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 <u>arise out of</u> and <u>in the course of</u> 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.

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 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
                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 “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.

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 periodic 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 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 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.
   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 cannot 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:
         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.
   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 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;
            a) 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.
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:*
         a) 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.
         b) Locate the interest multiplier from that line from the same table in column B.
         c) 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:*
         a) Interest rate is calculated at the Treasury rate plus 2%.
         b) Interest is calculated using the following formula:

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

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

   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:

         $$I = P \times R \times T(1).$$

         - 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.

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.

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. *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 than 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.

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: Are injuries to the shoulder and arm classified as scheduled or unscheduled under Iowa Code Section 85.34(2)?

A: The Iowa Supreme Court held that injuries to the shoulder and arm are scheduled under Section 85.34(2), and thus do not fall under the unscheduled injury category governed by paragraph (v).

The Iowa Supreme Court reversed the Court of Appeals decision that injuries to the shoulder and arm were unscheduled injuries under Section 85.34(2)(v). This decision rested on the language of Section 85.34(2), which governs compensation for permanent partial disabilities. Scheduled injuries are those described or referred to in paragraphs (a) through (u) of Section 85.34(2), while unscheduled injuries are governed by paragraph (v) of Section 85.34(2). The court held "an injury can be unscheduled only if it fits in paragraph (v). Iowa Code § 85.34(2)(v). And by its plain terms, paragraph (v) can *only* apply to injuries "other than those... described or referred to in paragraphs 'a' through 'u.' but the claimant's injuries are not "other than those... described or referred to in paragraphs 'a' through 'u.' " Claimant's injuries were to his shoulder and arm, and both are "described or referred to" in the schedule composed of "paragraphs 'a' through 'u.' Further, the court specifically noted the claimant's shoulder injury is "described or referred to" in paragraph (n), which states: "n. For the loss of a shoulder, weekly compensation during [a percentage of] four hundred weeks." § 85.34(2)(n), and the claimant's arm injury is "described or referred to" in paragraph (m), which states "m. The loss of two-thirds of that part of an arm between the shoulder joint and the elbow joint shall equal the loss of an arm, and the compensation therefor shall be weekly compensation during [a percentage of] two hundred fifty weeks." § 85.34(2)(m). Therefore, because the claimant's injuries are described and referred to in paragraphs (m) and (n), paragraph (v) does not come into play, and the injuries are scheduled.

The court also addressed three of the claimant's counterarguments, stating they deserved discussion:

(1) Anderson's argument concerning the statute's use of the singular and plural,

(2) Anderson's argument concerning paragraph (t), and

(3) Anderson's argument that our interpretation affords no meaning to paragraph (v).

In regard to the first argument, the court reasoned that the singular use of "arm" and "shoulder" in the statute holds no bounds unless "otherwise specifically provided by law, the singular includes the plural," citing *Little v. Davis,* 974 N.W.2d 70, 75–76 (Iowa 2022) (applying Iowa Code Section 4.1(17)). Further, the court cautions against reading "too much into the presence of 'a' or 'an' in a statute depending on the context," noting that the distinction here was not relevant as paragraph (v) does not say that it only applies to one of the paragraphs identified (a-u) but rather only injuries other than those described in paragraphs (a-u).

Second, the court held that the claimant's argument that paragraph (t) does not mention shoulder, inferring that the legislature meant to extend two body part losses from the schedule if one of those injuries was the shoulder, was incorrect based on the plain language of the statute. The court reasoned paragraph (t) was not relevant to the claimant, as paragraph (t) only applies to injuries "caused by a single accident," and evidence showed the claimant's injuries were due to decades of work wear and tear and not a singular incident. The court also noted that paragraph (t) does not preclude workers who suffer other combinations of injuries, stating that a scheduled injury combined with a scheduled injury does not create an unscheduled injury; therefore, if the injuries fall under (a-u), the injury would not fall into paragraph (v). Thus, this argument fails, and the injuries to both the arm and shoulder are scheduled members, and paragraph (t) does not dislodge this in the eyes of the court.

Lastly, the court held claimant's third argument held no merit as paragraph (v) retained meaning as it still does not apply to injuries to fingers, arms, hands, shoulders, or other parts described or referred to in the schedule but does apply to injuries that are not described or referred to in the schedule, such as back and head injuries. The court further noted, under current case law, "when there is injury to some scheduled member and also to parts of the body not included in the schedule, the resulting disability is compensated on the basis of an unscheduled injury," which would require compensation under paragraph (v). Thus, paragraph (v) maintains importance.

