BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TONY PAZZI,

Claimant,

vs.

EFCO/CPI,

Employer,

and

SENTRY INSURANCE

Insurance Carrier,
Defendants.

File No. 5063852

ARBITRATION

DECISION

Head Notes: 1108.50, 1402.20, 1402.40, 1803, 2401, 2907

STATEMENT OF THE CASE

Tony Pazzi, claimant, filed a petition in arbitration seeking workers' compensation benefits from EFCO, employer and Sentry Insurance, insurance carrier, as defendants. Hearing was held on March 28, 2019 in Des Moines, Iowa.

Tony Pazzi and Josh Gorman were the only witnesses to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE5, claimant's exhibits 1-8, and defendants' exhibits A-F.

Mr. Pazzi has alleged that he sustained a cumulative injury to his neck; he has alleged two dates of injury, October 17, 2016 and June 13, 2017. At the outset of the hearing, defendants objected to claimant's allegation on the hearing reports that the two alleged dates of injury were cumulative claims. Defendants argued that they did not know the claims were cumulative in nature until the morning of the hearing. Claimant contends that although the petition did not specifically state "cumulative" it was obvious from the evidence and the file that the claims were cumulative or repetitive in nature. At hearing, I took the objection under advisement so I could have the opportunity to review the evidence. I have now reviewed the evidence and overrule the defendants' objection. Based on the record before this agency, it is clear that the defendants knew or should have known well before the hearing date that the claims were cumulative in nature. The interrogatories, prior testimony, and medical records demonstrate that the neck injury is based on a cumulative claim. (Exhibit C, Transcript page 40; Joint Exhibit 1, pp. 1 and 6; Ex. 2, p. 1; Ex. C, p. 19; Ex. 7, p. 5) Furthermore, a petition for

arbitration before this administrative agency may state the claims in general terms. Defendants' objection is overruled.

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.

The parties submitted post-hearing briefs on April 11, 2019. The case was considered fully submitted on April 11, 2019. On April 18, 2019 defendants filed a response to claimant's post-hearing brief. Defendants did not seek permission from this agency to file the additional response brief. The undersigned had already written this decision and submitted it to our word processors. The defendants' reply brief is not considered. Since that time, claimant has filed a motion to strike the response brief on the basis that defendants failed to request leave of the court to submit a response brief after the case had been submitted. Claimant's motion to strike is granted.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained a cumulative injury? And if so, the appropriate date of injury.

2. The extent of industrial disability claimant sustained as a result of the alleged work injury.

3. The appropriate commencement date for any permanent partial disability benefits.

4. Whether claimant is entitled to payment of past medical expenses.

5. Whether claimant is entitled to future medical care.

6. Assessment of costs.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

At the time of this arbitration hearing, Mr. Tony Pazzi was 51 years old. He had been employed with the defendant-employer, EFCO/CPI, for 14 years. (Testimony)

Mr. Pazzi had a prior February 24, 2012 workers' compensation claim against EFCO. The February 24, 2012, workers' compensation claim proceeded to an

arbitration hearing on February 6, 2018, before a different deputy workers' compensation commissioner. The deputy awarded Mr. Pazzi 45 percent industrial disability for his lumbar and thoracic spine injuries. In the prior litigation Mr. Pazzi alleged that the February 24, 2012 work injury also injured his cervical spine. However, the deputy concluded that Mr. Pazzi's cervical spine problems were not attributable to the February 24, 2012 work injury. In reaching this conclusion, the deputy stated that "[c]laimant may have sustained the neck injury as a result of subsequent [after February 24, 2012] work activities according to Dr. Kuhnlein. However, that determination is for another day in another potential case." (Ex. C, p. 11) It appears that "another day" has arrived, because Mr. Pazzi is now alleging that his neck was injured by work he performed after February 24, 2012.

