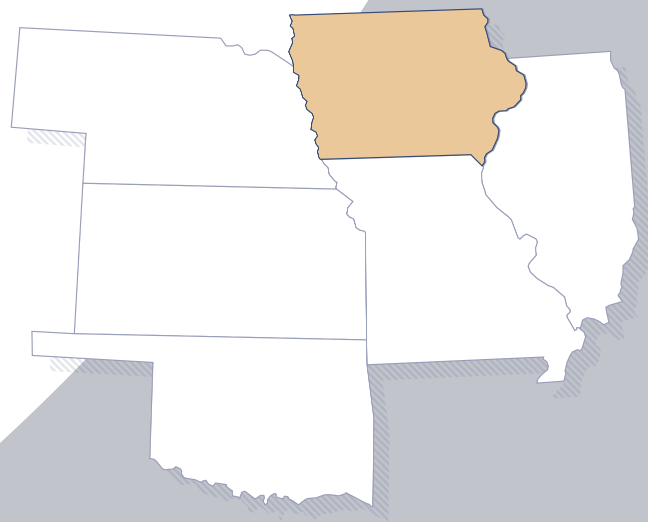
Workers' Compensation Reference Guide

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.

            a) Injuries due to unexplained falls from a level surface to the same level surface are statutorily excluded from compensability. § 85.61(7)(c).

         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.

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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.

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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 pneumoconiosis.
            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
                - 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 “dependents” 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.

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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.

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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.

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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.*
         iii. analyze the unexpected or unusual nature of the injury inducing event without regard to the claimant's own particular duties. *Tripp v. Scott Emergency Commc'n.*
   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 nonresident of Iowa, but for whom services are performed within Iowa by any employee.
   3. The employer corporation, individual, personal representative, partnership, or association has the necessary minimum contact with Iowa.
   4. 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

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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.

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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.

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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).

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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 benefit 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.

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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 represents(n/2 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.

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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:
      i. The employee returns to work, or:
      ii. 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.

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4. If the employer offers the employee suitable work *in writing* 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.
    a. An offer of suitable work must be in writing and include the details of lodging, meals, and transportation as well as set forth that any refusal by the employee must be communicated in writing and that they will not be compensated during that period.

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 *in writing* 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.
    a. An offer of suitable work must be in writing and include the details of lodging, meals, and transportation as well as set forth that any refusal by the employee must be communicated in writing and that they will not be compensated during that period.

C. Permanent Partial Disability (PPD) – § 85.34
1. Scheduled Member Injuries – "Loss of function"
    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 from 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, and adherence to these guidelines is compulsory.
        ii. As of 2017, shoulders are included as scheduled members as codified in § 85.34(2).
    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

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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;
      - 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.
4. An employee does not receive industrial disability if they return to work or are offered work in which they would receive the same or greater salary, wages, or earnings than they received at the time of injury.
   a. In this instance, permanency is based on the functional impairment.

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.
   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.

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3. If the employer offers the employee suitable work *in writing* 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.
    a. An offer of suitable work must be in writing and include the details of lodging, meals, and transportation as well as set forth that any refusal by the employee must be communicated in writing and that they will not be compensated during that period.

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. Applies only to weekly payments, not medical expenses.
4. Interest is calculated in a 3-step process as follows:
    a. **Step 1:**
        i. For interest on benefits that accrued **prior to July 1, 2017**:
            - 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.
            - Locate the interest multiplier from that line from the same table in column B.
            - Multiple the weekly benefit amount by the interest multiplier to determine interest payable.

        OR

        ii. For interest on benefits that accrued **July 1, 2017 or after**:
            - Interest rate is calculated at the Treasury rate plus 2%.
            - Interest is calculated using the following formula:

$$(N/2) \times (N-1) \times P \times r/52 = \text{interest}$$

Where:

- N = number of continuous weeks of disability
- P = the weekly benefit rate
- r = interest rate

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b. **Step 2:**
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
- P = principal (the total # of weeks/days to 3 decimal points of compensation due x compensation rate)
- R = rate of interest (10%)
- 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 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.

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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.
         i. A positive drug/alcohol test creates a rebuttable presumption that employee was intoxicated and that intoxication was a substantial cause of the work injury. That presumption is rebuttable by the worker if they can show they were not "intoxicated" and/or that the intoxication did not substantially cause the work 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.

