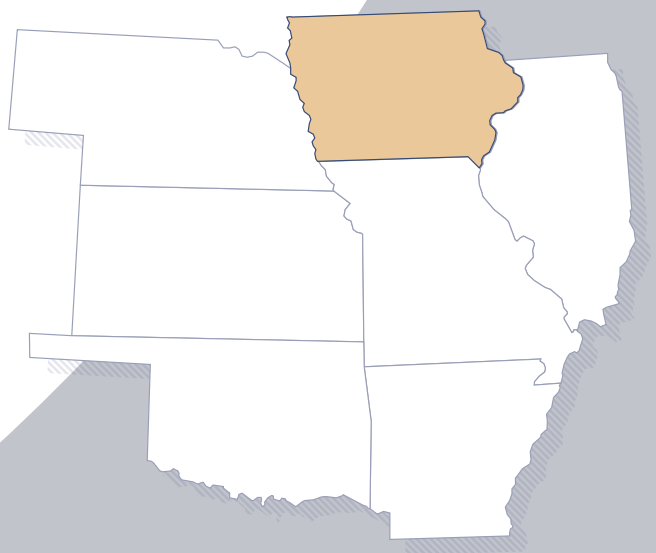
Workers' Compensation Reference Guide

Iowa



IOWA WORKERS' COMPENSATION

I. PERSONAL INJURY

A. Accident/Injury – *Almquist v. Shenandoah,* 218 Iowa 724, 254 N.W. 35 (1934)

1. Personal injury:
   a. An injury to the body, the impairment of health, or a disease, which comes about not through the natural building up and tearing down of the human body, but because of a traumatic or other hurt or damage to the health or body of an employee. The injury to the human body must be something that acts extraneously to the natural processes of nature, and thereby impairs the health, overcomes, injures, interrupts, or destroys some function of the body, or otherwise damages or injures a part or all of the body.
   b. Repetitive trauma:
      i. The injury to the body in repetitive trauma cases occurs when pain or physical inability prevents the employee from continuing to work.
2. An injury, to be compensable, must arise out of and in the course of the employment:
   a. "Arise out of" – requires proof of a causal connection between the conditions of the employment and the injury. The injury may not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of the employment.
      i. Special Cases—
         (1). *Actual risk*: an injury is compensable if the employment subjected the claimant to the actual risk that caused the injury, i.e. some causative contribution by the employment must exist.
         (2). *Idiopathic causes*: compensable only if caused or precipitated in part by some employment-related factor, or that the effects of the injury were worsened by the employment.
         (3). *Horseplay:* non compensable when an employee of his or her own volition initiates or actively takes part in an activity that results in injury. Victim/nonparticipant will be compensated.
         (4). *Assault*: generally compensable if it arises from an actual risk of the employment. If the assault is a willful act of a third party directed against the employee for reasons personal to the employee, then it will not be compensable.
   b. "In the course of" – the injury must take place within the period of the employment, at a place where the employee reasonably may be, and while the employee is fulfilling work duties or engaged in activities incidental thereto.
      i. *Coming and going*: an accident that occurs while an employee is going to or coming from work does not arise out of and in the course of employment.
      ii. Exceptions:

(1). *Employer-supplied transportation*: when an employer controls the situation, i.e. route and operation of the vehicle, the employee is being transported to an intended place of employment, injuries sustained are generally compensable.

(2). *Dual purpose trips*: If a trip is both personal and for services to the employer, an injury will only be compensable if canceling the trip would have caused the employer to send someone else.

(3). *Special errand*: a trip that would not be covered under the usual going and coming rule may be brought within the course of employment if the trip to and from the employer's premises were a special trip made in response to a special request, agreement, or instructions.

(4). *Parking lots*: employer parking lots are generally considered part of the employer's premises, but the injury must also occur within a reasonable time limitation related to, or occasion by, the employment.

(5). *Sole mission*: a plaintiff incurs the risk of injury while solely on a mission for his or her own convenience if there is no connection between plaintiff's work and his or her injury.

B. Occupational Disease – Defined by Statute, chapter 85A
   1. Occupational disease § 85A.8
      a. An occupational disease means a disease which;
         i. arises out of and in the course of employee's employment,
         ii. is the result of a direct causal connection with the employment and;
         iii. follows as a natural incident thereto from an injurious exposure it occasioned by the nature of the employment
      b. The disease must be incidental to the character of the business and not independent of the employment.
      c. Contraction of the disease must have an origin connected with the employment
      d. Hazards to which the employee would have been exposed to outside of the occupation are not compensable as an occupational disease.
   2. Applicable to all "employers" and "employees" as defined by the Iowa Workers' Compensation Act.
   3. Relates to the last occupation in which the employee was injuriously exposed to the hazards of the occupational disease. § 85A.10
      a. Limitations on Disablement or Death from Occupational Disease
         i. No recovery shall be had under Iowa Occupational Disease statute for any condition which is compensable as an "injury" under Iowa Workers' Compensation Act. § 85A.14
         ii. Compliance with the findings and orders of the Commissioner or Court shall discharge the employer and carrier for all future obligations under the Iowa Occupational Disease statute. § 85A.15

iii. An employer shall not be liable for compensation for an occupational disease unless:
(1). Disablement or death results within three years in the case of pneumoconisis.
(2). Employee makes a claim within 90 days after employee knew, or should have known, of disablement or death for exposure caused by X-rays, radium, radioactive substances or machines, or ionizing radiation.
(3). Disablement or death results within 1 year for all other occupational diseases.
(4). Death from an occupational disease results within seven years after an exposure following continuous disablement which started within one of the aforementioned periods.
(5). "Disablement " – § 85A.4
(a). is the occurrence of an event or condition which causes the employee to become actually incapacitated from performing work or from earning equal wages and other suitable employment as a result of the occupational disease.

4. Compensation – IA § 85A.5
   a. Employees who become disabled because of an injurious exposure are entitled to receive "compensation" and reasonable medical treatment. § 85A.17
      i. Compensation is payable to all "dependants" as defined by the Iowa Workers' Compensation Act.- § 85A.6.
   b. Employees that incur occupational disease, but are able to continue in employment, are not entitled to compensation but are entitled to reasonable medical treatment.
5. Apportionment – § 85A.7(4)
   a. Where an occupational disease is aggravated by a non-compensable disease or infirmity, or, a non-compensable disease or infirmity is aggravated by an occupational disease, compensation shall be in proportion to the amount that is solely caused by the occupational disease.
   b. Either the number of weekly payments, or the amount of such payments, may be reduced as determined by the Commissioner.
6. Exclusions – § 85A.7
   a. Employees are not entitled compensation if they misrepresent, in writing, that they had not been previously disabled, terminated, compensated, or missed work because of an occupational disease.
   b. Compensation for existing diseases shall be barred if the employer can prove the disease existed prior to the employment.
      i. The employer shall have the right to have an employee examined prior to employment and may require a waiver, in writing, of any and all compensation due to an occupational disease. § 85A.25

c. Compensation for death shall not be payable to any dependent whose relationship to the deceased employee was created after the beginning of the first compensable disability.
    i. This rule does not apply to children born after the first compensable disability to a marriage existing at the beginning of such disability.
d. Miscellaneous exclusions: no compensation shall be allowed if the occupational disease:
    i. is the result of an employee intentionally exposing themselves to the occupational disease;
    ii. is the result of the employees intoxication;
    iii. is the result of employees addiction to narcotics;
    iv. as a result of the employees commission of a misdemeanor or felony;
    v. as a result of employees refusal to use the safety appliance or protective device;
    vi. as a result of employees refusal to obey a reasonable written rule, made by the employer, and posted in a conspicuous position in the workplace;
    vii. as a result of the employees of failure or refusal to perform or obey a statutory duty;
    viii. The employer bears the burden of establishing these defenses.