Until February of 2012, Mr. Pazzi worked as a shipping clerk for EFCO. As a shipping clerk, he pulled materials out of the warehouse and prepared the materials for shipping. His job duties required bending and lifting. He had to lift up to 80 to 100 pounds. The shipping clerks also used a forklift and an overhead crane. (Testimony; Def. Ex. C)

On February 24, 2012, Mr. Pazzi sustained a work-related injury to his back. He underwent conservative treatment, including epidural injections, two lumbar fusions at the L5-S1 level, and the implantation of a spinal cord stimulator. As the result of the 2012 work injury, Mr. Pazzi had permanent restrictions placed on his activities. The restrictions were based on a functional capacity evaluation (FCE). Mr. Pazzi was restricted from lifting more than 30 pounds from the floor to the waist, 15 pounds from the waist, and overhead lifting. In September of 2016 a copy of those restrictions were provided directly to EFCO. (Ex. 7, pp. 1-2) With those restrictions, Mr. Pazzi could not perform the full duties of the shipping clerk job. Mr. Pazzi has not performed the full duties of a shipping clerk since 2012. When Mr. Pazzi initially provided EFCO with his FCE restrictions he was not experiencing any neck pain. To the employer's credit, EFCO accommodated the restrictions by placing Mr. Pazzi in different jobs such as, nuts and bolts, painting, inspecting, bolt reconditioning, and cleaning and arranging. In this litigation, Mr. Pazzi contends his neck was injured or aggravated by these other positions, especially the bolt reconditioning job he worked in after the employer received the FCE restrictions. (Testimony; Def. Ex. C)

Mr. Pazzi worked in a reconditioning bolts job where he spent his day taking nuts and bolts apart and putting them back together to make sure they fit properly and then placed them into buckets. At times, this job required him to oil the nuts and bolts or drill them up or down to get a proper fit. The nuts and bolts varied in size from ¾ inch to 6 inches. While performing this job, his arms were at waist level all day which put a strain on his neck. Mr. Pazzi reported his neck problems to his supervisor, Fransisco Jurado. Mr. Pazzi only performed the conditioning job for approximately one month because after he complained that the job hurt his neck Mr. Jurado placed him in a different job. Mr. Pazzi feels the conditioning job is the one that aggravated his neck the most. (Testimony; Ex. C, Tr. pp. 120-22)

Mr. Pazzi was placed into the paint booth where he painted parts with a spray gun. In this job he was provided a chair that he could sit on as needed. However, he had to bend to look under the parts and bend in order to place stencils on the parts; this also hurt his neck. He estimated he bent over for eight hours per day. He performed this job for about one month and then moved due to neck pain. He was also put in an inspection job. However, this job also bothered his neck, so EFCO put him in the packaging area. (Testimony)

Mr. Pazzi was eventually placed in the packaging freight job. This is the job he was still performing at the time of the 2019 hearing. In this job, Mr. Pazzi retrieves parts to fill orders, places them into boxes, and then tapes and labels the boxes. The parts weigh anywhere from 1 to 100 pounds. He is able to have help with lifting the heavy parts, but he does still maneuver the heavy parts by pulling them. The pulling places strain on his neck. Mr. Pazzi testified that these job duties would typically be performed by a shipping clerk; however, EFCO is having him perform these tasks to accommodate his restrictions. Mr. Pazzi's packaging duties are not enough to fill an eight-hour day. The amount of time the packaging takes each day varies; he could be done by 9:30 or 11:00 a.m. His work day is not scheduled to be done until 4:00. He fills the remainder of his work day with cleaning, organizing, and helping others for the rest of his day. He looks for work to do to keep himself busy. According to Mr. Pazzi, he is not performing a job that EFCO would hire someone for if he left his employment. Mr. Pazzi does not believe there is a full-time job at EFCO that would fit within his restrictions. (Testimony)

As early as October of 2016, Mr. Pazzi reported that his work duties aggravated his neck pain. However, he did not seek medical treatment for his neck pain until June of 2017. On June 13, 2017, Mr. Pazzi went to Metro Anesthesia and Pain Management, a provider who was authorized by the defendants to treat his February 24, 2012 back injury. The authorized doctor recommended that Mr. Pazzi receive treatment for his neck. However, the defendants denied any treatment for the neck. I find that the date of injury in this case is June 13, 2017. This is the date that Mr. Pazzi knew he had a neck injury and that the injury was caused by his employment. Because defendants denied any authorized treatment for the neck, Mr. Pazzi sought treatment on his own. (Testimony)

Although Mr. Pazzi originally believed his neck issues were due to his work-related back injury, this was later determined to be incorrect. However, Mr. Pazzi has consistently testified that his neck pain began after he was working in other positions pursuant to the FCE restrictions for his back injury. (Testimony)

Defendants assert that claimant failed to give timely notice of his neck injury. Specifically, defendants assert there is no evidence that the defendants had notice of any injury date other than 2012. Thus, defendants argue they tailored their entire defense to the elements of that date of injury. Defendants argue that they were prejudiced by not knowing the specific alleged dates of injury until the petition was filed. Defendants contend they could not focus their investigation on times without the specific date. Defendants also assert that they could not effectively interview coworkers,

examine records or investigate the workers' off-the-job activities. In essence, defendants argue they were denied any effective investigation opportunity on the specific dates plead by the claimant. This argument is not persuasive because defendants had been aware of, investigating, and defending a cumulative back and neck claim since at least December of 2017.