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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

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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. *As of March 15, 2023, if all parties are represented by counsel, a commutation is presumed to be in the best interests of the claimant, and the parties may stipulate to a different period of compensation. This change to the Administrative Code also removes the language that "a commutation of less that ten weeks' benefits is presumed to be not in the best interest of the claimant."*
    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.

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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.

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

Q: What is the definition of a "shoulder" under Iowa Code 85.34(2)(n)?

A: A "shoulder" is defined in the functional sense to include the glenohumeral joint as well as all of the muscles, tendons, and ligaments that are essential to function.

Under section 85.34, the classification of a workers' compensation claimant's injury as either scheduled or unscheduled determines the extent of the claimant's entitlement to permanent partial disability benefits. If an injury is classified as a scheduled member injury to the shoulder under Iowa Code section 85.34(2)(n), the claimant is eligible for a percentage of 400 weeks of pay based on the impairment rating of the injury. In contrast, if an injury is classified as an unscheduled whole-body injury under section 85.34(2)(v), the claimant is eligible for payment for the functional impairment resulting from the injury on a 500-week schedule and additional compensation if the claimant did not return to work earning the same or greater wages as before the injury.

Claimants in both *Deng* and *Chavez* contended "shoulder," under section 85.34(2)(n), is narrowly defined to only include injuries located within the glenohumeral (shoulder) joint. Under this definition, damage to the proximal side of the joint would be considered an unscheduled whole-body injury, damage to the distal side of the joint would be considered a scheduled arm injury, and damage within the glenohumeral joint would be considered a scheduled shoulder injury.

The Court stated, "Viewing section 85.34(2) in its entirety, it is apparent that the legislature did not intend to limit the definition of "shoulder" solely to the glenohumeral joint. With this decision, the shoulder and its attendant muscles and ligaments, including rotator cuff injuries, remain scheduled member injuries in Iowa. Recovery for these injuries under the Act is limited to the value of the functional impairment to the upper extremity out of 400 weeks of benefits for the total loss of a shoulder.

Deng v. Farmland Food, Inc. No. 21-0760 (Iowa 2022); *Chavez v. MS Technology LLC*, No. 21-0777 (Iowa 2022).

Q: Is an employee who sustains bilateral shoulder injuries arising out of a single incident entitled to compensation under industrial disability analysis?

A: Yes. If an employee sustains injuries to both shoulders as the result of a single incident, they are to be compensated under the "catch-all" provision of section 85.34(2)(v) which evaluates permanent impairment under an industrial disability analysis.

In *Carmer v. Nordstrom, Inc.*, the claimant sustained a compensable right shoulder injury. The employee subsequently developed a left shoulder injury due to overuse.

The deputy commissioner determined the left shoulder injury was a sequela from the accepted right shoulder injury and, accordingly, both shoulder injuries arose out of a single occurrence. The deputy commissioner further found these injuries to be scheduled

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member injuries which failed to extend into the claimant's body as a whole.

With this finding, the claimant asserted her injuries should be compensated industrially under the "catch-all" provision of Iowa Code section 85.34(2)(v). Conversely, Nordstrom argued an injury to the shoulder is to be compensated under the schedule pursuant to Iowa Code section 85.35(2)(n) and the claimant was therefore limited to a functional disability analysis. However, following an analysis of the 2017 legal changes, the deputy commissioner sided with the claimant and concluded that an injury to the right shoulder and a sequela injury to the left shoulder caused by the effects of the original injury must be compensated industrially under Iowa Code section 85.34(2)(v) because "the statute does not contain a provision addressing this situation under the schedule."

The Commissioner affirmed this finding on appeal. His most notable reason for coming to this conclusion was the Iowa legislature's failure to add the word "shoulder" to section 85.34(2)(t)—a provision which sets forth a list of two scheduled members that when injured as the result of a single accident are to be compensated on a 500-week basis—when making changes to Iowa workers' compensation laws in 2017. The Commissioner deemed this omission to be significant in light of the legislature's re-categorization of a shoulder injury from an unscheduled injury to a scheduled injury.

Accordingly, as the law currently stands with the agency, permanent impairment in a case where bilateral shoulder injuries arise from a single accident should be compensated under an industrial disability analysis pursuant to section 85.34(2)(v).

Carmer v. Nordstrom, Inc., No. 1656062.01, 2021 WL 4243190 (Arb. Sept. 13, 2021) & *Carmer v. Nordstrom, Inc.*, No. 1656062.01, 2021 WL 6206792 (App. Dec. 29, 2021).