C. Hearing Loss – Defined by Statute, § 85B.5

1. Occupational Hearing Loss is the portion of permanent hearing loss that exceeds average hearing levels that arises out of and in the course of employment and is causally related to excessive noise exposure.
    a. 25 decibels in either ear is equivalent to a 0% hearing loss.
    b. An average of 92 decibels in either ear is equivalent to a 100% hearing loss.
2. Applicable to all "employers" and "employees" as defined by the Iowa Workers' Compensation Act.
3. Limitations:
    a. Occupation Hearing Loss does not include loss of hearing attributable to age or any other condition or exposure not arising out of and in the scope and course of employment.
    b. Compliance with the findings and orders of the Commissioner or Court shall discharge the employer and carrier for all future obligations under the Iowa Occupational Hearing Loss statute. § 86B.13
4. Compensation
    a. A claim for compensation for hearing loss may not be made unless and until there is a change in the claimant’s employment situation generally as the result of the occurrence of any one of the following events:
        i. Transfer from excessive noise exposure employment by an employer;
        ii. Retirement;
        iii. Termination of the employer-employee relationship, which may include simply a change in ownership of the business

b. Compensation for Occupational Hearing Loss is calculated using 175 weeks for total loss, and a proportional period of weeks relating to partial hearing loss.
c. Determination of hearing loss shall be made by the employer's regular or consulting physician or a licensed, trained, and experienced audiologist.
d. If the employee disputes the assessment, he or she may select a physician or licensed, trained, and experienced audiologist to provide an assessment.

5. Apportionment
   a. Any amounts paid under this section by a previous employer, or under a previous claim, shall be apportioned and the employer is only liable for the increase in hearing loss sustained in the scope and course of employment.
6. Employer/Employee Duty:
   a. Employees have an affirmative obligation to submit to periodic testing of their hearing.
   b. If, after testing, the employer learns that the employee's hearing level is in excess of 25 decibels, the employer must inform the employee as soon as practicable after the examination.
   c. Employers have an affirmative obligation to inform employees if they are being subjected to sound levels and duration in excess of the acceptable limits as indicated in IA § 85B.5.
   d. An employer liable for an employee's occupational hearing loss under this section must provide the employee with a hearing aid, unless the hearing aid will not materially improve the employee's ability to communicate. § 85B.12
7. Notice
   a. An employee may file a claim for Occupational Hearing Loss, at the earliest, one month after separation of the employment which caused the hearing loss with a two year statute of limitations.
   b. The date used for calculating the "date of the injury" shall be the date the employee:
      i. Was transferred from the environment causing the hearing loss;
      ii. Retired;
      iii. Was terminated from employment.
   c. In the event an employee is laid off for longer than one year, the Occupational Hearing Loss must be reported within six months after the date of the layoff.
8. Exclusions
   a. If an employee fails to use, or refuses, employer-provided hearing protective devices, as long as the opportunity and requirement are communicated to the employee in writing.
   b. An employee's failure to submit to period testing in accordance with IA 85B.7 precludes recovery under this section.

c. If an employee's prior hearing loss is tested and documented, and the employee sustained a prior hearing loss, the employer is only liable for the increase in hearing loss under the Occupational Hearing Loss Act.

D. Mental claims – compensable where the injury arose out of and in the scope and course of employment
    1. Employee has the burden of proving cause in fact and legal causation.
        a. Cause in Fact – Supported by competent medical evidence.
        b. Legal Causation –
            i. whether the stress is greater than that experienced by similarly situated employees. *Dunlavey v. Economy Fire.*
            ii. manifest happening of a sudden traumatic nature from an unexpected cause or unusual strain. *Brown v. Quik Trip.*
    2. When a scheduled physical injury aggravates or causes a compensable psychological injury, the psychological injury is compensable as an unscheduled injury. *Mortimer v. Fruehauf Corp.,* 502 N.W.2d 12, 1993 Iowa Sup. LEXIS 146 (Iowa 1993).

II. JURISDICTION - IA Code §85.3, §85.71

A. Act will apply where:
    1. The injuries occurred or occupational disease was contracted in Iowa while in the scope and course of employment.
    2. Employer is a resident of Iowa.
    3. Employer is a nonresident of Iowa, but for whom services are performed within Iowa by any employee.
    4. The employer corporation, individual, personal representative, partnership, or association has the necessary minimum contact with Iowa.
    5. The injury occurred outside of the territorial limitations of Iowa, if:
        a. The employer has a place of business in Iowa, and;
            i. The employee regularly works from that place of business, or;
            ii. The employee is working under a contract which selects Iowa as the forum state.
        b. The employee is working under a contract of hire made in Iowa, and the employee;
            i. Regularly works in Iowa, or;
            ii. Sustains an injury for which compensation is unavailable in the other possible jurisdictions, or;
            iii. Works outside of the United States.

B. Act will not apply where:
    1. Injured worker is covered by a federal compensation statute. *Isle of Capri Casino v. Wilson*, 2009 Iowa App. LEXIS 1446 (Iowa Ct. App. Sept. 2, 2009)
    2. The employee is engaged in service in a private dwelling and earned more than

$1500 in the previous 12 consecutive months before the injury, provided that the employee is not a relative of the employer. IA 85.1

3. The employer engages in agricultural operations, as long as the employee earned more than $1500 in the previous 12 consecutive months before the injury. This exclusion always applies to relatives of the employer, officers of a family farm Corporation, and owners of agricultural land. IA 85.1

C. Dual jurisdiction claims:
    1. Any action filed in Iowa shall be stayed if an employee or employee's dependents initiate a workers' compensation case for the same injury in a separate jurisdiction, but no order, settlement, judgment, or award has been had, pending the resolution of the out-of-state claim for benefits. IA § 85.72
        a. The employer/insurer must file for a stay of proceedings for the stay to be granted.
    2. If the employee or employee's dependents have initiated another workers' compensation case in a separate jurisdiction and benefits have been paid pursuant to a final settlement, judgment, or award, the employee or employee's dependents may not also seek benefits in Iowa. § 85.72

III. NOTICE – § 85.23

A. Notice of an injury is required within 90 days from the date of the "occurrence" of the injury.
    1. For purposes of the statute, "date of the occurrence of the injury" means the date that the employee knew or should have known that the injury was work-related.

B. If an employer has actual knowledge of the injury there is no need to give notice.

C. The employee or someone on the employee's behalf or a dependent or someone on the dependent's behalf may provide notice

D. Payment of compensation shall be conclusive evidence of notice of an employee's alleged work-related injury.

IV. REPORTING REQUIREMENTS § 86.11

A. FROI – First Report of Injury
    1. The employer or insurance carrier must electronically file a First Report of Injury:
        a. Within four days of receiving notice or knowledge of an injury, if:
            i. The injury results in temporary disability for a period longer than three days, or;
            ii. The injury results in permanent total disability, permanent partial disability, or death.

b. If the Commission sends a written request to the employer or insurance carrier.