In conclusion, the Iowa Supreme Court held that an injury is unscheduled if it is an injury "other than those... described or referred to in paragraphs 'a' through 'u' " of Section 85.34(2), and seeing as how the arm is scheduled under paragraph (m) and the shoulder is scheduled under paragraph (n), paragraph (v) held no relevance to this case and compensation should not be computed based on loss of earning capacity.

Bridgestone Americas, Inc. v. Anderson, No. 22-1328, 2024 WL 1334165 (Iowa 2024).

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: Are vascular injuries per se unscheduled injuries under Iowa Code § 85.64, affecting entitlement to Second Injury Fund benefits?

A: The Iowa Supreme Court held that whether an injury results in the loss of use of a scheduled member or extends to the body as a whole is a factual determination to be made on a case-by-case basis, and vascular injuries are not per se unscheduled injuries.

The Iowa Supreme Court interpreted Iowa Code § 65.64 with regard to vascular injuries and whether they are per se unscheduled injuries therefore affecting entitlement to second injury fund benefits. The claimant established a first qualifying injury that occurred in 1986 to her left leg. In 2019 she suffered an injury to her right knee that resulted in a total knee replacement. She was placed at maximum medical improvement and issued a 37% impairment rating to the right lower extremity by the treating physician. Claimant subsequently developed pain and swelling in her right calf and was diagnosed with postsurgical lymphedema, a vascular injury. Claimant then filed a petition and settled her claim against the employer but not the Second Injury Fund claim.

In an Independent Medical Examination, Claimant was assessed additional impairment for the diagnosed lymphedema. However, this impairment was to the whole person, rather than the right lower extremity. The parties proceeded to hearing on the issue of “whether Claimant sustained a second qualifying injury for purposes of the Fund.”

Under Iowa Code § 85.64(1), for an employee is entitled to Fund benefits if the employee (1) “previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye,” (2) “becomes permanently disabled by a compensable injury,” that (3) “resulted in the loss of or loss of use of another such member or organ.” Therefore, the determination of whether Claimant’s 2019 injury was scheduled or unscheduled to determine whether she qualified for Fund benefits.

Previously, the Agency has relied on *Blacksmith v. All-American Inc.*, to support the argument that all injuries to the vascular system are unscheduled. 290 N.W.2d 348 (Iowa 1980). The Iowa Supreme Court specifically found reliance on *Blacksmith* to support a per se rule was erred. The Court held that whether an injury results in loss of use to a scheduled member or extends to the body as a whole is a fact determination to be made on a case by case basis.

The Court expanded by analyzing cases where injuries to bodily systems were localized to only result in loss of use of a scheduled member. *See Second Injury Fund of Iowa v.*

Armstrong, No. 10-1689, 2011 WL 2090023 (Iowa Ct. App. May 25, 2011) and *Reichert v. John Deere Waterloo Works,* No. 21700141.01 (Dec. 19, 2022). Therefore, while an injury to a bodily system can lead to a body as a whole injury, it is not inevitable and may only constitute a scheduled injury.

Additionally, the Court restated that "loss of use of another such member or organ," as used in the statute, includes losses to members that subsequently cause impairment to an unscheduled member. Therefore, the case was remanded with directions to conduct further proceedings according to the new interpretations.

Delaney v. Second Injury Fund of Iowa, No. 23-0182 (Iowa 2024).

Q: Does Iowa Code § 85.39(2) allow for reimbursement of the full cost of an independent medical examination (IME), including diagnosis, maximum medical improvement (MMI), and causation, or only the portion relating to issuing an impairment rating?

A: The Supreme Court held that Iowa Code § 85.39(2) allows for reimbursement of the full cost of the IME, including diagnosis, MMI, and causation, and that the reasonableness of the fee is a question of fact for the Commissioner to determine.

The Supreme Court reversed the Court of Appeals decision reducing the reimbursable amount of Claimant's IME. Under Iowa Code § 85.39(2) claimants are entitled to reimbursement for the reasonable fee for an independent medical examination by a physician of their choosing if they believe the impairment rating issued by the employer retained physician to be too low. The Supreme Court decision turned on the interpretation of the 2017 amendment to Iowa Code § 85.39(2) which added that "a determination of the reasonableness of a fee for an examination… shall be based on the typical fee charged by a medical provider *to perform an impairment rating* where the examination is conducted."

