BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NAZARETH HOWARD, Claimant, vs. PRESTAGE FOODS OF IOWA, LLC, Employer, and SAFETY NATIONAL CASUALTY CORP., Insurance Carrier, Defendants.	File No. 1665279.01 ARBITRATION DECISION Head Note Nos.: 1402.40, 1403.20, 1703, 1803.1, 2907

STATEMENT OF THE CASE

Claimant Nazareth Howard filed a petition in arbitration seeking workers' compensation benefits from defendants Prestage Foods of Iowa, LLC, employer, and Safety National Casualty Corporation, insurer. The hearing occurred before the undersigned on January 20, 2021, via CourtCall video conference.

The parties filed a hearing report at the commencement of the arbitration hearing. In the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision, and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The evidentiary record consists of: Joint Exhibits 1 through 10, Claimant's Exhibits 1 through 9, and Defendants' Exhibits A through J. Claimant testified on his own behalf. Andrea Jondle also testified. The evidentiary record was closed at the end of the hearing, and the case was considered fully submitted upon receipt of the parties' briefs on February 15, 2021.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained a work-related neck/cervical spine injury.
2. Whether claimant's injury was limited to his right shoulder or extended into the body as a whole.
3. Whether permanency is ripe for determination, and if so, the extent of claimant's permanent disability.
4. Whether claimant is entitled to additional temporary benefits.
5. Claimant's rate.

6. Whether claimant is entitled to additional medical care for his neck.
7. Whether claimant is entitled to reimbursement for his independent medical examination (IME) pursuant to Iowa Code section 85.39.
8. Costs.

FINDINGS OF FACT

The parties agree claimant sustained a work-related injury on May 1, 2019 when he slipped and fell and landed on the right side of his body. (Hearing Report; Hrg. Transcript, p. 20) There is no dispute that claimant injured his right shoulder as a result of this slip and fall, but defendants dispute whether claimant's injury extends beyond his right shoulder into the body and whether claimant injured his neck/cervical spine during the incident.

After the fall, claimant was immediately evaluated in defendant-employer's nurse's office before being sent to an occupational medicine clinic. (Tr., pp. 20-21) When conservative treatment, including physical therapy, failed, claimant was referred to Mark Palit, M.D., an orthopedist, for his right shoulder. (JE 1, p. 7)

Notably, the records from claimant's treatment at the occupational medicine clinic are devoid of any mentions of neck pain. (JE 1) Claimant similarly did not mention his neck on his medical history questionnaire that he completed prior to initiating physical therapy. (JE 6, p. 79)

Claimant likewise did not represent neck pain at his first appointment with Dr. Palit. Instead, he complained only of right shoulder pain, for which Dr. Palit recommended surgery. (JE 3, pp. 22-23) That surgery—a right shoulder arthroscopy rotator cuff repair with labral debridement and subacromial decompression—was performed on June 19, 2019. (JE 3, p. 27)

Claimant continued to report significant right shoulder symptoms during his follow ups with Dr. Palit in June, July and August of 2019, but Dr. Palit's notes make no mention of neck pain until an appointment on September 17, 2019. (JE 3, p. 36) Dr. Palit diagnosed claimant with cervical radiculopathy and recommended an MRI. (JE 3, p. 37)

Dr. Palit indicated the MRI revealed significant stenosis at C4-C5 and C5-C6 for which he recommended a cervical epidural steroid injection (ESI). (JE 3, p. 42) Dr. Palit also stated, "This is work comp related." (JE 3, p. 42) He restricted claimant from returning to work until the ESI was performed. (JE 3, p. 42)

Defendants then scheduled claimant for another cervical MRI for purposes of a second opinion. (See JE 3, p. 43)

In the meantime, defendants authorized Dr. Palit's recommendation for a cervical ESI. The ESI was performed by John Rayburn, M.D., a pain management specialist, who also prescribed claimant gabapentin and recommended an EMG. Notably, that EMG was negative for cervical radiculopathy. (JE 5, p. 74)

Unfortunately, Dr. Rayburn's ESI provided only brief relief. (JE 4, p. 50) As a result, claimant was referred to spine surgeon Trevor Schmitz, M.D. (JE 4, p. 52) In the interim, Dr. Rayburn recommended continued use of the gabapentin. (JE 4, p. 52)

After his initial evaluation of claimant on December 11, 2019, Dr. Schmitz recommended a nerve block to diagnose whether claimant had a radicular component to his pain. (JE 4, p. 58) When the nerve block provided claimant no relief, Dr. Schmitz offered the following opinion: "I think his shoulder symptoms are likely stemming from the shoulder. There is nothing further to offer from his neck. He points directly over his shoulder as the source of his symptoms." (JE 4, p. 60) Dr. Schmitz then released claimant from his care.