2. The time period for calculation excludes Sundays and legal holidays.
3. A First Report of Injury is required even if liability is denied—it is not considered an admission of liability.
4. An Agency file number will not be assigned and the claim cannot be settled if the FROI has not been filed. The FROI must be filed through EDI. The Agency will not accept a paper FROI.
5. A $1,000 fine will be imposed if FROI is not filed within 30 days of notification from the Commissioner that a FROI must be filed.

B. SROI – Subsequent Report of Injury
   1. Following the filing of a First Report of Injury, a Subsequent Report of Injury must be filed in the event:
      a. A claim is denied (in addition to a denial of liability letter);
      b. weekly compensation benefits are paid (filed 30 days after the date of the first payment);
      c. Whenever weekly compensation payments are terminated or interrupted;
      d. Whenever a claim is open on June 30 of each calendar year;
      e. When a claim is closed;
      f. Whenever “other” benefits are paid, ie medical, mileage, burial, interest, vocational rehabilitation, and penalties.

C. Medical reports must be filed if the injury exceeds thirteen weeks of temporary total disability or when there is permanent partial disability.

D. Final Reports must be filed showing the date of last payment in the employee's last known address.

V. LIMITATION OF ACTIONS § 85.26

A. An employee must file an Original Notice and Petition with the Commission;
   1. Within two years of the occurrence of the accident or injury under the Workers’ Compensation Act,
      a. Begins running the date the claimant knows they have sustained a work-related injury. For purposes of the statute, “date of the occurrence of the injury” means the date that the employee knew or should have known that the injury was work-related.
   2. Within three years of the date of last payment if weekly benefits are paid pursuant to § 86.13.
   3. Within three years of approval of a settlement or issuance of an award.

B. In an original proceeding, all issues subject to dispute are before the Commission. In a proceeding to reopen an award or settlement, the inquiry will be limited to whether

or not the employee's condition warrants an end to, diminishment of, or increase of compensation awarded or agreed upon.

VI. ANSWER TO PETITION – IA Administrative Code § 876.4.9(1)

A. Upon receipt of Notice of a Contested Case, the Employer shall answer or file a motion within 20 days.

B. All medical records and reports in possession of the Employer/Insurer must be served on all opposing parties within 20 days of filing the Answer and on a continuing basis within 10 days of receipt of the records.

C. Failure to do either of the above could lead to possible penalties including preclusion of evidence, sanctions, or judgment by default.

VII. MEDICAL TREATMENT – § 85.27

A. Employer is responsible for all reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies, plus reasonable and necessary transportation expenses incurred for such services.
    1. If compensability is admitted, employer is not responsible for unauthorized care, unless the employee shows that the unauthorized care was successful and beneficial toward improving the employee's condition in a way that benefits the employer as well as the employee.

B. The employer's obligation to provide reasonable and necessary medical care carries with it the right to select the treating physician, provided that the care is offered promptly and is reasonable suited to treat the injury without undue inconvenience to the employee. *McKim v. Meritor Auto., Inc.,* 158 F. Supp. 2d 944 (S.D. Iowa 2001).
    1. Exceptions - The employer is not entitled to select the provider when:
        a. Emergency care is necessary because of an actual work-related event.
        b. The employee notifies the employer in writing of his or her dissatisfaction with the employer's provider and provide reasonable proofs of the necessity of alternate care.
        c. The employer denies the claim.

C. If the employer pays medical benefits under a group plan, the amounts paid by the group plan shall be deducted from the amounts paid under the Workers' Compensation Act.

D. If the employer believes the charges of a medical provider are excessive, the employer has the right to have the issue decided by the Commission.

E. The employer, insurance carrier, or employee waive any claim of privilege by virtue of filing or defending a workers' compensation claim. Failure of a medical provider to provide medical records may result in a Court order imposing penalties or sanctions on the provider.

VIII. VOCATIONAL REHABILITATION – § 85.70

A. To be entitled to vocational rehabilitation benefits, an employee must be unable to return to gainful employment because of a job-induced disability and must have permanent partial or permanent total disability.

B. For injuries sustained after September 8, 2004, benefits may be available from the employer in the form of:
   1. $100 per week for 13 weeks,
   2. An additional $100 for 13 weeks if the employee can show that the continuation of benefits will accomplish rehabilitation.

C. For injuries sustained prior to September 8, 2004, benefits may be available from the employer in the form of:
   1. $20 per week for 13 weeks,
   2. An additional $20 for 13 weeks if the employee can show that the continuation of benefits will accomplish rehabilitation.

D. Benefits are paid in addition to any other indemnity owed.

IX. CAREER VOCATIONAL TRAINING AND EDUCATION PROGRAM – § 85.70

A. If an employee sustains a shoulder injury and cannot return to gainful employment, a vocational expert is required to evaluate whether the employee would benefits from vocational training or an education program offered through a surrounding community college.

   1. If it is determined that the employee would benefit from this training, the employee will be referred to a nearby community college for enrollment in a program that will result in (a minimum) of an associate degree or certificate program which would allow the employee to return to the work force.
   2. The employee has six months from the date of the referral to enroll in this program; otherwise, they will lose their eligibility to participate.
   3. The employee is entitled to financial support from the employer and/or insurance provider, not to exceed $15,000.00 for tuition, fees and supplies.
   4. The employer and/or insurance carrier may request progress reports each semester to assure the employee has a passing grade and regularly attends.
   5. If the employee is not complying with these requirements, eligibility for participation can be terminated.

X. AVERAGE WEEKLY WAGE/COMPENSATION RATE – § 85.36 & § 85.37

A. Average Weekly Wage (AKA Gross Weekly Earnings)
   1. The weekly earnings of the employee are computed by averaging the total spendable earnings in the thirteen weeks prior to the injury. § 85.36. However:
      a. If the employee's wage is reduced because of reasons personal to the employee, i.e. sickness or vacation, the employee's weekly earnings shall be based on the amount the employee would have earned.
      b. If a week "does not fairly reflect the employee's customary earnings" the week shall be replaced by the closest previous week which fairly represent the employee's earnings.
      c. The overtime rate is not included. Overtime hours are computed at straight time.
         i. Exception for part time employees.
      d. Irregular bonuses, expense allowances, and employer's contributions to benefit plans are not included in the average weekly wage.
   2. Special Cases –
      a. *Part-time employees*: If the employee earns less than the usual weekly earnings of a regular full-time adult laborer in the same industry and locality, then the weekly earnings are 1/50th of the total earnings which the employee has earned in the prior 12 calendar months, including premium pay, shift differential, and overtime pay from all employment.
      b. *Employees with indeterminate earnings*: In situations where the employee's earnings can not be determined, the gross weekly earnings are based on the usual earnings for similar services rendered by paid employees.
      c. *Volunteer Firefighter, EMT, and Reserve Peace Officers*: Any compensation earned by a volunteer firefighter, emergency medical care provider, or reserve peace officer shall be disregarded for purposes of calculating gross weekly earnings in the event of a compensable injury. The gross weekly earnings are calculated from the *greater* of:
         i. The amount the employee would receive if injured in the scope and course of his or her regular job.
         ii. 140% of the state average weekly wage.
      d. *Apprentice or Trainee*: Gross weekly earnings may be augmented if the apprentice or trainee's wages would have increased absent the work-related injury.
      e. *Inmates § 85.59*: Inmates are due the minimum compensation rates under 85.34 in the event of injury or death.
      f. *Elected or Appointed Official*: An elected or appointed official has the option of choosing between:
         i. Their rate of pay as an elected official, or:
         ii. 140% of the state average weekly wage.