The Defendant's argued that the amendment only allowed for reimbursement of the portion of the IME relating to issuing an impairment rating. The Court disagreed holding that the amendment only added a point of reference to determine the reasonability of the fee for an IME and that the statute still allows for reimbursement of the cost of the accompanying examination. In ruling on the meaning of "perform an impairment rating" the Court held that it includes determining a diagnosis, whether the claimant is at MMI, and causation, all of which typically require reviewing past medical records and conducting a physical examination. Therefore, each portion is reimbursable under the statute.

However, under the 2017 amendment, the Court found that the reasonableness of the fee is a question of fact for the Commissioner to make. The Commissioner must make a finding on the fees typically charged in the area that the examination was performed and the parties may offer evidence to support or challenge the fee charged. In this matter, the Court stated that the Commissioner failed to make such a determination and sent the case back to the Commissioner for further ruling on the reasonableness of the fee.

MidAmerican Construction LLC and Grinnell Mutual v. Sandlin, No. 22-0471 (Iowa 2024).

Q: Is an employer liable for a functional impairment increase from an initial injury that was compensated based on industrial consideration?

A: Yes. Under section 85.34(7), an employer is not entitled to a credit for previous benefits paid for a reduction in earning compacity to offset claimant's entitlement to any new permanent partial disability as computed by any increase in functional impairment from a subsequent injury.

In *Loew v. Menard*, the claimant initially suffered a low back injury in 2015, which resulted in a 20% functional impairment and ultimately resulted in a 30% award of industrial disability. The claimant then suffered a second work-related back injury in 2018, which was compensated functionally as he continued to work for the employer and earned wages in excess of those at the time of the injury. As a result of the second award, the claimant was found to have an 8% functional impairment, taking the total functional impairment from 20% from the prior injury to a combined total of 28%. The commissioner concluded that the employer was not required to pay additional benefits for the second injury, as the employer received a credit for the 30% award that had previously been paid, which was in excess of the 28% functional award. The district court affirmed the commissioner's decision. However, the Supreme Court reversed the district court's ruling and remanded the claim back to the commissioner for further review.

The Court briefly reviewed the difference between functional and industrial injuries, noting that under 85.34(2)(v), "unscheduled injuries are to be determined functionally if the employee continues to work for the employer at the same or greater compensation." According to the Court, under this statute, "an employer is only responsible for paying for an injury once - double recoveries are prohibited." Further, the Court concluded that the commissioner "erred in interpreting 85.34(7) to preclude compensation for this new permanent partial disability." The Court cited the text of 85.34(7), stating it "limits an employer's liability only to the extent that the employee's preexisting disability has already been compensated under this chapter." The Court further noted that the claimant did not seek to hold the employer liable for a preexisting disability but instead only the new permanent partial disability of the additional 8% functional impairment that occurred as a result of the second injury.

The Court then indicated that this was not a double recovery claim, as only 20% of the 28% impairment had previously been compensated. As the earlier recovery was based on an industrial consideration rather than on a functional consideration, the Court quoted the reasoning in *Rife v. P.M. Lattner Manufacturing Co.* that the two recovery systems are "incommensurable, and it makes no logical sense to use one award to offset the other." The Court followed this reasoning with the example, "a claimant's industrial disability can be lower than functional impairment if claimant's earlier industrial injury had been 10%, there would be no argument that claimant would be entitled to an 18% award (the difference between the 10% industrial award and 28% functional loss." The Court held that the determination of the credit is to be made based on the difference between the functional rating of the initial injury and the functional rating of the subsequent injury.

Loew v. Menard, Inc., No. 22-1894 (Iowa 2024).

Q: Is an employer entitled to apportionment of liability under Iowa Code section 85.34(7) for a second shoulder injury, and is the claimant entitled to full reimbursement for an independent medical examination (IME)?

A: The Iowa Supreme Court held that apportionment credit for a shoulder injury under section 85.34(7) is based on whether there is a difference in functional impairment between the two injuries, with the employer being liable only for the marginal increase in impairment caused by the second injury, and that a claimant is entitled to full reimbursement for an IME if the fee is reasonable and customary within the geographic location.