As previously noted, claimant originally claimed that his neck symptoms were related to the 2012 back injury. However, the deputy in the April 2018 decision relied on a December 27, 2017 IME report from Dr. Kuhnlein which concluded that the claimant's neck problems were a new injury. Defendants argue that at that point in time, it was obvious to the claimant that his neck problems were due to a work injury occurring on another date. I find that the date of Dr. Kuhnlein's December 27, 2017, report is the manifestation date for the neck injury. I note defendants received Dr. Kuhnlein's report during the course of the prior litigation. Once defendants received Dr. Kuhnlein's report, it should have been equally obvious to the defendants that claimant's neck problems were due to a work injury occurring on another date. At the time defendants received Dr. Kuhnlein's IME report, they were already investigating and defending against the alleged occurrence of a neck and back injury. Defendants argue that receipt of Dr. Kuhnlein's report is insufficient to provide notice because they were only aware of the possibility that another injury date existed. However, I do not find this argument to be persuasive. Not only did Dr. Kuhnlein's report give them notice of another injury date, it also gave defendants notice of the mechanism of injury. Specifically, the report stated, "Subsequently, he says that with the changes in his work activities, he developed the symptoms in the cervical myofascial distribution. . ." (Ex. 1, p. 8) Furthermore, there is no requirement in the statute that defendants have notice of a specific date of injury, merely notice of the occurrence of an injury. I find that defendants had timely knowledge of the occurrence of an injury. I further find that the defendants have failed to carry their burden of proof to show that Mr. Pazzi's claim is barred for failure to give timely notice.

We now turn to the issue of causation. The medical experts in this case support Mr. Pazzi's contention that his neck injury is due to the work he performed at EFCO.

At the request of his attorney, Mr. Pazzi saw Dr. Kuhnlein on November 28, 2017, for a reassessment of his neck, mid back, and low back conditions related to the February 24, 2012 work injury. Dr. Kuhnlein had originally seen Mr. Pazzi for an IME on July 6, 2016. As a result of the November 2017 visit, Dr. Kuhnlein issued a report. Dr. Kuhnlein noted that after the FCE results, EFCO advised Mr. Pazzi to adjust the way he worked. Mr. Pazzi did less lifting and more pulling and he developed symptoms in the cervical myofascial distribution. Dr. Kuhnlein opined that this represented a new injury; specifically, a new cumulative cervical myofascial injury related to his EFCO employment. He felt the symptoms developed when Mr. Pazzi adapted his work activities after the FCE. Dr. Kuhnlein provided an impairment rating for the cervical spine. He placed Mr. Pazzi in the DRE Cervical Category II and assigned five percent whole person impairment. (Cl. Ex. 1, p. 8)

Christopher Stalvey, D.O., of Metro Anesthesia and Pain Management also provided his opinion regarding causation in this case. Dr. Stalvey provided treatment to Mr. Pazzi. On January 25, 2018, Dr. Stalvey signed a letter indicating that the statements in the letter accurately reflected his opinions. Dr. Stalvey indicated, to a reasonable degree of medical certainty, that it was more likely than not, that Mr. Pazzi's modified work duties at EFCO caused a material aggravation of his neck and cervical symptoms. The doctor also noted that if Mr. Pazzi continued to perform those duties, he would continue to aggravate his neck and cervical area. (Cl. Ex. 2, p. 1)

Janae Brown, ARNP also signed a letter confirming that the statements in the letter accurately reflected her opinions. ARNP Brown indicated that Mr. Pazzi's neck and headache symptoms were more likely than not due to an ongoing aggravation due to his work duties at EFCO. (Cl. Ex. 3, p. 1)

The medical opinions in this case support Mr. Pazzi's contention that his neck injury is related to the restricted work he performed at EFCO. As noted above, Dr. Kuhnlein, Dr. Stalvey, and Brown, ARNP all causally connect his symptoms to the work at EFCO. (Cl. Ex. 1, p. 8; Cl. Ex. 2; Cl. Ex. 3)

Claimant also contends that his headaches are related to the restricted work he performed at EFCO. Dr. Kuhnlein and Dr. Stalvey do not address causation with regard to Mr. Pazzi's headaches. ARNP Brown does causally connect the headaches to his work at EFCO. The headache causation opinion of ARNP Brown is unrebutted. I find the opinion of ARNP Brown to be persuasive. I find Mr. Pazzi has carried his burden of proof to show that his headaches are causally connected to the work injury.