3. The employer has an affirmative obligation to produce wage information to the employee following a workers' compensation claim. Failure to produce the information is a simple misdemeanor.

B. Compensation Rate
   1. 80% of the employee's weekly spendable earnings, subject to maximums set by the Division of Workers' Compensation
      a. No calculations are necessary—Consult the charts available at www.iowaworkforce.org/wc to determine the correct rate once weekly spendable earnings, marital status, and number of exemptions have been established.
      b. Charts are updated yearly by Division, consult chart which corresponds to the date of accident.
      c. Rate stays the same through pendency of claim.
   2. Minimum rate shall be the lesser of:
      a. The weekly benefit amount of a person whose gross weekly earnings are 35% of the statewide average weekly wage (calculated and published by the Division) OR
      b. The spendable weekly earnings of the employee

XI. DISABILITY BENEFITS - § 85.33, 85.34

A. Temporary Total Disability (TTD)
   1. Payable when employee is unable to return to gainful employment because of a work related injury which *will not* result in permanent disability.
      a. Terminated when:
         a. The employee returns to work, or:
         b. There is a finding that the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury.
   2. Temporary total disability payment shall start on the fourth day of disability. Benefits must be paid for those days if the employee is disabled for more than 14 days. § 85.32.
   3. Can be owed for scheduled as well as whole body injuries.
   4. If the employer offers the employee suitable work and the employee refuses to accept the suitable work offered by the employer, the employee shall not be compensated with temporary total disability during the period of the refusal.

B. Temporary Partial Disability (TPD) § 85.33(2)
   1. Compensation is 2/3rds of the difference between the employee's weekly earnings at the time of the injury and the employee's actual gross weekly income during the period of temporary disability. § 85.33(4)
   2. Payable when the employee is temporarily disabled, but is able to work light duty for the employer or an alternative employer.

3. If the employer offers the employee suitable work and the employee refuses to accept the suitable work offered by the employer, the employee shall not be compensated with temporary partial disability during the period of the refusal.

C. Permanent Partial Disability (PPD) – § 85.34
    1. Scheduled Member Injuries – "Loss of Use"
        a. Payable when the employee sustains a permanent impairment causally related to an injury in the scope and course of employment.
        b. Compensation for permanent partial disability shall begin when it is medically indicated that the employee has reached maximum medical improvement form the injury or percentage of permanent impairment can be determined by use of the AMA Guidelines.
        c. Based upon a statutory schedule codified in § 85.34
            i. Iowa subscribes to the 5th Edition of the AMA Guidelines for permanent impairment, but adherence to these guidelines is not compulsory.
        d. The amount payable for specific injuries contemplates both the impairment and payment for the reduced capacity to perform labor.
    2. Body as a Whole Injuries – "Loss of Earning Capacity"
        a. Compensation is 80% of employee's weekly spendable earnings up to the statutory maximum, multiplied by the industrial disability rating, multiplied by 500 weeks.
        b. Applies to all injuries causing permanent impairment not specifically mentioned in § 85.34
        c. Industrial Disability (claimant's lost earning capacity) is determined by considering:
            i. The employee's age, education, qualifications, and experience;
            ii. Employee's inability, because of the injury, to engage in employment for which he or she is fitted;
                (1). The inability can be caused by a physical or emotional condition.
            iii. Failure of the employer to provide employment after an employee suffers an injury;
            iv. A change in the employee's status at his or her employment following a return to work;
            v. Employee's mitigation of his or her industrial disability.
    3. If an overpayment of temporary total or healing period benefits occurs, a credit may be given against permanent disability benefits.

D. Permanent Total Disability – (PTD) § 85.34
    1. Where employee has lost access to the labor market based on personal factors coupled with the employee's permanent physical condition caused by the work-related injury, and the employer has failed to carry its burden of producing evidence of available suitable employment.
    2. The benefits are paid for the employee's life.

E. Healing Period of Permanent Disabilities § 85.34
    1. Compensation will start when employee is unable to return to gainful employment because of a work related injury which will result in permanent disability.
        a. Benefits terminate when:
            i. The employee returns to work, or:
            ii. It is medically indicated that significant improvement from the injury is not anticipated or;
            iii. The employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, or;
        b. To terminate healing period benefits, the employer/carrier must provide the employee 30 days written notice ("Auxier letter") prior to the termination of benefits, and inform the claimant he has the right to file a claim with the Division unless the employee's healing period terminates by a return to work. Failure to provide proper notice of termination, delay or denial of benefits will result in penalties. *Auxier v. Woodward State Hospital-School*, 266 N.W.2d 139 (Iowa 1978).
    2. If an overpayment of temporary total or healing period benefits occurs, a credit may be given against permanent disability benefits.
    3. If the employer offers the employee suitable work and the employee refuses to accept the suitable work offered by the employer, the employee shall not be compensated with healing period benefits during the period of the refusal.

F. Interest
    1. Interest should be volunteered when any late payments are made. Penalties will not be assessed on late interest payments, but interest will continue to accrue
    2. If delay in payment of benefits is due to neglect of the claimant, interest is not payable
    3. Interest is calculated in a 3 step process as follows:
        a. Step 1:
            i. Locate the number of weeks during which benefits are payable in column A of the 10% interest table contained in the Division's manual for the year corresponding to the late payments
            ii. Locate the interest multiplier from that line from the same table in column B
            iii. Multiple the weekly benefit amount by the interest multiplier to determine interest payable
        b. Step 2:
            i. Compute the interest from the end of the period during which benefits are payable until date benefits are actually paid using the following formula: I = P x R x T

(1). I = Interest
(2). P = principal (the total # of weeks/days to 3 decimal points of compensation due x compensation rate)
(3). R = rate of interest (10%)
(4). T = time (# of weeks from end of period during which benefits are payable until date of payment, divided by 52)

c. Step 3:
   i. Add result from Step 1 to result from Step 2

G. Offering Temporary, Light Duty Work
1. The employer must communicate the offer of a light duty position in writing. If the employee refuses the position, the employee must communicate the refusal in writing including the reason for the refusal.
2. If an employee was traveling for 50 percent or more of their work time prior to their injury, light duty positions at the employer's principal place of business are acceptable, accommodated positions.

H. Duplicate Benefits
1. An employee may not receive both permanent partial disability benefits at the same time the employee is receiving permanent total disability benefits. On the date the employee begins receiving permanent total disability benefits, the permanent partial benefits will terminate.

XII. DEATH BENEFITS - § 85.31

A. Reasonable burial expenses are payable, not to exceed 12 times the statewide average weekly wage paid employees as determined and published by the Division in effect at the time of death.
B. Death benefits are payable to the dependents who are wholly dependent on the earnings of the employee for support at the time of the injury.
C. A dependent spouse shall receive weekly payments, commencing from the date of death, for the life of the dependent spouse, provided that that the spouse does not remarry. In the event of remarriage, two years of death benefits shall be paid to the surviving spouse in a lump sum if there are no children entitled to benefits.
D. Dependent children shall receive a proportional share of weekly benefits commencing from the date of death until the age of 18, unless dependency extends beyond the age of 18 if actual dependency continues. Full-time enrollment in any accredited educational institution shall be a conclusive showing of actual dependency.
E. Dependent children who are physically or mentally incapacitated from earning at the time of the injury causing death shall receive a proportional share of weekly benefits for life, or until they shall cease to be physically or mentally incapacitated from earning.