Q: How is a distal clavicle excision in Iowa rated under the AMA Guides?

A: Distal clavicle excision receives a 10% impairment as an acromioclavicular arthroplasty under Table 16-27 of the AMA guides but also requires a 25% multiplier making the total impairment rating 2.5%.

In *Jay v. Archer Skid Loader Serv., LLC,* a Claimant sustained a shoulder injury and underwent a revision procedure including a distal clavicle excision. Claimant had an IME who assigned a 5% impairment for loss of range of motion and a 10% impairment for the distal clavicle excision under Table 16-27 of the AMA Guides. The treating physician did not assign an impairment rating for the distal clavicle excision providing a detailed opinion stating the AMA Guides Table 16-27 is for "arthroplasty procedures or joint replacements, which a distal clavicle excision is not." The Deputy adopted the IME opinion as the legislature mandated that functional impairment be determined by the 5th Edition AMA Guides. Upon appeal it was argued that the IME should have applied a modifier to the 10% rating. The Commissioner found that when a Claimant undergoes a revision procedure including a distal clavicle excision or Mumford procedure and receives an impairment rating under Table 16-18 of the AMA Guides, the appropriate multiplier for the acromioclavicular joint is 25%. Thus, resulting in a 2.5% impairment for a distal clavicle excision.

Jay v. Archer Skid Loader Serv., LLC, File No. 19003586.01 (App. Dec. Aug. 23, 2022).

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Q: Does trapezius pain or distal clavicle resection after a shoulder injury lead to a body as a whole injury?

A: No. Distal Clavicle resection is to improve the glenohumeral joint function which is part of the shoulder, not a separate injury, and trapezius pain alone does not extend beyond the shoulder injury.

Clickner v. Prairie Farms Dairy, Inc., File No. 20000273.01 (Arb. Dec. July 1, 2022).

Q: Can a defendant claim credit for a pre-amendment non-scheduled member shoulder injury?

A: Yes. Despite the shoulder being compensated as an injury to the body as a whole prior to the 2017 amendment, the defendant may now claim credit for the shoulder injury as a scheduled member. This issue has been remanded back to the Commissioner to determine the appropriate credit to be given to the prior injury.

P.M. Lattner Mfg. Co. v. Rife, No. 22-1421, 2023 WL 3862594, at *5 (Iowa Ct. App. June 7, 2023).

Q: Is an employee who sustains permanent disability to his right arm and right shoulder as the result of a single accident entitled to industrial disability benefits under Section 85.34(2)(v)?

A: Yes. When an employee sustains an injury to his arm and shoulder as the result of a single accident, they will be compensated under an industrial disability analysis pursuant to Section 85.34(2)(v).

In *Anderson v. Bridgestone Americas Inc.*, the claimant sustained permanent disability to his right arm and permanent disability to his right shoulder as the result of a single accident. When determining how to compensate the claimant for his permanent disabilities, the deputy commissioner analyzed four potential ruling subsections of Iowa Code section 85.34(2): (m), (n), (t), and (v).

Subsections (m) and (n) were quickly rejected as the appropriate choice since the claimant sustained a loss to *both* his arm *and* shoulder, and subsections (m) and (n) are limited to the loss of *either* an arm *or* a shoulder.

Subsection (t) was similarly rejected as "shoulder" was not included in the list of scheduled members which may be compensated pursuant to the subsection when the loss results from a single incident. A noted omission by the legislature in 2017.

With the claimant's disability failing to fall into any subsection listed in "a" through "u," Subsection (v), which acts as a "catch-all" provision was determined to be the appropriate statute ruling compensability. With this finding, the claimant was to be compensated on the basis of an unscheduled injury based on a 500-week schedule and an industrial disability analysis was triggered.

Accordingly, when an employee sustains permanent disability to his right arm and right shoulder as the result of a single work injury, the employee will be entitled to receive industrial disability benefits pursuant to section 85.34(2)(v).

Anderson v. Bridgestone Americas Inc., No. 5067475, 2021 WL 4132332 (Arb. Sept. 2, 2021).

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Q: Is an employer who fails to authorize surgery recommended by the treating physician and fails to pay weekly benefits following surgery subject to penalty when they are continuing to investigate the claim?