In *P.M. Lattner Manufacturing Co. v. Rife*, claimant suffered a right shoulder injury in 2009, when the shoulder was considered a non-scheduled member. Following this incident, claimant received industrial disability which was calculated using a loss of earning capacity. After receiving multiple impairment ratings, the commissioner never made a finding regarding the impairment rating because the parties entered into a commutation settlement agreement which stipulated that claimant sustained a permanent partial disability of 29.6% of the body as a whole.

In 2017, the general assembly changed the method of calculating permanent partial disability benefits for an injury to the shoulder and reclassified a permanent partial disability arising out of an injury to the shoulder as a scheduled disability. This modified how compensation was calculated and based it on the percentage of functional impairment to the scheduled member in relation to a set number of weeks.

Following the 2017 amendment, claimant sustained a second work-related injury to his right shoulder in 2018. Claimant sought an independent medical examination (IME) where he received a 19% impairment rating to the shoulder. The physician did not distinguish between the 2009 and 2018 shoulder injuries when assessing the claimant's permanent functional impairment. After the deputy commissioner found the claimant would be entitled to 19% functional impairment, the employer argued that it was entitled to an apportionment of liability under Iowa Code section 85.34(7) and sought a credit for its prior partial disability payment. This argument was rejected, and Lattner appealed. Additionally, claimant sought reimbursement for the costs of the IME, and the deputy commissioner determined the reimbursement was appropriate. On appeal, the commissioner agreed with the deputy's conclusions that apportionment was not appropriate in this situation and that Lattner was required to reimburse the claimant for the IME. Lattner appealed to the district court, who concluded that the commissioner's ruling on the apportionment issue was erroneous, and the relevant statutes and commutation settlement should have been addressed. Additionally, the district court found the claimant was not entitled to any reimbursement and reversed the agency's decision. The claimant appealed, arguing to the court of appeals that apportionment under section 85.34(7) was not applicable. The court of appeals concluded that under section 85.34(7), Lattner was entitled to some credit for its disability payments made under the prior commutation settlement. Furthermore, the court of appeals concluded that

the claimant was entitled to reimbursement for the IME, but only for the cost of the impairment rather than the cost for the entire examination.

The Iowa Supreme Court first addressed the apportionment issue pursuant to section 85.34(7). The Court noted that the legislature's stated purpose in enacting section 85.34(7) was to "prevent all double recoveries and all double reductions in worker's compensation benefits for permanent partial disability." Furthermore, the Court mentioned that the holding in *Loew v. Menard, Inc.* resolved this case at hand. In *Loew*, it was concluded that, "offsetting an award based on functional impairment against a prior award based on loss of earning capacity was an improper comparison of apples to oranges." Ultimately, section 85.34(7) requires that the employer can only be liable for the marginal increase in functional impairment caused by the second injury. The Court concluded that distinguishing marginal increases in functional impairment was a factual inquiry the agency would be able to determine. Therefore, the Court remanded the case for additional evidence and determined Lattner should be afforded the opportunity to present evidence under the correct standard set forth in *Loew* to determine whether the physician's 19% functional impairment rating was in addition to, or inclusive of, the claimant's preexisting functional impairment.

The Court then addressed issue of IME reimbursement. It was concluded that an employee is entitled to reimbursement of the reasonable cost of the examination, which is to be based upon the typical fee charged within the geographic area in which the IME is performed. Ultimately, the Court found the commissioner's finding that the physician's fee was customary within the area and supported by substantial evidence.

In conclusion, the Court held that apportionment credit for a shoulder injury under section 85.34(7) is based upon whether a difference in functional impairment exists between the two injuries. Section 85.34(7) then requires that the employer be held liable only for the marginal increase in functional impairment caused by the second injury. The Court also held that a claimant is entitled to reimbursement for an IME when it is determined the fee was reasonable and customary within the geographic location.

P.M. Lattner Manufacturing Co. v. Rife, No. 22-1421 (Iowa 2024).

Q: Can the Court overturn a timely notice finding when the record could have supported a contrary conclusion?

A: When the Court concludes the commissioner's determination of timely notice is supported by substantial evidence, the decision will stand, even if the record could have supported a contrary conclusion.

The Court of Appeals affirmed the decision of the Commissioner holding the Defendant failed to show substantial evidence to support their notice defense under Iowa Code § 85.23. Defendant argued that Claimant only mentioned that he was hurt, but not that an injury was work related. However, Defendant failed to introduce testimony or evidence to rebut the Claimant's testimony that his supervisors had been informed of his work-related injury within the 90-day period. Specifically, the court stated that although the record could have supported Defendant's argument that Claimant failed to give notice, the

Commissioner finding was still supported by substantial evidence. Therefore, the court affirmed the commissioner's finding.