XIII. DEFENSES

A. Statutory:

1. *Willful injury/Intoxication.* § 85.16. No compensation under this chapter shall be allowed for an injury caused:
    a. By the employee's willful intent to injure the employee's self or to willfully injure another;
    b. By the employee's intoxication, which did not arise out of and in the course of employment but which was due to the effects of alcohol or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner, if the intoxication was a substantial factor in causing the injury.
    c. By the willful act of a third party directed against the employee for reasons personal to such employee.
2. *Statute of Limitations.* § 86.13. An action must be filed:
    a. Within two years of the occurrence of the accident or injury under the Workers' Compensation Act, or
    b. Within three years of the date of last payment if weekly benefits are paid pursuant to § 86.13.
3. Notice. Notice of an injury is requited within 90 days from the date of the "occurrence" of the injury.

XIV. PENALTIES

A. In order to deny any benefits due and owing under the Iowa Workers' Compensation Act, the employer must have a reasonable or probable cause or excuse for the delay, denial, or termination of payments.

B. The employer must show the following:
    1. The employer or insurance carrier conducted an investigation and evaluation of whether benefits were due and owing to the employee;
    2. The results of the investigation or evaluation were the contemporaneous basis of the denial, delay, or termination of benefits;
    3. The employer or insurance carrier contemporaneously communicated the basis for the denial, delay, or termination of benefits to the employee.

C. The employer or insurance carrier must provide the employee thirty days notice stating the reason for the termination of benefits and advising the employee of their right to file a claim with the Commission.

D. If the Commission finds that the basis for the denial was unreasonable or without probable cause, a penalty, up to 50% of the benefits that were denied, delayed, or terminated.

E. Practical tips regarding penalties:
    1. The employer/insurer should assume that if the initial weekly payment will not be made when it is due, the facts of the investigation and delay should be communicated in writing to the employee no later than the date the initial payment would otherwise be due

2. At the outset of the claim, communicate with the employee that the claim report is acknowledged and an investigation is required. Also inform employee that because it takes time to obtain relevant information, weekly benefits may be delayed until the investigation is complete.
3. Communication with the employee should indicate that employee's cooperation is required in the investigation.
4. The statute does not require that communication to the employee be in writing, but it be from an evidentiary standpoint.
5. Investigate promptly. This may include:
    a. Obtain recorded statement as soon as possible
    b. Write for medical records as soon as a list of providers and Patient's Authorization are available
    c. Medical evaluations/testing should be scheduled as soon as available.
6. If there is a delay in the investigation (i.e. slow response from medical providers), this should be communicated to the employee in writing
7. If employee fails or refuses to cooperate in the investigation the failure/refusal should be communicated to employee in writing explaining the delay or refusal is preventing the investigation and delaying payment of benefits.
8. If the investigation proves the claim is valid this should be communicated to the employee in writing and all accrued benefits plus interest should be paid.
9. If the investigation reveals information that supports a denial of the claim, this should be communicated to the claimant in writing with explanation as to the reason and basis for denial.
10. The duty to investigate continues beyond the initial determination and all results and consequences of the investigation should be communicated in writing to the employee.
11. Once the claim is referred to counsel be sure to provide all of the above communication to defense counsel in the event the claim becomes litigated.

XV. SETTLEMENTS - § 85.35

A. Types of Settlements:
    1. Agreement for Settlement
        a. Parties may enter into an agreement as to the amount and extent of compensation due and file with the Commissioner.
        b. This type of settlement will not end future rights or medical benefits
    2. Compromise Settlement (AKA Special Case Settlement or Closed File)
        a. When there is a dispute as to whether or not the employee is entitled to benefits, parties may enter into a compromise settlement
            i. There must be at least one issue in dispute and it must be clear what the dispute is. Nature and extent of the injury are generally not sufficient without supporting medical to clearly describe the dispute.
        b. This type of settlement ends the employee's future rights to any benefits

B. General Settlement Information:

1. Full Commutation:
    a. Lump sum payment of all remaining future benefits
    b. Must be at least 10 weeks of benefits remaining from date of the end of the healing period or temporary total disability period. If less than 10 weeks are remaining full commutation will not be allowed.
    c. Once approved this will end all of employee's future rights to any additional benefits including medical
    d. To be approved, parties must show the employee has a specific need and the lump sum is in the best interest
        i. Pro se employees must complete a Claimant's Statement expressing that need
2. Partial Commutation:
    a. Lump sum payment of a portion of the remaining benefits
    b. Establishes the employee's entitlement to disability benefits but it does not end future rights.
3. Settlement language may not include "any and all injuries" or "other states or jurisdictions."

XVI. PROCEDURE

A. Filing of Original Notice and Petition or Petition for Alternate Care begins the litigation process
    1. Answer or other responsive motion must be filed within 20 days
    2. Discovery may commence via Interrogatories, Request for Production, Request for Admission, Depositions
    3. Notice of Service of Medical Records (NOS) served on opposing party on a continuing basis
        a. NOS of all medical records in a party's possession must be served within 20 days of filing an Answer and within 10 days of receipt of records for the remainder of the claim. Failure to properly serve records could prevent admission of the records into evidence.
    4. Alternative Dispute Resolution is encouraged through the Division or through private mediation
    5. Hearings:
        a. If claim has not been resolved through settlement a hearing will be held and a Deputy Commissioner will determine Claimant's rights and issue an award.
        b. All evidence must be submitted at the time of the hearing – the record will be closed at the conclusion of the hearing.
        c. Case is left open following a hearing and award for lifetime medical and Review & Reopening for a period of 3 years from the date of the last weekly benefits paid.
        d. Continuances generally are not granted even if a claimant has not reached MMI

e. Appeal to Commissioner must be filed within 20 days of Deputy's decision.
f. Appeal to District Court within 30 days of final agency decision
    i. District Court is bound by the factual determinations made by the Agency unless a different result is required as a matter of law – if the agency decision is "irrational, illogical or wholly unjustifiable."
    ii. If a decision is supported by substantial evidence the decision will not be overturned.
g. Appeal to Iowa Supreme Court within 30 days of the District Court's final judgment

RECENTLY ASKED QUESTIONS IN IOWA
FROM ISSUES ADDRESSED IN RECENT IOWA CASES

Q: Can a claimant's voluntary termination from an employer trigger entitlement to industrial disability.

A: Yes. When an employee does not return to work with the same employer that he/she was working for at the time of the injury, that employee is allowed industrial disability for a whole-body injury.

In *Martinez*, claimant alleged injuries to his bilateral lower extremities, right wrist, head and back. Claimant returned to work for the employer for several months before voluntarily leaving employer and enrolling in an apprenticeship program. Even though claimant was earning greater wages at the time of the Arbitration hearing than he was when he was injured, his leave from the employer removed him from functional impairment analysis and triggered an entitlement to benefits under the industrial disability analysis. Specifically, the workers' compensation commissioner issued an appeal decision stating that when an employee does not return to work with the same employer that he/she was working for at the time of the injury, that employee is allowed industrial disability for a whole-body injury. In the event employee is with the same employer, which he/she was with at the time of the injury, and that employer offers employee the same or higher wage level work which employee accepts than there is a limitation on employee's allowance of an industrial disability. However, if the employee is offered the work and declines it, he/she is allowed industrial disability under the law.