A: Yes. When employer lacks evidence to support their claimed effort to investigate and fails to contemporaneously convey the basis for its delayed decision or denial of benefits, penalty benefits are appropriate.

In *Foster v. East Penn Mfg. Co.*, the claimant sustained an accepted work-related injury. The employer paid for the initial medical treatment and benefits associated with the claimant's time off work which included a first surgery which failed to wholly fix her condition. As a result, the doctor recommended a second surgery and the claimant was again taken off work following the procedure. However, the employer refused to authorize the second surgery or pay temporary total disability (TTD) benefits and the agency imposed penalty against the employer as a result. The penalty was affirmed on appeal by the District Court. Defendants appealed arguing an award of penalty benefits was unsubstantiated by the record as (1) the delay was necessary to investigate the claim, (2) a reasonable basis existed to delay the payment of benefits, and (3) there was a good faith dispute to the claimant's entitlement to benefits. The employer further contended that even if penalty benefits were required, nothing is owed as a credit for other benefits paid should apply.

However, the Iowa Court of Appeals held that because the employer (1) had a lack of evidence to support their claimed effort to investigate and (2) failed to contemporaneously convey its basis for its delayed decision making or denial at the time of the denial, the delay in benefits was not "justified by necessary time for investigation or a reasonable basis to contest the claim" and, accordingly, penalty benefits were appropriate.

The court further held the employer was not entitled to credit for prior permanent partial disability (PPD) benefits paid as both parties stipulated that PPD benefits were not yet at issue. Accordingly, the court was unable to determine if the amount voluntarily paid was duplicative and the agency's finding that the employer was not due a credit for TTD benefits based on PPD benefits paid was affirmed.

Consequently, penalty benefits are appropriate when the employer lacks evidence of efforts to investigate and fails to contemporaneously provide the basis for its delayed decision and/or denial of benefits.

Foster v. East Penn Mfg. Co., No. 20-1738, 2021 WL 5918422 (Iowa Ct. App. Dec. 15, 2021).

Q: When an employee commits suicide after being terminated for insubordination, is their surviving spouse entitled to death benefits for a mental-mental injury?

A: No. Not when the surviving spouse (1) fails to cite any legal authority on the issue of factual causation, (2) the mental injury resulted from the employee's love for his job which was reasonably terminated as a result of his insubordination, and (3) presents no evidence offering comparison of the stress endured by "similarly situated employees" as needed to meet the legal causation burden.

In *Jackson v. Bridgestone Americas Tire Operations*, a surviving spouse sought death

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benefits for a mental-mental injury after her husband's termination and resulting suicide. Before his death, the decedent had worked for the employer for twenty-eight years before being terminated for insubordination. After the decedent was notified by the employer of his termination, he shared the news with his family and returned home. Shortly thereafter, the decedent's spouse arrived home to find the decedent locked in their garage with his car running. The decedent's spouse was able to convince the decedent to come out of the garage. However, when his spouse stepped into the house, the decedent left the home, and was subsequently discovered dead at a nearby bridge. Only a few hours had elapsed between the employee's termination and his suicide.

The decedent's spouse filed a petition seeking workers' compensation death benefits with the agency. Following an arbitration hearing, the deputy commissioner concluded the claimant's mental condition and suicide were not causally related to his termination and, more succinctly, the suicide could not be traced to an injury arising out of and in the course of employment. Both the Commissioner and district court affirmed this denial of benefits.

On appeal before the Iowa Court of Appeals, the surviving spouse agreed the suicide itself would not qualify as an injury under the act, but presented a medical causation opinion which she argued, when read as a whole, unmistakably demonstrated that her husband "(1) suffered a mental injury as a result of being fired and (2) that the firing and resulting mental injury caused him to take his own life."

The Iowa Court of Appeals rejected the spouse's argument, noting that she failed to cite "any legal authority whatsoever on the issue of factual causation." However, the court continued its analysis by concluding the surviving spouse's expert opinion was based on incomplete information as it failed to take into consideration her husband's "repeated and blatant" insubordination and that it was this insubordination which resulted in his termination paired with the decedent's love for his job which resulted in any mental injury.

The court also addressed the issue of legal causation and noted that even if a mental injury occurred as the result of the decedent's termination, the surviving spouse failed to present evidence that the "resulting stress was of greater magnitude than the mental stress experienced by other workers in the same or similar jobs that were terminated for insubordination." A threshold necessary to satisfy legal causation in a mental injury cause without an accompanying physical injury.

