BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

EDWARD A. GREEN, Claimant, vs. COMPASS GROUP USA d/b/a BON APPETIT, Employer, and NEW HAMPSHIRE INSURANCE COMPANY, Insurance Carrier, Defendants.	File No. 5059233 A R B I T R A T I O N D E C I S I O N Head Note No.: 1108

STATEMENT OF THE CASE

The claimant, Edward A. Green, filed a petition for arbitration and seeks workers' compensation benefits from Compass Group USA d/b/a Bon Appetit, employer, and New Hampshire Insurance Company, insurance carrier. The claimant was represented by Tom Wertz. The defendants were represented by Nathan McConkey.

The matter came on for hearing on August 9, 2018, before Deputy Workers' Compensation Commissioner Joe Walsh in Cedar Rapids, Iowa. The record in the case consists of Joint Exhibits 1-4, Claimant's Exhibits 1-7 and Defense Exhibits A-F. The claimant testified under oath at hearing. Ellen Tucker was appointed the official reporter for the proceeding. The matter was fully submitted on September 10, 2018, after helpful briefing by the parties.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury which arose out of and in the course of employment on October 17, 2016.

2. Whether the alleged injury is a cause of temporary or permanent disability.

3. Whether claimant is entitled to healing period benefits from March 31, 2017 through July 10, 2017.

4. Whether the claimant has sustained any permanent disability to his left foot.

5. What were the claimant's gross earnings at the time of the accident for purposes of calculating his rate of compensation?

6. Whether claimant is entitled to medical expenses under Section 85.27.

7. Whether claimant is entitled to independent medical examination (IME) expenses under Section 85.39.

8. Whether claimant is entitled to penalty benefits for the denial of benefits.

9. Whether the claimant is entitled to costs related to his Request for Admissions.

STIPULATIONS

Through the hearing report, the parties stipulated to the following:

1. The parties had an employer-employee relationship at the time of the alleged accident.

2. The commencement date for any permanent disability benefits is July 11, 2017.

3. The claimant was single and entitled to two exemptions at the time of the alleged injury.

4. Defendants claim no credit for benefits paid.

5. Affirmative defenses have been waived.

FINDINGS OF FACT

Claimant, Edward A. Green, was 65 years old at the time of hearing. He worked for Compass Group, which does business as Bon Appetit. Bon Appetit is a business that contracts with Cornell College to provide food service management. Mr. Green worked as a dishwasher.

Mr. Green testified live and under oath at hearing. His testimony was credible. I find his testimony at hearing is consistent with the medical records in evidence. There was nothing about his demeanor at hearing which caused me any concern about his truthfulness.

On October 17, 2016, Mr. Green was working for the employer. He was

performing routine work activities on that date and bent down to pick up a fork off the ground. At that time, he felt a pop in the outer portion of his left foot. This fact is not seriously in dispute.

Mr. Green has a number of other health issues and maladies. He fractured this same foot while climbing stairs in 2012, which resulted in an acute avulsion fracture in the cuboid region. (Joint Exhibit 1, pages 1 through 6) He underwent a right hip replacement in 2013 for severe osteoarthritis. (Jt. Ex. 1, pp. 7-8; Jt. Ex. 3, p. 1) At hearing, he testified he has suffered from diabetes, hypertension, restrictive lung disease, chronic kidney disease, obesity and low back pain. (Jt. Ex. 3, pp. 1-6) He has been on significant medications over time for these conditions, including chronic pain medications. Mr. Green is a large man, who weighed approximately 320 pounds at the time of his alleged injury.

The first medical treatment documented in the file is a visit to UnityPoint Health, an urgent care clinic on October 17, 2019. (Jt. Ex. 4, p. 1) The records document that he "bent down to pick up a fork and heard a pop in his left outer foot." (Jt. Ex. 4, p. 2) X-rays were taken and he was provided an ankle immobilizer and a referral to an orthopedic specialist. (Jt. Ex. 4, p. 3) He next sought treatment from Physicians' Clinic of Iowa where he was examined by Sarah Kluesner, ARNP, on October 24, 2017. The following history is recorded:

> Edward is a 63-year-old right-hand-dominant male who presents today for evaluation and management of his left fifth metatarsal fracture sustained while at work. He reports bending over to collect a fork that had fallen on the ground when he heard a pop along the lateral aspect of his foot with subsequent pain and swelling. He presented to urgent care where x-rays confirmed a Jones fracture. He has been nonweightbearing in a boot with crutches. Has been working with limitations. His pain is mild with intermittent sharp discomfort.

(Jt. Ex. 1, p. 9) After reviewing radiographic films with Rodney Dempewolf, DPM, the following diagnosis was made: "Mildly displaced fracture involving proximal shaft of fifth metatarsal consistent with Jones fracture." (Jt. Ex. 1, p. 11) Work restrictions and surgery was recommended. (Jt. Ex. 1, p. 11)

All of the medical records, as well as claimant's discovery answers, documented that Mr. Green was bending over to pick up a fork when he felt the pop in the outer portion of his right foot as described above. (Def. Ex. C, p. 3; Cl. Ex. 1, p. 12) At hearing, claimant testified regarding the specific manner in which he bent down to pick up the fork. He leaned against a wall, and squatted to reach the fork. The defendants believe this modification to his testimony is extremely significant. I find it is not. I find he simply provided more detailed hearing testimony than was recorded by his medical providers. There is nothing inconsistent about his hearing testimony.