Zachary Martinez v. Pavlicj Inc and National Interstate Insurance, File No: 5063900, Appeal Decision July 30, 2020.

Q: Is a shoulder injury to the infraspinatus muscle considered a whole body injury?

A: No. A shoulder injury is a scheduled member injury because of the entwinement of the glenohumeral joint and the muscles which make up the rotator cuff, including the infraspinatus muscle, and the rotator cuff's importance to the function of that joint. Thus, the muscles which make up the rotator cuff are included within the definition of a shoulder.

In *Deng*, claimant sustained injuries to her infraspinatus muscle and labrum. The deputy commissioner found claimant had sustained an injury beyond the shoulder because the infraspinatus is proximal to the glenohumeral joint. Thus, finding claimant had not sustained a scheduled member but instead a whole body injury. Defendants appealed asserting claimant's injury was limited to her left shoulder and should be compensated as a scheduled member.

This was a case of first impression involving the 2017 legislative changes made to the Iowa Code Chapter 85 with respect to the addition of the shoulder to the list of

scheduled members. The compensation commissioner reversed the deputy commissioner's definition of this shoulder injury as a whole body injury and instead found it to be a scheduled member injury detailing the intricacies of the glenohumeral joint and the muscles which make up the rotator cuff, including that of the infraspinatus which is at issue here. Utilizing defendant's expert's definitions of a shoulder, the compensation commissioner determined the muscles which made up the rotator cuff are included within the definition of a shoulder according to section 85.34(2)(n) and thus claimant's injury is a scheduled injury, not a whole-body injury.

Deng v. Farmland Foods & Safety Nat'l Casualty Corp., Appeal Decision September 29, 2020

Q: Is an idiopathic fall compensable when the claimant hit his or her head on a surface that is commonplace?

A: Potentially, depending on the facts of the case and if the claimant meets his or her burden of proof. In this case, the claimant fell on the floor at work due to a seizure and hit the back of his head.

The claimant has the burden and the opportunity in idiopathic-fall cases to meet the increased-risk test. This means that there is no blanket rule in Iowa that idiopathic falls onto level floors are *never* compensable. There is also no blanket rule that idiopathic falls are *always* compensable. Instead, the claimant can recover if he or she proves that a condition of his or her employment increased the risk of injury. The commissioner can factually determine on a case-by-case basis whether the conditions of employment shown by the claimant caused an increased risk of injury in the workplace. The court emphasized that the workers' compensation statute was to be applied broadly and liberally in maintaining its objective: the benefit of the worker and the worker's dependents.

In response to this case, Senate File 507, relating to Workers' Compensation § 85.61, subsection 7, Code 2019, added in 7(c), which states:

> "Personal injuries due to idiopathic or unexplained falls from a level surface onto the same level surface do not arise out of and in the course of employment and are not compensable under this chapter."

Thus, the Iowa legislature has essentially rendered the outcome of the *Bluml* case invalid under Iowa law.

Bluml v. Dee Jay's Inc., 920 N.W.2d 82 (Iowa 2018).

Q: Can a claimant impose civil liability on an employer's workers' compensation insurance carrier for negligently conducting an insurance inspection when the claimant claims that serious health problems occurred as a result of the negligent inspection?

A: No. Iowa Code § 517.5 states that insurance inspections done for the purpose of insuring a company cannot be the basis for the imposition of civil liability upon the

inspector or the insurance company.

In this case, the claimants alleged that in the course of manufacturing wind blades at the TPI manufacturing facility, they experienced horrific injuries from hazardous chemicals, including rashes, skin ruptures, and respiratory congestion, among other various maladies. TPI's insurer claimed it had statutory immunity from negligent inspections under Iowa Code § 517.5. The claimants responded that § 517.5 was unconstitutional under equal protection, due process, and the inalienable rights clauses of the Iowa Constitution.

The court discussed the role of voluntary undertakings and the scope of the grand bargain that exists in workers' compensation claims. . It determined that it was rational and reasonable for the legislature to determine via statute that workers' compensation carriers' inspections are immunity to civil liability. The court state that the insurer is tied to the employer, so the insurer has this civil liability immunity as well. Therefore, the court determined that because no valid claim existed against the carriers' inspections, the claimants had no right to a jury trial

Clark v. Ins. Co. Pa., No. 17-2068, 2019 Iowa Sup. LEXIS 50 (May 3, 2019).

Q: Will an award for partial commutation be upheld when supported by a claimant's testimony concerning his/her plans to invest and the approval of the claimant's financial adviser?

A: Yes. Whether the award of a partial commutation is in the best interests of a claimant, is a fact-based determination. The court will consider multiple factors in their determination of whether a partial commutation is appropriate.

In *United Fire and Casualty v. Hessenius*, claimant was awarded permanent total disability benefits resulting from a work-related shoulder injury in the amount of $1,300 per week. Following claimant's petition for partial commutation, the deputy awarded $100,000. The commissioner than reversed and awarded a partial commutation of over $1 million and defendants appealed asserting the commissioner's decision was not supported by substantial evidence, specifically that claimant did not demonstrate how he would make up for the stream of income lost due to the partial commutation.

A claimant seeking commutation of future workers' compensation benefits "to a present worth lump sum payment" must prove certain conditions to the commissioner, including "that such commutation will be for the best interest of the claimant. To establish that a commutation of future workers' compensation benefits is appropriate, the Supreme Court has establish the following factors: (1) the worker's age, education, mental and physical condition, and actual life expectancy; (2) the worker's family circumstances, living arrangements, and responsibilities to dependents; (3) the worker's financial condition, including all sources of income, debts and living expenses; (4) the reasonableness of the worker's plan for investing the lump sum proceeds and the worker's ability to manage invested funds or arrange for management by others.

Here, the Court of Appeals noted claimant testified that he planned to invest the amounts very conservatively to provide a stream of income and claimant's financial advisor was in full support of the investment plan. Based on these facts, the Court of Appeals found there was substantial evidence supporting the commissioner's award of a partial commutation of over $1 million.

United Fire & Cas. Co. v. Hessenius, No. 19-1929, 2020 WL 7385283 (Iowa Ct. App. Dec. 16, 2020).

Q: In order for penalty benefits to be unjustified, what must the respondent prove?

A: Under Iowa § 86.13(4)(a), the commissioner can award additional benefits if (1) the employee demonstrated a denial, delay in payment, or termination of benefits. (2) The employer failed to prove a reasonable or probable cause or excuse for the denial, delay, or termination.

Further, under Iowa § 86.13(4)(b), the defendant must prove that the excuse was (1) preceded by a reasonable investigation as to whether the employee was entitled to benefits; (2) the benefits were denied, delayed, or terminated as a result of the investigation; and (3) the reason for the denial, delay, or termination was conveyed contemporaneously to the employee.

In *Baccam v. ACH Food Cos., Inc.*, thirteen months passed between the beginning of the defendant's investigation and the date of a doctor's impairment rating. No communication was sent to the claimant to explain the reason for the delay. No finding of fact showed that the doctor was the reason for the delay. Because of this and the respondent company's failure to object, the court awarded the claimant an additional five percent plus interest on his claim.

Baccam v. ACH Food Cos., Inc., No. 18-1002, 2019 Iowa App. LEXIS 260 (Ct. App. Mar. 6, 2019).