Kraft Heinz Co. v. Ernest Bynum. No 23-0045 (Iowa Ct. App. Feb. 7, 2024).

Q: Does the discovery rule toll the notice period if a claimant does not know the nature of one's injury?

A: No. Following the 2017 amendments to chapter 85, the ninety-day notice period begins when the claimant knew or should have known the injury was work-related, with no regard to the claimant's knowledge of the nature, seriousness, or probable compensable character of the injury.

The Court of Appeals affirmed the decision of the Commissioner holding the Claimant failed to provide notice of an injury within 90 days of the injury's occurrence. Claimant sustained a cumulative injury and therefore argued that the notice period should have been tolled under the discovery rule claiming he did not discover the nature of his injury until September of 2019. However, since the inception of the claim, the Iowa Supreme Court interpreted the 2017 amendments to Iowa Code § 85.26(1) which, in short, held that the legislature changed the date of the occurrence of the injury to be tied to the date the claimant knew or should have known the injury was work related. Therefore, the realization of the nature of the injury was irrelevant for the purposes of the starting of the notice period. The Claimant in this case conceded that he knew his injury was work related in 2018. Notice was not given until October of 2019, well outside the 90 day period and section 85.23 operated to bar recovery.

Tyler v. Tyson Fresh Meats, Inc. No. 23-0393 (Iowa Ct. App. Feb. 2024).

Q: Does the settlement with the Second Injury Fund divest the agency of jurisdiction, and is the claimant's petition barred by the statute of limitations under Iowa Code § 85.26?

A: The Iowa Supreme Court held that the settlement with the Second Injury Fund did not divest the agency of jurisdiction because it involved separate subject matter jurisdiction, but the claimant's petition was untimely as it was filed outside of the two-year statute of limitations period from when the claimant knew or should have known that the injury was work-related.

The Iowa Supreme Court addressed two areas of the Iowa Code governing Workers' Compensation: section 85.35(9) regarding settlements and section 85.26 regarding the discovery rule.

The claimant sustained an injury in 2017 to his right arm while vacuuming a grain bin. Claimant sought medical treatment and was diagnosed with tennis elbow. He underwent some conservative management of his pain. Claimant's pain did not subside and he returned to treatment in January of 2018. He then underwent physical therapy without success. It was not until May of 2018 that an MRI revealed a deltoid tear which was opined to have been caused by overcompensation for the tennis elbow injury.

Claimant filed a petition on January 21, 2020 in which he also alleged entitlement to Second Injury Fund benefits. Claimant settled with the Second Injury Fund prior to the

hearing. At hearing, Defendants argued that the agency no longer had jurisdiction due to the settlement with the Second Injury Fund and that regardless, the petition was not filed within the two year statute of limitations. The Deputy disagreed holding that the settlement did not divest the agency of jurisdiction and that the discovery rule applied and was not operative until April of 2018. Therefore, the petition was timely.

The case was appealed and ultimately landed before the Supreme Court which held that the petition was not barred due to the settlement with the Second Injury Fund because it involved separate subject matter jurisdiction. The extent of any bar relies on the subject matter of the settlement. Here, the subject matter of the Second Injury Fund claim was separate and apart from the claim against the employer. Therefore, the claim was not barred on these grounds.

However, the Court also held that claimant's petition was untimely. While the Commissioner relied on the discovery rule to find that the claimant did not appreciate the seriousness of his injury until April of 2018, The Court held that the definition regarding the date of the occurrence of injury as applied to section 85.26 was operative. Therefore, the petition must be filed within two years of the date the employee knew or should have known that the injury was work related. While the discovery rule was the proper method prior to the legislature's addition of the definition of "date of the occurrence of the injury", the legislature expressly intended it to be for the purpose of 85.26. Therefore, the Court found that the legislature expressly intended to limit the discovery rule to the knowledge an injury is work related and not the nature of the injury. Applying the new interpretation, Claimant's petition was file outside of the two year period from the date of the occurrence of the injury and barred as untimely.

Tweeten v. Tweeten, 999 N.W.2d 270 (Iowa 2023).

