true?
>
> A. No.
>
> Q. So you're saying you were never offered treatment under work comp?
>
> A. Not by anybody.

Q. And you never had a discussion with Michelle or anybody in HR about you wanting to just get medical treatment on your own under your own insurance, that your insurance was better?

A. I had one conversation with Michelle, and that was right the week of the surgery, and I just told her that I got injured, and I had to see the doctor a few more times. And she said that whatever I needed to do she would take care of it.

Q. And you never told Michelle that you actually injured your finger at home?

A. No.

(Tr. pp. 30, 31)

Mr. LeRoque, HR generalist at Cemen testified. When asked about claimant's injury he testified,

Q. Now, when the employer saw Mr. Bailey had a bandage on his hand, did the employer offer medical treatment under work comp if there actually had been a work comp injury?

A. Yes.

(Tr. p. 38) Mr. LeRoque testified that claimant refused to file a claim for workers' compensation and told him that the injury happened at home. (Tr. p. 39) On cross-examination Mr. LeRoque agreed that he never talked to claimant about any sort of injury at home. (Tr. p. 44)

On August 26, 2017 claimant was seen by Adam Andrews, D.O. Claimant reported that a red hot metal wire went into his right second finger two days ago and that there was swelling and tenderness. (JE 1, p. 1) On August 28, 2017 claimant returned to Dr. Andrews for increased pain in the right hand. Dr. Andrews noted there was redness spreading from the index finger to the palm of the hand. (JE 1, p. 3) Dr. Andrews referred claimant to the emergency department at Mercy Medical Center. Claimant was seen in the emergency department on August 28, 2017 by John Littler, M.D. who noted claimant had a, "[P]uncture wound present to the ulnar aspect of the right index DIP. There is swelling diffusely from the tip of the finger to the base of the thenar eminence." (JE 1, p. 10) Claimant was examined by Dr. Cook in the emergency department. Dr. Cook noted that given the significance of the infection claimant was taken to the operating room for irrigation and debridement. (JE 2, pp. 4, 5) Claimant followed up with Dr. Cook on September 5, 2017. Dr. Cook referred claimant for physical therapy. (JE 2, p. 7) The Social History of this encounter identifies claimant as a self-employed welder. (JE 2, p. 8)

On June 28, 2019 defendants wrote Dr. Cook concerning the claimant. (Ex. G, pp. 1, 2) On July 9, 2019, Dr. Cook wrote that his records did not have any notation that claimant's injury was related to a work injury. Dr. Cook stated that claimant did not go to the recommended physical therapy and that claimant has no permanent restriction due to his finger injury. Dr. Cook did not provide an impairment rating and said he would likely grade the injury as a finger injury and would not likely use grip strength in the rating. (JE 2, p. 14)

March 7, 2018 claimant emailed Ms. Eggleston to inform her of his work injury. (Ex. 2, p. 2) On March 7, 2018 Ms. Eggleston emailed claimant's supervisor, Mr. Seidenkranz and asked him if claimant had reported an injury to him and on what date. Mr. Seidenkranz replied on March 7, 2018. His reply was,

> Hey I apologize for not getting back sooner[.] I do remember him having the weld wire poke through his glove but I can't remember what month it was so yes he did report it to me[.] Thanks Bo

(Ex. 2, p. 4)

On March 12, 2018 claimant was sent a letter by United Heartland concerning his claim for workers' compensation. The letter stated:

> We are in receipt of a claim for worker's compensation benefits for an injury from on or around 08/24/2017. According to our file documentation, you had an injury to your hand/finger that resulted in infection requiring medical treatment. You declined to file a worker's compensation claim for any benefits at the time of the injury and your bills for medical treatment for this injury have been submitted through your health insurance. It was not until after you were terminated for unrelated reasons, you advised your employer you wanted to file a claim for worker's compensation benefits.
>
> Under Iowa Law, an injured employee is required to report an injury within 90 days of the date of the injury alleged. Due to late filing of a work comp claim, the insurance company is denying liability for the claim. Furthermore, we have the right to direct and authorize care for treatment of a worker's compensation injury. We have not directed or authorized any care for treatment of an alleged injury from on or around 08/24/2017.