In conclusion, for a mental injury without an accompanying physical injury to qualify as a personal injury, an employee must prove both factual and legal causation. To prove factual causation, the employee must show the injury is causally connected to his/her employment. To prove legal causation, the employee must show the mental injury "'was caused by workplace stress of greater magnitude than the day-to-day mental stresses experienced by *other workers employed in the same or similar jobs*,' regardless of their employer" (emphasis in original).

Jackson v. Bridgestone Americas Tire Operations, 973 N.W.2d 882, 2021 WL 5918032 (Iowa Ct. App. Dec. 15, 2021).

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Q: Are healing period benefits late when commenced 11 days after the injury?

A: No. The first weekly benefit payment is due on the eleventh day according to section 85.32.

The Iowa Supreme Court has previously held that "The due date for the first week of healing period compensation is the eleventh day after the injury" and "The subsequent due dates fall on the day after the end of each compensation week thereafter, that is, the eighth day after the first day of each subsequent compensation week." *Goodman v. Snap-On Tools Corp.*, No. 03-0414, 2004 WL 2066941, at *3 (Iowa Ct. App. Sept. 9, 2004). This 11-day grace period, allows for an "evaluation and investigation of the injury and a determination of the correct weekly compensation rate before the first compensation payment is due." *Robbennolt v. Snap-On Tools Corp.*, 555 N.W.2d 229, 235 (Iowa 1996).

City of Maxwell v. Marshall, 967 N.W.2d 566, 2021 WL 4889238 (Iowa Ct. App. Oct. 20, 2021).

Q: When an employer obtains an opinion from a medical expert addressing causation but does not assign an impairment rating, is the employee entitled to an IME under section 85.39?

A: Yes. If the injury is determined to be compensable, the employer will be held responsible for reimbursement of the reasonable cost of the employee's IME.

In Kern v. Fenchel, Doster & Buck, P.L.C., the employer sent the claimant for an examination with a doctor who opined the claimant's injuries were not work related. With this finding, the employer denied any liability for the injuries, and the claimant filed a claim with the Iowa Workers' Compensation Division. The claimant subsequently underwent an independent medical evaluation (IME) where both causation and permanent impairment were found. At hearing, the claimant sought reimbursement for her IME fees which the deputy commissioner denied after finding the claimant failed the comply with the procedure described in Iowa Code section 85.39 to entitle her to an evaluation at the insured's expense since no impairment rating was provided at claimant's initial evaluation by the insured' selected provider.

While this denial of reimbursement was upheld at all early stages of appeal and petition for rehearing, the Iowa Court of Appeals found the IME cost should have been reimbursed as a determination that the claimant's injuries were not caused by her employment is "clearly a disability evaluation" since it is effectively an opinion that the claimant suffered no impairment as the result of her employment. In other words, an opinion on lack of causation is tantamount to a 0% impairment rating.

Kern v. Fenchel, Doster & Buck, P.L.C., 966 N.W.2d 326, 2021 WL 3890603 (Iowa Ct. App. Sept. 1, 2021).

Q: As an employer, what am I responsible to pay for regarding an IME?

A: An employer is only responsible to pay for an impairment rating at a typical fee as designated by the medical provider.

In *MidAmerican Construction LLC v. Sandlin*, the court delt with the interpretation of the revisions of section 85.39. The revisions to 85.39(2) had indicated that the "reasonable

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fee for a subsequent examination by a physician of the employee's own choice" was to be reimbursed once a doctor retained by the employer had issued a rating. Those revisions had also indicated that the determination of the reasonableness of the fee "shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination occurred." 85.39(2).

In this case Dr.Taylor had previously indicated that the impairment rating was $500, and the remaining balance of the $2020.00 report was the cost of the IME. The Court held that the impairment rating was only $500 and therefore the cost to the employer under 85.39(2) encompassed the "reasonable fee" but to go beyond that "would authorize payment of expanded examination, report, and intensive review of medical records, in contravention of what the legislature has determined." Thus, the reimbursement of the IME is limited to the cost of the impairment rating pursuant to 85.39.

MidAmerican Cosnt. LLC v. Sandlin, No. 22-0471 (Iowa App. Feb. 22, 2023).

Q: Is an employer responsible to reimburse the costs of the IME if the employee did not comply with the requested evaluations by the defendant?