Q: Does an injury resulting from a Covid-19 vaccine that the employer encouraged arise out of and in the course of employment?

A: No, if the vaccine was not required by the employer there is no actual risk of an adverse reaction to the Covid 19 vaccine as a result of employment and the vaccine was in no way connected to employment.

Driscoll v. City of Cedar Rapids was a case of first impression in Iowa concerning an employee who developed complications from the Covid-19 vaccination and sought to demonstrate that the injury arose out of and in the course of his employment. The deputy concluded that claimant's injury had arisen out of and in the course of employment (Cleereman). On appeal, the commissioner reverses and concludes that the injury did not arise out of and in the course of employment. Parties agreed that claimant's injury had resulted from the administration of the Covid-19 Johnson and Johnson vaccine. The employer "strongly encouraged" employees to obtain the vaccine but there was no requirement from the employer that an employee must obtain the vaccine.

In his decision, the commissioner notes that although the City encouraged its employees to obtain the vaccine, "defendant made it clear the vaccinations were only recommended and not mandatory." The employer provided no incentives to obtain the vaccine and no disciplinary action was imposed if an employee failed to obtain the vaccine. The commissioner found that the employer had encouraged employees to receive the vaccine but had not "strongly encouraged" the receipt of the vaccine, nor was it required. The

deputy had originally relied on Larson's treatise on workers' compensation, which noted that a claim might arise out of and in the course of employment "if there is a combination of strong urging by the employer and some element of mutual benefit in the form of lessened absenteeism and improved employee relations." The commissioner however rejected this, noting that Larson's treatise was not universally accepted or applied throughout the states.

The commissioner did conclude that the claimant was "in the course of employment" when he received his vaccination, since claimant was able to use work time to obtain the shot. However, he ruled the injury did not arise out of employment. Using the actual risk doctrine, the commissioner concluded “claimant had not proven that there was an actual risk of an adverse reaction to the Covid-19 vaccine as a result of his employment. The vaccine was in no way connected to employment according to the commissioner. Taking the Covid-19 vaccine was not a rational consequence or hazard connected with claimant's employment. Had the vaccine been required, claimant would have been able to make such a case, but the vaccine was not required by the City.” The commissioner also held Larson's "strongly urged" standard, "creates a disincentive for employers to assist their employees and to provide convenience for their employees." The commissioner also finds that the "strongly urged" standard was not universally accepted.

Driscoll v. City of Cedar Rapids, No. 22001119.01 (App. Dec. Jan. 5, 2024).

Q: Are employers required to obtain split sample drug tests in accordance with Iowa Code § 730.5 in order to be admissible in workers’ compensation proceedings?

A: No, failing to obtain a split sample drug test does not render the drug test inadmissible, as section 730.5 does not apply to workers' compensation proceedings.

In *Davis v. Gordon Food Service*, the claimant suffered an injury at work and took a drug test pursuant to their employer’s policy which was positive for methamphetamine. The test, however, was not performed in accordance with section 730.5, which requires that *two samples* be taken to allow the claimant to have the samples independently tested. At the hearing, the deputy concluded that the failure to obtain a split sample did not make the test inadmissible. The deputy further concluded that the claimant did not rebut the presumption that he was intoxicated under 85.16 of the Code despite the fact that the claimant testified that he had not taken drugs for four days before the injury and there was no testimony that the claimant was acting in an intoxicated manner and no evidence that intoxication led to the injury. The commissioner affirmed, as did the district court on judicial review.

The claimant appealed, arguing that the repeal of language under the old code section exempting testing for workers' compensation benefits under 730.5 and the silence of the 2017 revisions to the code on how to drug test meant that 730.5 applied to workers’ compensation proceeding. Therefore, they argued that the failure to obtain a split sample required the exclusion of the results of the testing if the testing in the workers’ compensation setting. The employer argued that the legislature was aware of 730.5 when the 2017 revisions occurred as 730.5 applies only to private employees, and applying the statute in workers' compensation cases would lead to disparate results between private and public employees. The court agreed with the employer and affirmed the decision of

the commissioner. The changes to 85.16 indicated that intoxication demonstrated by a positive test result led to a presumption of intoxication. No reference to specific drug-testing provisions were referenced in 85.16, and the court found that this was a "deliberate omission." The court further rejected the argument that the claimant rebutted the presumption of intoxication as the claimant's argument was based on his testimony that "a meth high would last for hours, not days, and that he drove and otherwise acted without incident prior to the injury." The court held that the deputy had found the claimant's testimony self-serving and that this was a credibility finding by the deputy as there was an absence of any expert testimony or independent witnesses. The court affirmed the district court's decision, concluding that section 730.5 does not apply to workers' compensation proceedings and that a failure to obtain a split sample drug test does not render the test inadmissible in workers' compensation proceedings.