Mr. Pazzi has been diagnosed with trigeminal neuralgia of the left side of his face. (JE2) He contends this condition is also related to his work at EFCO. However, there is no expert medical opinion that causally connects this condition to the work injury. I find clamant has failed to carry his burden of proof to show that the trigeminal neuralgia is related to the June 13, 2017 work injury.

We now turn to the issue of industrial disability. Mr. Pazzi's understanding of his restrictions at the time of the hearing were as follows: restricted lifting of 30 pounds from floor to waist, 15 pounds from waist, and no overhead lifting. These are the same restrictions that were provided to him pursuant to an FCE from the prior back litigation. (Testimony)

Due to Mr. Pazzi's back and neck injuries, he is not able to perform the full duties of any job at EFCO. However, the employer and employee are both commended for continuing their relationship in which it appears they continue to try their best to help each other. Mr. Pazzi's unrebutted testimony was that the duties he performs are typically done by a shipping clerk. However, the employer has generously allowed him to perform these duties for several hours per day and then Mr. Pazzi finds things to do to occupy the remaining time of his shift. If Mr. Pazzi's employment were to end, EFCO would not hire another employee to perform this work. These factors were also true at

the time of the arbitration hearing in the prior back claim. These factors were taken into consideration by the prior deputy when he made his industrial disability evaluation. (Ex. C, pp. 9-16)

Mr. Pazzi continues to have daily neck pain on both sides of his neck, but the pain on the left side is greater. He has pain up to his neck, head, and shoulder blades on both sides. He feels his neck pain is much worse now, than it was after the 2009 injury. His headaches and neck pain are constant, even when he is not working. His medications have increased due to his neck pain. Dr. Kuhnlein assigned 5 percent functional impairment of the whole person for the cervical spine. This was not taken into account by the prior deputy because he found the neck was not part of the prior claim. Furthermore, claimant is performing fewer job functions than he was at the time of the prior hearing. Since the time of the 2018 arbitration hearing, Mr. Pazzi is performing less work. He is no longer allowed to drive the forklift or overhead crane. His supervisors have also restricted him from working on the warehouse floor. (Testimony)

Mr. Pazzi's work history and education are as reflected in the 2018 arbitration decision. At the time of this hearing he was 51 years of age. Considering Mr. Pazzi's age, educational background, employment history, ability to retrain, lack of motivation to obtain a job, length of healing period, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that he has sustained a 5 percent loss of future earning capacity as a result of his June 13, 2017 work injury with EFCO. As such, he is entitled to 25 weeks of permanent partial disability benefits. Mr. Pazzi has continued to work in the same job and perform the same type of work since the time of the June 13, 2017 work injury. Therefore, his permanent partial disability benefits shall commence on June 13, 2017 and be paid at the stipulated rate of five hundred five and 44/100 dollars ($505.44).

Mr. Pazzi is seeking payment for past medical expenses as set forth in claimant's exhibit 5. I found Mr. Pazzi carried his burden of proof to show that his neck injury and headaches are related to the June 13, 2017 work injury. Defendants dispute payment of the bills, but make no argument as to why they should not be responsible for the medical expenses. The medical bills appear to be reasonable and necessary because of the work injury. I find defendants are responsible for the medical expenses contained in claimant's exhibit 5.

Claimant is seeking future treatment for the work-related conditions. Because claimant carried his burden of proof to show that his neck injury and headaches are related to the June 13, 2017 work injury, defendants are responsible for reasonable and necessary medical treatment related to the work injury.

Finally, claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. I find that Mr. Pazzi was generally successful in his claim. I exercise my discretion and find that an assessment of costs against the defendants is appropriate.

Claimant is seeking reimbursement for the filing fee in the amount of one hundred and no/100 dollars. I find this is an appropriate cost under 876 IAC 4.33(3).