In a January 23, 2020 letter to defendants' counsel, Dr. Schmitz opined claimant's May 1, 2019 work injury did not cause, materially aggravate, or accelerate claimant's neck condition. (Defendants' Ex. A, pp. 1-2) Dr. Schmitz later reaffirmed this opinion in an April 6, 2020 check-the-box style letter. (Def. Ex. A, pp. 5-6)

On April 23, 2020, Dr. Palit authored a letter to claimant's counsel in which he opined that claimant's cervical spine complaints were caused by the May 1, 2019 work injury and that further treatment, including surgical consultation, was appropriate. (Cl. Ex. 3, p. 19)

Claimant continued to report shoulder pain during his treatment with Dr. Rayburn and Dr. Schmitz. As a result, defendants authorized treatment with Kyle Galles, M.D. Claimant was first seen by Dr. Galles on April 1, 2020. Dr. Galles was concerned that claimant's rotator cuff failed to heal, so he recommended another MRI and placed claimant on work restrictions. (JE 4, p. 64)

On April 2, 2020, defendants' counsel penned a letter to claimant's counsel indicating defendant-employer had work available within Dr. Galles' restrictions. (Ex. D, p. 21) The letter included details of lodging, meals, and transportation and communicated to claimant that if he refused the offer, he must do so in writing and would not be entitled to temporary benefits during the refusal. (Ex. D, p. 21)

Dr. Galles' April 1, 2020 restrictions remained in place until he performed surgery on claimant on April 27, 2020. The surgery consisted of a right shoulder manipulation under anesthesia, arthroscopic acromioplasty and extensive arthroscopic debridement. (JE 4, p. 66) Dr. Galles later opined that this surgery was limited to the right shoulder "and did not extend into the body." (Def. Ex. B, p. 12)

Dr. Galles maintained claimant's lifting restrictions during his post-operative treatment, including when he released claimant from surgical care on August 27, 2020 and referred claimant back to Dr. Rayburn for pain management. (JE 4, p. 73)

Dr. Galles clarified in a September 10, 2020 check-the-box style letter that the restrictions he assigned were temporary until claimant underwent pain management. (Def. Ex. B, p. 12) He also clarified that the pain management sessions were to determine if additional treatment was necessary or claimant had reached maximum medical improvement (MMI). (Def. Ex. B, p. 12)

As a result, claimant returned to Dr. Rayburn on September 16, 2020. Claimant was "adamant" to Dr. Rayburn that he was interested in any additional injections or surgeries. (JE 4, p. 74) Because claimant failed gabapentin, Dr. Rayburn indicated opioid pain medications were not appropriate and he had nothing else to offer. (JE 4, p. 74) As such, he placed claimant at MMI and released him from his care. (JE 4, p. 74)

On November 16, 2020, Dr. Galles authored a letter indicating claimant reached MMI as of August 27, 2020. He assigned a 13 percent upper extremity impairment rating based on claimant's range of motion deficits. (Def. Ex. B, p. 14a)

Claimant underwent an IME with Charles Wenzel, M.D., in July of 2020 before he was released from Dr. Galles' care. In his August 27, 2020 report, Dr. Wenzel opined claimant sustained an aggravation/acceleration of his pre-existing cervical degeneration as a result of his May 1, 2019 work injury. (Claimant's Ex. 1, p. 9) Dr. Wenzel disputed Dr. Schmitz's concern that claimant did not immediately note neck pain or a radicular component to his pain; Dr. Wenzel pointed to claimant's treatment records from May 5, 2019, in which claimant reported pain and numbness down his arm. (Cl. Ex. 1, p. 10)