Davis v. Gordon Food Service, Inc., No. 22-1944 (Iowa Ct. App. Feb. 21, 2024).

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 permeant 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 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 a layoff by an employer who had been accommodating a disability lead to a review and reopening of a settlement if the employee has suffered an economic change due to not being able to find work?

A: Yes. If an employee shows an economic change after a layoff was a proximate cause of the initial injury the settlement may be reopened.

In *Debra Stuart v. Dickten Masch Plastics*, the appeals court dealt with the interpretation of section 86.14 of the Iowa code. Section 86.14 authorizes the workers' compensation

commissioner “to reopen an award for payments or an agreement for settlement” if “the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon.” Iowa Code § 86.14(2). In a review-reopening proceeding to increase benefits, the injured worker must show a change in their condition that was “proximately caused by the original injury.” *E.N.T. Assocs. v. Collentine*, 525 N.W.2d 827, 829 (Iowa 1994). “A cause is proximate if it is a substantial factor in bringing about the result.” *Blacksmith v. All-Am., Inc.,* 290 N.W.2d 348, 354 (Iowa 1980). The court in *Stuart* held, no proof of a physical condition was necessary when a change in economic condition is alleged. The court also provided more light as to the supreme court’s decision in *U.S. West Communications, Inc. v. Overholser*, 566 N.W.2d 873 (Iowa 1997). The court in *Stuart* found that the *Overholser* decision did not exclude a change in economic condition caused by a general layoff as a qualifier for reopening but instead, demonstrated that the commissioner must look at the full record to determine whether the workers “inability to secure employment after a layoff was proximately caused by the initial injury.” In totality, when examining reopening the commissioner must examine if the original injury was another proximate cause of the inability for the employee to find work after the layoff, not the only cause. This is decided through the evidence surrounding, accommodations, transferability of job skills, and inability to find work following the layoff resulting in a credible economic change. The case was reversed and remanded back to the commissioner.

Debra Stuart v. Dickten Masch Plastics, LLC and Employers Preferred Ins. Co., No. 23-0018 (Iowa Ct. App. Oct. 25, 2023).

Q: Does the Workers’ Compensation Commissioner have discretion to exclude medical records?

A: Yes, under rule 876 IAC 4.19(3), evidence may be excluded "if the objecting party shows that receipt of the evidence would be unfairly prejudicial."

In *Hagen v. Serta/National Bedding*, the Claimant failed to timely certify her expert witnesses and also failed to produce the reports of the experts at least thirty days before hearing. The deputy found that the acceptance of the reports would be unduly prejudicial to the employer and excluded the reports. The commissioner affirmed this decision, but the district court reversed that decision. The Court of Appeals affirmed the decision of the district court on appeal and the Supreme Court accepted the case for further review in February.

The court of appeals held, under rule 876 IAC 4.19(3), claimant was required to certify experts within 120 days of hearing. The rule also provides that reports from experts were to be provided within 30 days of hearing. The rules note that evidence may be excluded "if the objecting party shows that receipt of the evidence would be unfairly prejudicial." The hearing in the case was set for September 25, 2020. Claimant was originally to have an IME on May 19, the IME was rescheduled to June 23 due to illness of the medical examiner. A vocational expert was certified by the claimant for the first time on August 19. Both the reports were completed on September 10, with the IME served on the employer on September 10 and the vocational report on September 11, both within 30 days of hearing. A week before the hearing, the employer objected to both reports,

arguing that the experts had not been identified in a timely manner and that the reports were untimely. The employer argued that both reports were prejudicial and further arguing that they did not have time to respond or rebut either the IME or the vocational report. At hearing, claimant argued that defendants should be given additional time to respond to the reports which would cure any prejudice that existed. The deputy excluded the reports, finding that allowing the record to remain open would only "delay final disposition of the matter."