Claimant is also seeking costs in the amount of $1,392.50 incurred in connection with a date of service of November 28, 2017 with Dr. Kuhnlein. Of the amount sought, $1330.00 is for an exam and the remaining $62.50 is for an abstract of medical records. The record does not clearly demonstrate that these were costs associated with preparation of a written report of claimant's IME. As such, they cannot be reimbursed as a cost at hearing under rule 876 IAC 4.33.

Defendants are assessed costs in the amount of one hundred and no/100 dollars ($100.00).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6)(e).

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.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is

serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Based on the above findings of fact, I conclude Mr. Pazzi sustained a June 13, 2017 work injury to his neck. I further conclude that the manifestation date for the July 13, 2017 neck injury was the date of Dr. Kuhnlein's December 27, 2017, report.

Defendants contend that claimant's neck injury is barred by operation of Iowa Code section 85.23. The Iowa Workers' Compensation Act imposes time limits on injured employees both as to when they must notify their employers of injuries and as to when injury claims must be filed.

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).

The time period both for giving notice and filing a claim does not begin to run until the claimant as a reasonable person, should recognize the nature, seriousness, and probable compensable character of the injury. The reasonableness of claimant's conduct is to be judged in light of claimant's education and intelligence. Claimant must know enough about the condition or incident to realize that it is work connected and serious. Claimant's realization that the injurious condition will have a permanent adverse impact on employability is sufficient to meet the serious requirement. Positive medical information is unnecessary if information from any source gives notice of the condition's probable compensability. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Orr v. Lewis Cent. Sch. Dist., 298 N.W.2d 256 (Iowa 1980); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

In this instance, I found that claimant did give notice of a neck injury within 90 days of Dr. Kuhnlein's IME report. There is no requirement in the statute that the claimant must provide a date certain when giving notice. The statute merely require that the employer have notice of the occurrence of an injury. Therefore, I conclude that

the employer has not established its notice defense pursuant to Iowa Code section 85.23.

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).

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.

Based on the above findings of fact, I conclude Mr. Pazzi sustained 5 percent loss of future earning capacity as a result of his June 13, 2017 work injury with EFCO. As such, he is entitled to 25 weeks of permanent partial disability benefits. Mr. Pazzi has continued to work in the same job and perform the same type of work since the time of the June 13, 2017 work injury. Therefore, his permanent partial disability benefits shall commence on June 13, 2017 and be paid at the stipulated rate of five hundred five and 44/100 dollars ($505.44).

Pursuant to Iowa Code section 85.27, the employer shall furnish reasonable and necessary medical treatment for all compensable injuries. Based on the above findings of fact, I concluded that the defendants shall be responsible for the medical bills contained in claimant's exhibit 5 which are related to treatment of claimant's neck and headaches.

Finally, claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. I conclude the filing fee is an appropriate cost and assess costs in the amount of $100.00 against the defendants.

However, I concluded that the costs claimant seeks in connection with Dr. Kuhnlein's bill were not appropriate under 876 IAC 4.33. Iowa Code section 85.39 is the sole method for reimbursement of an exam by a physician of the employee's choice. If an injured worker seeks reimbursement for an IME, the provisions established by the legislature, under Iowa Code section 85.39, must be followed. Only the costs associated with preparation of the written report of a claimant's IME can be reimbursed as a cost at hearing under rule 876 IAC 4.33. DART v. Young, 867 N.W.2d 839, 846-847 (Iowa 2015).

Defendants are assessed costs totaling one hundred and no/100 dollars ($100.00).

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of five hundred five and 44/100 dollars ($505.44).

Defendants shall pay twenty-five (25) weeks of permanent partial disability benefits commencing on June 13, 2017.

Defendants 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 Deciga Sanchez v. Tyson Fresh Meats, Inc., File No. 5052008 (App. Apr. 23, 2018) (Ruling on

Defendants' Motion to Enlarge, Reconsider or Amend Appeal Decision re: Interest Rate Issue).

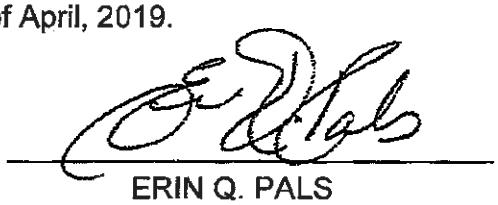
Defendants shall be responsible for the medical bills as set forth above.

Defendants shall provide claimant reasonable future medical care for all causally related conditions and treatment.

Defendants shall reimburse claimant costs as set forth above.

Defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 23rd day of April, 2019.



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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.