Q: Is a claimant barred from reopening a prior workers' compensation settlement agreement?

A: No. If the claimant's physical condition worsens or the claimant experiences a reduction in earning capacity, the claim may reopen. The claimant must then prove by a preponderance of the evidence that the employee's current condition is proximately caused by the original injury.

However, if the claimant knew of a condition at the time of the settlement and did not disclose it, the claimant cannot reopen the case later based on that known condition. The issue could have been litigated at the time of the settlement; therefore, the claim would be barred from reopening.

In this case, the claimant, a health professional, injured himself by tripping and hitting his head. After settling his workers' compensation claim as a permanent partial disability for 50% loss and 250 weeks of compensation, the claimant tried to reopen the case years later. He claimed that his injury caused him further temporary disability and additional permanent disability. However, the court determined that the claimant could not prove that his further injury was a result of the original accident. He also knew of that injury at the time of the original claim yet chose not to litigate it, thereby barring the further-disability claim.
Brinck v. Siouxland Mental Health Ctr., 924 N.W.2d 536 (Iowa Ct. App. 2018).

Q: Fact-finding is vested in the discretion of the commissioner, so is the appellate court bound by the fact-findings upon review?
A: Yes, so long as the commissioner's fact-finding is supported by substantial evidence. Evidence is substantial if a reasonable mind would find it adequate to reach the same conclusion.

In this case, the claimant requested an Arabic translator at her arbitration hearing. The translator was provided; nonetheless, the claimant had a difficult time understanding the Arabic her translator spoke, so the claimant waived her right to her interpreter and proceeded in English. The deputy commissioner ultimately determined that the claimant failed to prove that she sustained an injury as the result of her fall at work. The commissioner affirmed the order, denying the claimant's application for rehearing. The claimant challenged the fact-findings of the agency, claiming that the determinations were affected by implicit bias.

When a commissioner is accused of implicit bias, the appellate court will determine whether the commissioner's opinion was based on substantial evidence supported by the record and proceedings as a whole. The court in *Cerwick* ultimately determined that the claimant's cry of implicit bias was unsupported by the evidence and that the deputy's attention to the evidence and the conclusions drawn directly conflicted with the claimant's perception of the evidence.

Cerwick v. Tyson Fresh Meats, Inc., No. 18-0152, 2019 Iowa App. LEXIS 133 (Ct. App. Feb. 6, 2019).

Q: Can an employment application constitute a contract? Secondly, how does an exculpatory clause in a contract with a temporary employment agency affect the agency's customers and the claimant's potential remedies?

A: Not by itself. A valid contract must have an offer, acceptance, and consideration. A job application itself is the solicitation of an offer. Once the employer offers the job to the employee and the employee accepts, all that remains is consideration. Because job offers are conditioned upon terms and conditions written in the agreement, a valid contract subsequently exists when the employee accepts employment.

In *Cupps v. S & J Tube, Inc.*, the claimant (Cupps) worked for a temporary employment agency (TSS), which then found temporary employment for Cupps at S & J Tube, Inc (S & J). When Cupps signed his employment agreement with TSS, the employment contract stated that any work-related injury claims had to go through TSS's workers' compensation insurance and that Cupps could not seek damages against S & J.

Cupps was injured upon leaving S & J and subsequently attempted to file for workers' compensation through S & J. The court determined that while the application itself was not a valid contract, the subsequent job offer was a valid contract when Cupps accepted employment.

Secondly, the court discussed the crucial nature of the contract's exculpatory clause. It was key that the exculpatory clause had clear language stating that by signing the application, all claims relating to future acts or omissions of negligence toward the customer company (S & J Tube, Inc.) were void. The existence of the valid exculpatory clause in the contract exonerating S & J from any future liability prohibited Cupps from taking action against S & J as a result of Cupps's injury. As a result of the valid and unequivocal exculpatory clause, Cupps's only remedy was through TSS, his temporary employment agency.

Cupps v. S & J Tube, Inc., No. 17-1922, 2019 Iowa App. LEXIS 26 (Ct. App. Jan. 9, 2019).

Q: Can purely mental injuries be compensable in the absence of an accompanying physical injury? Alternatively, can the claimant prove legal causation under a modified standard?

A: Yes, purely mental injuries can be compensable, so long as the employee can show that the mental injury was caused by workplace stress of a greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs. Alternatively, the claimant can prove legal causation under a modified standard so long as the mental injury arises out of an instance where the employee witnesses a gruesome injury or the death of another or is personally physically threatened.

Dubinovic v. Des Moines Pub. Sch., No. 18-0194, 2019 Iowa App. LEXIS 523 (Ct. App. May 15, 2019).

Q: Can a claimant in a civil action successfully assert claims of bad faith against his or her employer's workers' compensation insurance carriers, relating to the handling of his workers' compensation claims?

A: Yes. An example of a successful claim of bad faith includes when the insurer fails to give an expert all the relevant facts. The insurer can rely on reasonable opinions to successfully defeat claim of bad faith, but only if the "expert's report is objectively prepared and the insurer's reliance on the report is reasonable." Insurers should retain qualified experts who have the opportunity to review all relevant records, diagnostic tests, and expert reports, even if the expert has already issued an opinion.

Dunlap v. AIG, Inc., No. 17-1503, 2019 Iowa App. LEXIS 50 (Ct. App. Jan. 9, 2019).

Q: If precluded by the statute of limitations, can a claimant recover by way of a cumulative-injury claim for an increase in functional disability?

A: Yes. In this case, the claimant fractured her right ankle. Once she was at maximum medical improvement, she was given a 17% impairment rating for the ankle. She was given PPD benefits and returned to work without restrictions. Six years later, the claimant filed a cumulative injury claim as a result of the original incident.

If a claimant is precluded by the statute of limitations from bringing an original proceeding or review-reopening, the claimant may recover by way of a cumulative-injury claim for any increase in functional disability shown to have occurred as the result of day-to-day activities in the workplace subsequent to the original injury. The claimant can do so without having to show he or she suffered a "distinct and discreet" disability attributable to the post-original-trauma work activities.

The court ultimately determined that because the claimant could only show that her daily work activities may have aggravated the ankle injury in later years, this alone was not enough to establish a cumulative injury, as her ankle had never fully healed. Thus, the claimant failed to prove that her injury was "distinct and discreet," attributable to her work activities after the original ankle injury.

Gumm v. Easter Seal Soc'y of Iowa, Inc., No. 18-1051, 2019 Iowa App. LEXIS 501 (Ct. App. May 15, 2019).

Q: Must the commissioner of a case provide a "logical pathway" outlining the commissioner's industrial-disability determination?

A: Yes. In this case, the claimant argued that the commissioner did not provide a "logical pathway" explaining the industrial-disability determination. The claimant stated that "the agency pulled its industrial-disability finding 'out of thin air, with no explanation.'"

The commissioner has a duty to state the evidence relied upon and to detail the reasons for the conclusions reached. The commissioner must sufficiently detail his or her decision to show the path taken through conflicting evidence. These requirements are satisfied if the reviewing court is able to determine with reasonable certainty the factual basis on which the administrative officer acted. Even if the decision does not refer to all evidence in the case, the losing party cannot claim that the decision was made irrationally.