In November 2017, defendants had William Boulden, M.D., provide a medical opinion for this case. Defense counsel provided Dr. Boulden with records and a history

of the injury and asked if he agreed with the following statement: "Mr. Green's foot fracture, allegedly occurring on October 17, 2016, resulted from a variety of his personal factors, such as his weight, age, diabetes, narcotic medication usage, tobacco use and congenital cavus deformity, where the timing of the fracture was coincidental to his work." (Def. Ex. F, p. 3) Dr. Boulden agreed. On December 19, 2016, defendants notified Mr. Green that his claim was denied. He wrote a separate report wherein he stated that "the mechanism of injury that caused the foot to fracture; however, there are extenuating circumstances in the fact that he has a cavus deformity of his foot, which is felt by some people to put more stress on the fifth metatarsal, therefore, causing fracture." (Def. Ex. F, p. 1)

Mr. Green did not return to a physician until February 2017. On his next visit, Dr. Dempewolf also diagnosed claimant with congenital metatarsus adductus foot shape. (Jt. Ex. 1, p. 15) Dr. Dempewolf again recommended surgery, but also provided other options. (Jt. Ex. 1, p. 15) In March 2017, Mr. Green opted to pursue the surgical option. (Jt. Ex. 1, p. 19) Surgery was performed on March 31, 2017. (Jt. Ex. 2) Mr. Green was then off work from March 31, 2017, through July 10, 2017. The defendants contend that claimant would have been off work in any event for a portion of this time for summer break (approximately mid-May through early August). He had an uneventful recovery from the injury and was released from medical care on July 10, 2017, with no restrictions. (Jt. Ex. 1, p. 29)

In August, Dr. Dempewolf prepared a report for claimant indicating that the injury was acute and directly related to his work activity of bending down to pick up a fork off the floor. (Jt. Ex. 1, p. 34) He acknowledged that diabetes and elevated body mass index complicated claimant's care "but are otherwise not directly causative or indicative of fracture development." (Jt. Ex. 1, p. 34) He opined that Mr. Green needed to be off work following the surgery. He further opined that ordinarily no long-term disability is associated with this type of injury. (Jt. Ex. 1, p. 35) I understand this to mean that he did not expect any permanent impairment, however, he apparently did not perform a specific evaluation for functional loss.

Dr. Dempewolf last evaluated Mr. Green on November 21, 2017, and documented no pain, swelling or discomfort. (Jt. Ex. 1, p. 39) He released him fully without any restrictions on activity,

In March 2018, Sunil Bansal, M.D., evaluated Mr. Green at the request of claimant's counsel. (Cl. Ex. 1) Dr. Bansal took a thorough history, reviewed all appropriate records and recited an accurate medical history. (Cl. Ex. 1, pp. 6-13) He also examined Mr. Green. (Cl. Ex. 1, p. 14) He documented that claimant continued to have some pain in his left foot particularly when he places weight on the foot. (Jt. Ex. 1, p. 13) He agreed with Dr. Dempewolf's diagnosis of left fifth metatarsal Jones fracture and assigned a 5 percent lower extremity rating, which converts to 7 percent of the foot. (Cl. Ex. 1, p. 15; see also The AMA Guides to the Evaluation of Permanent Impairment, 5th Ed. Table 17-33, Forefoot Deformity) I find this is a modest and reasonable assessment of claimant's relatively minor functional loss in his left foot.

CONCLUSIONS OF LAW

The first question submitted is whether the claimant sustained an injury which arose out of and in the course of his employment on October 17, 2017.

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.

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.

Claimant contends he obviously did. Defendants contend that, while claimant was at work at the time the injury happened, and while he was performing a work activity, the injury did not arise out of the course of his employment because it was "coincidental" to his work activities.

Having reviewed all of the evidence, I find that the claimant suffered an injury which arose out of and in the course of his employment when he squatted and bent over to retrieve a fork off the ground on October 17, 2017. I find that the claimant was performing a work activity to benefit his employer which increased his actual risk of injury. Defendants argue that claimant had numerous preexisting conditions which

predisposed him to suffering this type of injury. This may be true, although the treating surgeon, Dr. Dempewolf rejected this theory. (Jt. Ex. 1, pp. 34-35) Even if it were true, an employer is required to take the injured worker as it finds him. The fact that the claimant may have been at higher risk for suffering such an injury due to his weight, or a medical condition such as diabetes, or a congenital condition, such as congenital metatarsus adductus foot shape, is not a valid defense to the occurrence of an injury. In fact, it can oftentimes explain why a relatively minor injury, which may not impact another person, can cause serious injury.