(Ex. B, p. 1)

On September 7, 2018 Sunil Bansal, M.D. issued an independent medical examination (IME) report. (Ex. 1, pp. 1–7) Dr. Bansal noted claimant had numbness of his right index finger that extended into his palm and decreased grip strength. (Ex. 1, p. 5) For claimant's right hand he assigned a 10 percent upper extremity impairment rating. (Ex. 1, p. 6) Dr. Bansal billed $2,079.00 for the report and $559.00 for the examination. (Ex. 1, p. 10)

Defendants submitted a number of invoices concerning payment for rating opinions. (Ex. H, pp. 1–11) The invoices range from $150.00 to $500.00. None of the invoices appeared to be a comprehensive IME.

A First Report of Injury (FROI) was filed by defendants with this agency. A copy of the FROI lists the date of the claimant's injury was August 24, 2017, the date the employer had knowledge of the injury was August 24, 2017 and the date the claim administrator had knowledge of the injury was March 9, 2018. The FROI listed the accident site as 1700 N. 14th St., Indianola, Iowa, 50125. (Ex. 2, p. 7) The defendants admitted in their answer to the original notice and petition that the employer's address is 1700 N. 14th Street, Indianola, Iowa, 52025. (Ex. 2, p. 5)

Dean Wampler, M.D. performed a record review IME of the claimant on July 19, 2019. (Ex. 3, pp. 1–6) Dr. Wampler was critical of Dr. Bansal's use of the loss of grip strength as a means of determining claimant's impairment rating. (Ex. 3, pp. 4, 5) Dr. Wampler provided a 66 percent permanent partial impairment to the claimant's right index finger. (Ex. 3, p. 5)

RATIONALE AND CONCLUSIONS OF LAW

Notice defense

Defendants have asserted that claimant failed to provide notice of the work injury within 90 days of the accident and that the claim must be dismissed. Defendants point out that claimant did not tell his medical providers he had a work injury.

Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days from the date of the occurrence, unless the employer has actual knowledge of the occurrence of the injury.

The purpose of the 90-day notice or actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The actual knowledge alternative to notice is met when the employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940).

Iowa Code 86.11 provides, in part,

> The report [FROI] to the workers' compensation commissioner of injury shall be without prejudice to the employer or insurance carrier and shall not be admitted in evidence or used in any trial or hearing before any court, the workers'

compensation commissioner or a deputy workers' compensation commissioner except as to the notice under section 85.23.

Defendants had actual notice that claimant had a work injury on August 24, 2017. Defendants have not met their burden of proof that they did not have notice.

I find:

- The FROI establishes defendants knew of the work injury on the day it happened and that it occurred at the work site.
- Claimant credibly testified he informed his immediate supervisor, Mr. Seidenkranz, on August 24, 2017 of the injury, and he reported his injury to Mr. Neer on August 25, 2017.
- Claimant's supervisor, Mr. Seidenkranz's, email to Ms. Eggleston establishes the fact that the employer knew of his work injury.
- Ms. Eggleston's September 5, 2017 email letting the claimant attend a medical appointment is evidence that the employer was treating his injury as a work injury.

There is some indication in the testimony that claimant may have said he did not want to file a worker's compensation claim. I do not make that finding. However, whether claimant wanted to pursue a claim for workers' compensation is separate and apart from providing notice of a work injury. Assuming arguendo that claimant said he did not want to file a claim for workers' compensation, the employer still had notice of the injury.

Quite frankly, defendants' notice defense is beyond the pale of reasonable argument. The notice defense by defendants does not appear to be in good faith.