The court of appeals emphasized the commissioner's reliance on medical testimony and that the court could logically follow the commissioner's decision to a reasonable conclusion. Thus, the court found that the commissioner's determination was reasonable, even though the claimant was dissatisfied with the commissioner's precision.

Harper v. Lensing, Ltd., 922 N.W.2d 106 (Iowa Ct. App. 2018).

Q: Is the absence of medical evidence a bar to the claimant to request alternate medical care?

A: No. In this case, claimant Huff worked for CRST as a truck driver, living out of and using his truck for personal transportation. He was involved in a trucking accident and sustained numerous serious injuries. As a result of the accident, Huff submitted three unsuccessful requests with the agency for alternate care, asking for an ADA-compliant living arrangement, a handicap van, plus an in-home and community-assistance healthcare provider. The agency denied the requests because no medical personnel had stated Huff needed these accommodations.

Claimants can make successful requests for alternate medical care or claims that the care provided through the employer was unreasonable without introducing medical evidence. The appellate court found that though medical evidence is normally provided to the agency, it is not necessary to show the effect of undeniable injuries or to prove that the requested care would replace lost function as a result of the sustained injuries. Therefore, the court remanded the case to determine factually what available care best fit Huff.

Huff v. CRST Expedited, Inc., No. 18-0336, 2019 Iowa App. LEXIS 254 (Ct. App. Mar. 6, 2019).

Q: When there is conflicting medical testimony regarding whether ongoing work contributed to the severity of an injury, what standard does the court follow?

A: The commissioner is the fact finder. Therefore, though the appellate court will not rubberstamp the commissioner's decision regarding the facts, it will only reverse the decision if the decision was based on insubstantial evidence. If different conclusions may reasonably be drawn from the same evidence, this does not create immediate reversible error.

In this case, the claimant had two doctors examine her, each making very different medical determinations. One independent medical examination found that due to performing her work for 30 years, the claimant had a cumulative injury to her knees. A different independent medical examination found that while the work could have aggravated her developing arthritis, the claimant's systemic risk factors were the far-greater contributors to the knee issues. The court found that, while there was conflicting evidence that could have led to a different outcome, the commissioner's determination that there was no cumulative injury arose from substantial evidence, ultimately affirming the district court's decision.

Keeran v. Quaker Oats Co., 924 N.W.2d 535 (Iowa Ct. App. 2018).

Q: In order for a claimant to be granted alternate medical care by the commissioner, what determination must the commissioner make?

A: Generally, when alternate medical care is granted by the employer, the employer must fund it. However, when a claimant seeks alternate medical care, and the employer denies it, the claimant is responsible for payment. However, a claimant can get funding from the employer for that care is if the employer can prove the care is reasonable and beneficial under the totality of the circumstances to the treatment of the work injury.

In this case, the claimant injured his ankle and ultimately sought and received alternate medical care that was unauthorized. Because of this unauthorized treatment, the claimant was responsible for the costs of that treatment unless he could prove the treatment was reasonable and beneficial. The court found that the employer cannot be held liable for payment of alternate medical care when the employer resisted the care, the care was unauthorized, and no evidence was shown to prove the alternate medical care was reasonable and beneficial to the treatment of the injury.

Lynch Livestock, Inc. v. Bursell, No. 17-1629, 2019 Iowa App. LEXIS 235 (Ct. App. Mar. 6, 2019).

Q: How does the court determine in which state a contract of hire is made?

A: Contracts are made in the state in which the offer is accepted or where the last act necessary to a meeting of the minds or to complete the making of the contract is performed. The place of contract is where the acceptance is made. If a resident of one state places a letter in the mail making an offer to a person who resides in another state, the contract is completed where the acceptance is mailed.

In this case, the claimant was an Iowa resident who began working as a truck driver for a Wisconsin trucking company operating in 48 states. The claimant was injured while working on a drive for the company in Kentucky. The claimant filed for workers' compensation benefits in Iowa. The company argued that there was no jurisdiction in Iowa because neither the injury, contract, nor the company's place of business were in Iowa.

However, under Iowa Code § 85.71(b), an employee is entitled to benefits, even if his or her injury occurs outside of Iowa if (1) he was working under a contract of hire in Iowa at the time of the injury and (2) he regularly worked in Iowa. There was no dispute that the claimant regularly worked in Iowa. The court found that because the claimant mailed his acceptance of the contract from Iowa to the company's headquarters, his contract of hire was in Iowa.

Niday v. Roehl Transp., Inc., No. 18-0712, 2019 Iowa App. LEXIS 360 (Ct. App. Apr. 3, 2019).

Q: Does Iowa Code Section 17A.19(2) (2017) have a jurisdictional requirement that the petitioner asking for judicial review must mail a copy of the petition to attorneys for all parties in the case?

A: Not necessarily. Service requirements are met under Section 17A.19(2) when a lawyer *emails* a copy of the petition to opposing counsel.

Ortiz v. Loyd Roling Constr., No. 18-0047, 2019 WL 2236111 (Iowa May 24, 2019).

Q: Is an award of solely medical benefits sufficient to allow for the filing of a review-reopening petition?

A: Yes. Review re-opening must be filed within three years of the date of the award or settlement if the award is limited to medical benefits. If no indemnity benefits have been paid and a case has not gone to award or settlement, the statute of limitations for filing an original petition is two years from the date of the accident.

In this case, the claimant was injured in August 2008 and filed for workers' compensation benefits in December 2008. In the January 2010 hearing report, neither party stipulated that TTD or PPD benefits were in dispute, so the agency did not consider either. The agency thus awarded medical benefits only, which was affirmed by the court of appeals. Three years later in September 2013, the claimant filed for a review-reopening seeking disability for her August 2008 injury. This proceeding was approved in March 2015, and the agency awarded PTD and penalty benefits. The agency's decision was affirmed in October 2016 upon intra-agency review. Pella ultimately appealed, claiming that the review-reopening petition was untimely and that the claimant was not entitled to PTD or penalty benefits.

Under prior case law, the court found that an award of solely medical benefits is eligible for review-reopening. To have a successful petition for a review-reopening, the claimant must prove by a preponderance of the evidence that after the date of the award under review, he suffered an impairment or lessened earning capacity caused by the original injury and that this change was not taken into account at the time of the award.

Pella Corp. v. Winn, No. 17-1545, 2019 Iowa App. LEXIS 44 (Ct. App. Jan. 9, 2019).

Notes Pages

Notes Pages

KANSAS CITY, KS
10 E. Cambridge Circle Dr., Ste. 300
Kansas City, KS 66103
Ph 913.371.3838

ST. LOUIS, MO
505 N. 7th St., Ste 2100
St. Louis, MO 63101
Ph 314.621.1133

SPRINGFIELD, MO
1546 E. Bradford Pkwy, Ste. 100
Springfield, MO 65804
Ph 417.865.0007

OMAHA, NE
10665 Bedford Ave., Ste. 101
Omaha, NE 68134
Ph 402.408.1340

TULSA, OK
2021 S. Lewis, Ste. 225
Tulsa, OK 74104
Ph 918.771.4465

DES MOINES, IA
4400 Westown Pkwy, Ste. 490
West Des Moines, IA 50266
Ph 515.823.0800

SPRINGFIELD, IL
3201 W. White Oaks Dr., Ste. 200
Springfield, IL 62704
Ph 217.606.0900

KANSAS CITY, MO
2700 Bi-State Dr, Suite 400
Kansas City, MO 64105
Ph 816.912.4446