Defendants cite Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996), Lakeside Casino v. Blue, 743 N.W.2d 169 (Iowa 2007), and McIlravy v. North River Ins. Co., 653 N.W.2d 323 (Iowa 2002), for the proposition that claimant must prove an actual risk in order to meet the "arising out of" standard. Defendants contend that the injury was merely coincidental to claimant's work activity, which I understand to mean, he just happened to be bending and squatting at work when the injury occurred.

While I agree that Iowa has adopted the actual risk doctrine, I find that claimant has met his burden of proof under this doctrine. Bending and squatting down to pick up a fork, a required activity for a dishwasher, is substantively different than reaching to flush a toilet. It is a required work activity. In this case, bending down and squatting caused the claimant's fifth metatarsal to break.

The next issue is medical causation.

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).

There is not really a genuine causation issue here. Even Dr. Boulden acknowledged that "the mechanism of injury that caused the foot to fracture; . . ." (Def. Ex. F, p. 1) Dr. Boulden was really opining that a number of other preexisting factors, such as the cavus deformity, smoking, diabetes, obesity, medication use, etc., contributed to the condition such that the timing was "coincidental to his work." (Def. Ex. F, p. 3) I reject this argument for the reasons stated above. Furthermore, I find that the expert opinion of Dr. Dempewolf, which is bolstered by Dr. Bansal's opinion, is more convincing than the opinion of Dr. Boulden. (See Jt. Ex. 1, pp. 34-35)

The next issue is whether claimant is entitled to temporary disability benefits from March 31, 2017, through July 10, 2017.

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.

Based upon the expert medical opinion of Dr. Dempewolf and the credible testimony of the claimant, I find claimant is entitled to benefits during the period of March 31, 2017, through July 10, 2017. I find the claimant had not returned to work during this period. He was not capable of substantially similar employment during this period. The claimant was not at MMI.

The next issue is the extent of claimant's functional disability.

Where an injury is limited to a scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a)-(t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably the following language in the case of Soukup v. Shores Co., 222 Iowa 272, 277; 268 N.W. 598, 601 (1936):

> The legislature has definitely fixed the amount of compensation that shall be paid for specific injuries . . . and that, regardless of the education or qualifications or nature of the particular individual, or of his inability . . . to

> engage in employment . . . the compensation payable . . . is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong's Sportswear 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

Thus, when the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National Union C. M. Co., 194 Iowa 819, 184 N.W. 746 (1921).

The parties have stipulated that any disability is calculated to the left foot under Iowa Code section 85.34(2)(n) (2015).

Dr. Dempewolf opined that claimant had no functional deficits at the time he released him. He did not, however, perform a formal impairment evaluation. Claimant testified that he has some pain, particularly when he has to bear significant weight on his left foot. His deficits are undoubtedly minor. Dr. Bansal utilized the AMA Guides, 5th edition and estimated the impairment at 5 percent of the leg, which converts to 7 percent of the foot. I find this is the best estimate of claimant's functional loss. This entitles claimant to 10.5 weeks of benefits.

The next issue is the rate of compensation.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings is excluded, however. Section 85.36(6).

Having reviewed Defendants' Exhibit A, in comparison to Claimant's Exhibit 3, I find that the claimant's average gross earnings were $472.32 per week. This entitles the claimant to a weekly compensation rate of $324.54 per week.

The next issue is 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).

Claimant seeks medical expenses and mileage as set forth in Claimant's Exhibits 4 and 5. All of this treatment was reasonable and necessary and the charges were fair. The only possible defense to these bills (whether an injury occurred) has been rejected. As such, I find the defendants responsible for these expenses.

The next issue is penalty.

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."
>
> Christensen, 554 N.W.2d at 260.

The supreme court has stated:

> (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.

(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).

> 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.

Id.

(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.

(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.

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).

The penalty issue is close. The issue is whether the defendants' outright denial of this claim was reasonable or fairly debatable. While I have rejected the defendants' claim that the injury did not arise out of his employment, I cannot state that their position was per se unreasonable given the current state of the law. They asserted it was coincidental to his employment and there are enough similar cases to suggest this defense has worked in somewhat similar circumstances. The case law suggests this is a close enough question that this denial must be deemed fairly debatable. The claimant is not entitled to penalty. Similarly, I reject claimant's claim for costs under the Iowa Rules of Civil Procedure for the same reason.

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the rate of three hundred twenty-four and 54/100 dollars ($324.54).

Defendants shall pay the claimant healing period benefits from March 31, 2017, through July 10, 2017.

Defendants shall pay the claimant ten and a half (10.5) weeks of permanent partial disability benefits commencing July 11, 2017.

Defendants shall pay accrued weekly benefits in a lump sum.

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

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

Defendants shall pay medical expenses as set forth in Claimant's Exhibits 4 and 5.

Defendants shall receive a credit for medical expenses paid by the group insurance carrier.

Costs are taxed to defendants.

Signed and filed this 8th day of November, 2019.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)
Nathan McConkey (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.