Injury to the Right Hand or Right Finger

The defendants assert that claimant's injury is to the right index finger. In their brief defendants refer to Joint Exhibit 1, page two, which shows the site of the injury as being on the right index finger. The evidence shows that due to infection both the right index finger and right hand were infected. A more accurate depiction of the injury and surgery sites is found in Claimant Exhibit 4, page 2. The claimant had surgery on both the right index finger and right hand to clean out the infection. Claimant had numbness in his hand as well as the finger. Claimant has a permanent injury to both the right hand and the right index finger (second finger).

Impairment ratings are frequently calculated in workers' compensation cases pursuant to the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition. The Guides report that impairment ratings developed by medical specialists are consensus-derived estimates that reflect the severity of the medical condition and the degree to which the impairment decreases an individual's ability to perform common

activities of daily living (ADL), excluding work. Impairment ratings were designed to reflect functional limitations and not disability. AMA Guides, Chapter 1, page 4.

Dr. Wampler did not examine claimant. His opinions were based upon a record review. Dr. Bansal actually examined claimant. Dr. Wampler's rating does not take into consideration any limitation to claimant's loss of some function in his right hand. Dr. Wampler only rates the right index finger. I find that Dr. Bansal's impairment rating is more accurate than the rating of Dr. Wampler[1]. I find claimant has an 11 percent impairment rating to his right hand.

Because Dr. Bansal provided a rating to the upper extremity, I converted the rating to the hand. Using Table 16-2 the Conversion of the Hand to Upper Extremity chart of the AMA Guides, Chapter 16, page 439, a 10 percent upper extremity rating converts to an 11 percent impairment of the hand. The claimant is entitled to 20.9 weeks of permanent partial disability (190 x 11% = 20.9).

Penalty

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.
>
> *c*. In order to be considered a reasonable or probable cause or excuse under paragraph *"b"*, an excuse shall satisfy all of the following criteria:
>
> (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee.

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[1] Dr. Wampler provided a 66 percent permanent partial loss to the right index finger. This is 19.8 weeks of benefits (30 x 66% = 19.8).

(2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits.

(3) The employer or insurance carrier contemporaneously conveyed the basis for the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay, 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 reevaluate 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.").

Defendants ignored the results of their investigation when it was clear that claimant provided timely notice of his work injury to his supervisors.

Likewise, defendants had a duty to reevaluate the claim when facts come to light about the notice claimant provided. When Mr. Seidenkranz reported that claimant reported his injury defendants should have revaluated their position on notice. When the employer gave time off for claimant's work-related injury the defendants should have reevaluated their position on notice. And when the FROI was filed that showed notice the defendants should have reevaluated their position on notice.

The claimant has shown that there was a denial of benefits and, therefore, it is the defendants' burden to prove that the denial was reasonable or with probable cause or excuse. As detailed in the above section on defendants' notice defense, the defendants' reliance on such a defense was not reasonable. As set forth in this decision, defendants had actual knowledge that claimant timely reported his injury. Defendants had no reasonable excuse not to pay benefits. I find claimant is entitled to penalty benefits.

Claimant has alleged that he is entitled to penalty for the failure of the defendants to obtain a rating and also for the defendants' failure to admit claim. Claimant relies upon Ferch v. Oakview, Inc., File No. 5010952 (App. April 13, 2006) and Stroud v. Square D, File No. 5013498 (App. Dec., June 21, 2016) for the proposition that failure to obtain a rating of impairment subjects defendants to penalty. Claimant's reliance on these agency cases is misplaced. In both of those cases and other agency decisions that have found penalty for failure to obtain a rating the defendants admitted claimant had a permanent injury that arose out of and in the course of employment. That is not the same as a denied claim. No penalty is awarded for the action of the defendants of not obtaining a rating of the claimant's impairment.

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). I am not at all convinced that the foregoing list is an exhaustive list of factors to be considered in assessment of the amount of a penalty. Rather, they are examples. The purpose is to set an amount of penalty to deter the defendants from engaging in such claim handling practices in the future. I find that the defendants were unreasonable in utilizing the notice defense and continued to utilize the notice defense at the hearing and in their post-hearing brief.