A: No. If the employee did not comply with the evaluations, then pursuant to Section 85.39(2) the employer is responsible to provide reimbursement for an impairment rating rather than the cost of the examination in its totality.

In *P.M. Lattner Mfg. Co. V. Rife*, the claimant sustained an injury to the right shoulder which resulted in a full commutation of benefits. The claimant later injured the shoulder again and obtained an IME for the shoulder, as well as a claimed right ankle injury. The Commissioner held that the claimant was entitled to reimbursement for the IME in full. The Appeals Court, citing *MidAmerican Const. LLC v. Sandlin*, held that the employer was not responsible for reimbursing costs from an examination that did not relate to the impairment of the compensable right shoulder. Thus, the impairment rating of the right ankle was not related and was not to be reimbursed by the employer.

P.M. Lattner Mfg. Co. v. Rife, No. 22-1421 (Iowa App. June 7, 2023) & *MidAmerican Cosnt. LLC v. Sandlin*, No. 22-0471 (Iowa App. Feb. 22, 2023).

Q: For the purposes of benefits under Iowa's Second Injury Compensation Act, when an employee sustains permanent impairment to the body as a whole that also causes impairment to a qualifying scheduled-member body part, do they have a "first qualifying injury" against the Fund?

A: No. A condition to the body as a whole that "merely affects" an enumerated member does not constitute a "first qualifying injury."

In *Blake v. Second Injury Fund of Iowa*, the claimant sought benefits from the Second Injury Fund (the Fund) under the assertion that impairment to her eye, caused by her Graves' disease, constituted a "first qualifying injury" within the context of Iowa's Second Injury Compensation Act. The workers' compensation Commissioner rejected this claim and denied benefits from the Fund. On judicial review, the Iowa Court of Appeals affirmed the district court's ruling and upheld the Commissioner's denial of the claimant's claim against the Fund.

The court came to this conclusion upon differentiating an injury to an enumerated member

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which also causes impairment to the body as a whole, from an impairment to the body as a whole that also causes impairment to an enumerated, scheduled member.

Holding, in summary, an injury to an enumerated member constitutes a "first qualifying injury" even when that injury also causes impairment to the body as a whole. However, the inverse of this, an injury to the body as a whole that also causes impairment to an enumerated member does not constitute a "first qualifying injury."

Blake v. Second Injury Fund of Iowa, 967 N.W.2d 221, 2021 WL 4304274 (Iowa Ct. App. Sept. 22, 2021).

Q: When an employee sustains a tear to the quadriceps tendon, is their injury compensated as a scheduled-member injury of the leg?

A: No, it would be considered a whole body injury. Accordingly, an industrial disability analysis is triggered.

In *Masterbrand Cabinets v. Simons*, the claimant sustained an undisputed work-related injury to his right quadriceps tendon. Following an arbitration hearing, the claimant was awarded permanent partial disability benefits based on an unscheduled injury. This award was affirmed by the workers' compensation Commissioner and District Court on appeal.

Masterbrand Cabinets continued to appeal this finding on the contention that the claimant's right quadriceps tendon tear injury was confined to his leg—limiting his benefits to a scheduled loss. However, in consideration of three doctors' opinions identifying impairment of the claimant's right hip resulting from his torn quadriceps tendon, and the claimant's credible testimony at the arbitration hearing, the commissioner's finding of an injury to the claimant's body as a whole was upheld.

Masterbrand Cabinets v. Simons, 967 N.W.2d 224, 2021 WL 4304957 (Iowa Ct. App. Sept. 22, 2021).

Q: When the party seeking judicial review of an alternate medical care decision fails to file a transcript of the agency hearing, will the alternate medical care decision be upheld?

A: Yes.

It is the appealing party's responsibility to file a transcript of the agency hearing. Without the agency hearing transcript, there is an insufficient record to allow the court to accept the party seeking judicial review's claim that the agency decision was not supported by substantial evidence. And since the court does not presume error, in the absence of agency hearing transcript an alternate medical care decision will be affirmed.

Dotts v. City of Des Moines, 965 N.W.2d 632, 2021 WL 3076305 (Iowa Ct. App. July 21, 2021).

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Q: Is an insurance carrier who inadvertently pays workers' compensation benefits to an employee entitled to reimbursement from another insurer when a petition for contribution, pursuant to section 85.21, is not filed until after the arbitration hearing?