The court found that the agency should be given deference in administering its rules. It rejected the district court's opinion that the agency had assumed prejudice by noting that the commissioner had specifically found that the reports had been filed in an untimely manner, that only the VE had concluded claimant was permanently and totally disabled and that there was "unfair surprise and prejudice by the untimely exchange of these reports." Further, the commissioner had noted that the reports were not from treating physicians but from hired experts. The Supreme Court found that the prejudice resulting from an untimely designation “need not be great to justify exclusion of the testimony.” Although the commissioner could have exercised his discretion by allowing the employer to respond, the exclusion of the testimony was not outside of that discretion. The Court of Appeals was reversed, and the commissioner's decision was affirmed.

Hagen v. Serta/National Bedding Co., LLC. No. 22-0684 (Iowa 2023)

Q: Did the claimant properly preserve error regarding the argument that his injury included both the shoulder and arm, which was raised for the first time during judicial review?

A: The Iowa Court of Appeals held that the claimant did not properly preserve error because the issue of the injury including both the shoulder and arm was not raised during the agency proceedings and was raised for the first time during judicial review, reversing the district court’s decision.

The Court of Appeals addressed whether the claimant properly preserved error in his judicial review petition to the district court. Claimant sustained injuries to his shoulder for which he sought benefits. However, at the time of his hearing, and on appeal to the Commissioner, the Supreme Court had not yet interpreted the 2017 amendment to the definition of “shoulder” as included in the schedule. Therefore, arguing only that the Commissioner had wrongly interpreted what constituted a shoulder, the claimant sought body as a whole benefits.

However, by the time the Commissioner was to issue his appeal decision, the Supreme Court issued a decision in *Chavez v. MS Technology, LLC*, 972 N.W.2d 662 (Iowa 2022). The Court held that the claimant’s injury was limited to a shoulder and therefore a scheduled member under the 2017 revision. So, the Commissioner followed the Supreme Court and held that Williams’ injury was limited to a shoulder as well.

Williams then filed a judicial review petition, changing his argument to state that he had suffered an injury to his shoulder and his arm. The Defendants argued that Claimant had

failed to preserve error given that he had not raised the issue before the agency. The district court found the Claimant had preserved error given that they had argued for a body as a whole claim.

The Court of Appeals reversed the decision of the district court holding, ""[J]udicial review of administrative action is limited to questions considered by the agency." *Pruss v. Cedar Rapids/Hiawatha Annexation Special Loc. Comm.,* 687 N.W.2d 275, 285 (Iowa 2004). To preserve error on an issue, Williams needed to raise the issue during the agency proceedings and not for the first time during judicial review." Stating that Williams was attempting to find an alternative way to make the case given the change in law, the court found that the issue was not properly preserved.

Archer Daniels Midland v. Williams, No. 22-2075 (Iowa Ct. App. Dec. 20, 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 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: Is third party tort recovery subject to reimbursement?

A: Yes, under Iowa Code 85.22(1), the entire third-party tort recovery is subject to reimbursement.

In *McKoy v. Twin City*, Claimant was paid workers' compensation benefits for medical care and disability in the amount of $148,501.60. She subsequently pursued a third party tort claim and settled with those parties for $175,000. The insurance carrier filed an action under 85.22, seeking reimbursement of the entire amount of the workers' compensation settlement less a pro rata share of attorney's fees. Claimant contested this action, arguing that the tort settlement represented a payment for pain and suffering and thus was not subject to reimbursement under 85.22. The deputy commissioner disagreed and awarded $116,666.67 to the employer. The commissioner affirmed this order. The Court noted *Sourbier v. State*, 498 N.W.2d 720, 723 (Iowa 1993), stating “the Supreme Court had squarely addressed this question and concluded that the "statute allows the employer or insurer to be reimbursed out of damages for pain and suffering because such construction furthers the purpose of the statute." The Court found no reason that *Sourbier* would not apply to this case and upholds the decision of the agency and district court. The Court specifically concluded that pain and suffering awards can be reimbursed under 85.22. The Court also rejected claimant's argument that the release precluded reimbursement and finds that since the insurance carrier on the workers' compensation claim had not signed the release, there was no way it could be bound by that document and is therefore entitled to reimbursement.

McKoy v. Twin City Fire Ins. Co. and ITA Group, Inc., No. 22-1787 (Iowa Ct. App. Dec. 20, 2023).

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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
11422 Miracle Hills Dr., Suite 400
Omaha, NE 68154
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., Ste. 400
Kansas City, MO 64108
Ph 913.371.3838