Considering all of the appropriate factors in assessing the amount I award a penalty of 50 percent of the past due permanent partial disability benefits. ($510.44 x 20.9 = $10,668.19: $10,668.19 ÷ 50% = $5,334.09). I award claimant penalty in the amount of $5,334.09 to deter such conduct in the future.

Medical expenses

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).

I previously found that the medical bills in Joint Exhibit 3 were due to his work injury of August 24, 2017. Defendants shall pay any outstanding medical bills that are in Joint Exhibit 3 and shall hold claimant harmless for any medical expenses related to his work injury.

The records submitted show that some of claimant's medical bills were paid for by Medicaid. Under Iowa Code section 249A.6 recipients of Medicaid assign the right to payment of medical care from any third party. Federal Medicaid law requires states operating Medicaid programs to ascertain whether there is third-party liability for costs paid for by Medicaid and to seek reimbursement for such costs – as Medicaid is a "secondary payer", so that it pays only where a primary payer does not exist. 42 U.S.C. § 1396a(a)(25)(A) and (B). These "secondary payer" requirements are set forth in greater detail in Medicaid's underlying regulations. 42 CFR § 433.137, § 433.139, § 433.140, and § 433.145. In 1987, the Iowa legislature adopted Iowa Code section 249A.6, which implemented federal law regarding a state's obligation to seek recovery of Medicaid benefits from liable third parties. Under Iowa law, claimant is not allowed to waive the rights to Medicaid reimbursement for medical care received under Medicaid. Defendants are ordered to reimburse these costs and to be fully liable to the medical care providers. Any dispute between defendants and the medical care providers shall be handled privately or through use of the informal dispute resolution procedures in Chapter 10 of this division's administrative rules. However, defendants will not be

allowed to shift the medical care costs of a work-related injury to the taxpayers of the state of Iowa away from the liability of the workers' compensation insurance carrier. Such programs exist to benefit Iowans who would otherwise be left without medical care treatment options, not to benefit workers' compensation insurance companies. Defendants have been found liable for claimant's medical expenses as a result of an injury that arose out of and in the course of claimant's employment.

Costs

The next issue to be determined is whether claimant is due reimbursement expenses for an IME under Iowa Code section 85.39 (2017) or for the cost of the report under 876 IAC 4.33, as well as the filing fee.

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. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

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.

The Iowa Supreme Court has held that section 85.39 only allows the employee to obtain an independent medical evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 847 (Iowa 2015).

Under the Young decision, an employee can only obtain an IME at the employer's expense if an evaluation of permanent disability has been made by an employer-retained physician.

In this case claimant obtained an IME from Dr. Bansal before defendants retained a physician who provided a rating of the claimant. As such, claimant is not entitled to the full cost of the IME.

The Supreme Court, in Young noted that in cases where Iowa Code section 85.39 is not triggered to allow for reimbursement of an independent medical examination (IME), a claimant can still be reimbursed at hearing the costs associated with the preparation of the written report as a cost under rule 876 IAC 4.33. Young at 846-847. I find claimant is entitled to reimbursement of the costs of the report prepared by Dr. Bansal. I find the costs to be reasonable. Using my discretion under 876 IAC 4.22 I find defendants shall pay claimant $2,079.00 and the $100.00 filing fee. Defendants shall pay claimant a total of $2,179.00 for costs.

ORDER

Defendants shall pay claimant twenty point nine (20.9) weeks of permanent partial disability benefits at the weekly rate of five hundred ten and 44/100 dollars ($510.44) commencing December 13, 2017.

Defendants shall pay claimant penalty of five thousand three hundred thirty-four and 09/100 dollars ($5,334.09).

Defendants shall pay the medical expenses as set forth in this decision.

Defendants shall pay claimant costs of two thousand one hundred seventy-nine dollars ($2,179.00).

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

Signed and filed this 19th day of November, 2019.

James F. Elliott

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Laura Ostrander (via WCES)
Eric Loney (via WCES)
Tonya Oetken (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.