A: No. An insurance carrier must seek and obtain a Section 85.21 order *before* the arbitration hearing in order to pursue reimbursement claims from another insurer.

The claimant in *American Home Assurance v. Liberty Mutual Fire Ins. Co*. filed a petition for workers' compensation benefits against his employer and its insurer, American Home Assurance (American Home). Following an arbitration hearing, 125 weeks for permanent partial disability benefits were awarded by a Deputy Commissioner, and later affirmed by the Commissioner. American Home paid the awarded benefits.

Three years after American Home's final payment of weekly benefits, the claimant filed a review-reopening petition. It was at this time American Home discovered it was not the insurer on the claimant's date of injury. Accordingly, American home filed an "Application for Payment Benefits Under Iowa Code Section 85.21." The application was subsequently granted by a Deputy Commissioner with an order authorizing American Home to "petition, cross-petition, or intervene in proceedings before this agency . . . to seek determination of liability and reimbursement from another carrier." Pursuant to Iowa Code section 85.21, American Home then filed a petition for contribution seeking reimbursement from Liberty Mutual Insurance Company (Liberty Mutual) for benefits paid to date as well as any future benefits "found to be due as a result of [the claimant's] currently pending" review-reopening petition.

While a deputy workers' compensation commissioner concluded American Home was entitled to such contribution, the Commissioner reversed the portion of the deputy commissioner's decision requiring reimbursement for payments made before the order authorizing a reimbursement claim was issued. The Commissioner reasoned that "Because American Home failed to seek an Iowa Code section 85.21 consent order prior to the arbitration hearing, Liberty Mutual is not liable for contribution to American Home for benefits ordered to be paid and paid pursuant to the arbitration decision." On judicial review the District Court reversed the agency's final decision finding there was no time limitation on reimbursement actions or a carrier's right to recovery.

However, on further appeal, the Iowa Court of Appeals agreed with the Commissioner's finding and limited American Home's reimbursement claim to benefits paid after the section 85.21 order was obtained. The Supreme Court of Iowa later affirmed under the same reasoning.

In short, an insurer is not afforded an indefinite period of time to seek reimbursement.

American Home Assurance v. Liberty Mutual Fire Ins. Co., -- N.W.2d --, 2021 WL 2080934 (Iowa June 10, 2022).

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Q: Can a previously agreed upon situs of injury be altered in a review-reopening action?

A: No. When there is prior settlement agreement and written stipulation which identify the part of the body affected or disabled, the employee is bound to that judicial acceptance and is estopped from attempting to claim a different injury.

In *Pesicka v. Snap-On Logistics Co.*, the parties entered into a settlement agreement pursuant to Iowa Code Section 85.35(2). As part of the settlement agreement, the parties stipulated a 13% permanent partial disability to the right leg. Following settlement, the claimant underwent eight additional surgeries. Two of which resulted in the amputation of all five toes on the claimant's right foot.

Claimant subsequently filed a petition for review/reopening relief asserting his right leg condition had worsened and he was seeking an increase in benefits. As part of his claim, while not included in the petition, the claimant asked the agency to award increased compensation for his lost toes.

However, the deputy commissioner, the commissioner, the district court, and the Iowa Court of Appeals found the claimant was unable to claim an award pertaining to the loss of his toes as his settlement agreement, and the review-reopening hearing report, contained the stipulation that claimant's injury was limited to his right leg. The Court of Appeals reasoned that to disregard the stipulation would prejudice the employer as they did not have adequate notice to dispute the level of impairment to the right leg, foot, and five toes.

In conclusion, the situs of injury in a review-reopening action will be limited to what was previously agreed upon in a settlement agreement and/or stipulated to at hearing.

Pesicka v. Snap-On Logistics Co., 965 N.W.2d 638, 2021 WL 3076551 (Iowa Ct. App. July 21, 2021).

Q. If an arbitration decision found no permanent impairment can a Claimant file a review/reopening to pursue a claim for permanent impairment?

A: Yes. Res Judicata does not prevent the review or reopening if the symptoms of permanent disability arise.

In *Green v. North Central Iowa Regional Solid Waste Authority*, a claimant filed a review of a 2014 arbitration decision where the Deputy concluded that claimant was entitled to temporary disability benefits for a cervical strain, closed head trauma and shoulder strain but had not proved any permanent injury resulting in permanent disability benefits. The Claimant alleged the temporary disability had worsened over time into permanent disability. The Iowa Supreme Court held that a prior determination in workers' compensation proceeding that injuries were not permanent did not bar a review and reopening proceeding when the Claimant's injuries had worsened overtime into permanent disability.

Solid Waste Authority paid temporary benefits to Green during her initial period of recuperation from injury. And on remand from the District Court in the earlier case, the Commissioner ordered it to make additional payments for medical bills and lost wages during the several months after the incident. The Iowa Supreme Court held the prior

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payments made as awarded by the Commissioner satisfied the statutory reopening requirement of “an award for payments or agreement for settlement.” Iowa Code section 86.14(2).

Green v. N. Cent. Iowa Reg'l Solid Waste Auth., 989 N.W.2d 144, 149 (Iowa 2023), reh'g denied (May 9, 2023).

Q: Does the Iowa workers’ compensation statute require employees with high stress jobs to prove mental injury claims occurred due to hyper-unexpected causes or strains?

A: No. Claimants meet the legal causation standard by showing the injury was induced by an unexpected cause or unusual strain *without* regard to the claimant’s own particular duties.

In *Tripp v. Scott Emergency Communication Center*, the Court determined that Iowa’s workers’ compensation statute does not place a higher bar of proof for emergency responders claiming benefits for trauma-induced mental injuries suffered on the job than workers in other roles with identical injuries. Iowa Code § 85.3(1) establishes a worker’s eligibility to receive compensation if a personal injury “aris[es] out of and in the course of employment.”

With regard to purely mental injuries, those that do not have an associated physical injury, a claimant must prove both medical causation and legal causation. Medical causation is that the mental condition was in fact caused by employment activities. Legal causation, however, requires a claimant to show that the mental injury resulted from “workplace stress of a greater magnitude than the day-to-day mental stresses experienced by other workers employed in the same or similar jobs, regardless of their employer.” *Dunlavey v. Economy Fire & Casualty Co.*, 526 N.W.2d 853, 858. But when the mental injury is based on a sudden traumatic event that comes from an unexpected cause or unusual strain, the courts have said that the legal causation standard is met. See *Brown v. Quik Trip Corp.*, 641 N.W.2d 725, 729.

The Tripp case defined a new test for what qualifies as an unexpected cause or unusual strain. Mandy Tripp worked as an emergency dispatcher for 16 years until she developed PTSD from a disturbing call from a mother reporting the murder of her baby. At the hearing before the Deputy Workers’ Compensation Commissioner, the defense counsel presented multiple witnesses who worked as dispatchers who also reported receiving calls of infant deaths. The Deputy commissioner denied the petition for benefits because dispatchers “routinely take calls involving death and traumatic injuries” and that “Tripp failed to prove the call was unusual or unexpected.”

However, the Iowa Supreme Court said that the ruling unduly placed upon first responders a burden of proving hyper-unexpected causes and hyper-unusual strains to qualify for benefits that less hazardous professions receive under a much lower bar. The Court put forth a new test which states, when a purely mental injury is traceable to a readily identifiable work event, the claimant proves legal causation by meeting the test we set forth in *Brown* by analyzing the unexpected or unusual nature of the injury inducing event without regard to the claimant's own particular duties.” In other words, no longer are claimants required to prove unexpected causes or unusual strains against their

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particular duties, but against the general population.

Tripp v. Scott Emergency Commc'n and Iowa Municipalities Workers' Comp. Assoc., -- N.W.2d --, 2022 WL 1815223 (Iowa 2022).

Q: Do the Iowa Supreme Court's COVID-related supervisory orders from April 2, 2020 and May 8, 2020—tolling the statutes of limitations, statutes of repose, and "similar deadline[s] for commencing an action in district court"—apply to the 30-day deadline for petition for filing a petition for judicial review of a final agency decision in a workers' compensation case?

A: No. The 30-day deadline to file a petition for judicial review, is an appellate deadline and jurisdictional prerequisite governed by Iowa Code section 17A.19(3), and is not considered a "statute of limitations, statute of repose, or similar deadline for commencing an action in district court." Accordingly, a proceeding for judicial review of a final agency decision must be commenced by filing of a petition with the district court within 30 days of the date when the claimant's application for rehearing had been deemed denied.

Askvig v. Snap-On Logistics Co., 967 N.W.2d 558 (Iowa Nov. 17, 2021).

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