Dr. Wenzel opined claimant was not at MMI for either his neck condition or his right shoulder condition. He recommended a second opinion for the neck and physical therapy for the shoulder. (Cl. Ex. 1, p. 10) He opined that claimant's right shoulder condition extended into the body as a whole because claimant had surgery on the "torso side of the body." (Cl. Ex. 1, p. 13) Dr. Wenzel also provided provisional impairment ratings of 5 percent whole percent impairment for loss of range of motion in claimant's neck and 17 percent upper extremity impairment for loss of range of motion in claimant's shoulder. (Cl. Ex. 1, p. 14)

Claimant testified he went back to work with Dr. Galles' restrictions in April of 2020 and was "wiping tables," but he was at times unable to continue the work due to pain. (Tr., pp. 43-44) He acknowledged, however, that no doctor restricted him from working entirely, that he notified defendant-employer via phone call only, and that defendant-employer always had light-duty work available to him. (Tr., pp. 86, 88) Claimant worked at least some days in April, May, June, July, August and September, and he last appeared for work on September 10, 2020. (See Tr., pp. 95, 10) At the time of the hearing, defendant-employer was still offering claimant work within his restrictions, but claimant was calling in daily indicating he was unable to work due to pain. (Tr., pp. 100-101)

Turning first to the nature of claimant's injuries, I am not persuaded by claimant's testimony that he experienced and reported neck pain in the immediate aftermath of his slip and fall. As discussed above, there is no notation of neck pain in any of the treatment records until months after the May 1, 2019 incident. Claimant did not even identify his neck as an injured body part in his answers to defendants' interrogatories in September of 2019. (Def. Ex. I, pp. 50-51)

I acknowledge Dr. Palit's statement in his record from claimant's September 16, 2019 appointment that claimant's neck condition "is work comp related" and his subsequent letter on April 23, 2020 in which he opined that claimant's cervical spine condition was related to the May 1, 2019 injury, but Dr. Palit failed to offer any

explanation regarding claimant's delayed reporting of his neck pain. It is also unclear whether Dr. Palit reviewed claimant's negative EMG or any of Dr. Schmitz's or Dr. Rayburn's treatment records prior to offering his April 23, 2020 opinion.

I likewise acknowledge Dr. Wenzel's opinion that the May 1, 2019 slip and fall aggravated claimant's pre-existing neck condition. Dr. Wenzel, however, was seemingly under the impression that claimant was experiencing and reported neck and radicular symptoms immediately after the injury. Dr. Wenzel also failed to address claimant's negative EMG and failure to respond to the nerve block.

Dr. Schmitz, on the other hand, treated claimant's neck condition, evaluated claimant after he received no relief from his nerve block injection, and observed claimant point directly over his shoulder as the source of his symptoms. Given claimant's delayed reporting of his neck symptoms and his failed response to the nerve block injection, I find Dr. Schmitz's opinion most convincing. I therefore find insufficient evidence that claimant sustained a neck injury as a result of his May 1, 2019 slip and fall.

With respect to claimant's right shoulder, I find claimant reached MMI on August 27, 2020, as indicated by Dr. Galles. At that point, Dr. Galles recommended one to two pain management visits, which claimant pursued, but Dr. Rayburn had nothing further to offer.

Dr. Wenzel opined that claimant had not yet reached MMI because he "should complete physical therapy and any other treatment recommended by Dr. Galles." (Cl. Ex. 1, p. 10) In his November 16, 2020 letter, however, Dr. Galles confirmed he had no additional treatment recommendations.

Using the measurements taken in claimant's IME with Dr. Wenzel, Dr. Galles assigned a 13 percent upper extremity impairment rating. Unlike Dr. Wenzel, however, Dr. Galles did not include impairment's for claimant's loss of extension or adduction. Dr. Galles failed to explain why he did not include these measurements in his rating. I therefore find Dr. Wenzel's rating to be most persuasive. I find claimant sustained a 17 percent right upper extremity impairment for range of motion deficits.

Turning to claimant's rate, claimant's calculation assumes claimant worked a set 45 hours per week every week. Claimant, however, testified his hours varied. (Tr., p. 54) In fact, claimant's wage records indicate claimant, during his short tenure with defendant-employer, never worked 45 hours. (See Def. Ex. C) Defendants' rate calculation is based on claimant's actual hours worked and corresponding wage records. I therefore find it more persuasive. I adopt defendants' rate calculation and find claimant's average weekly wage to be $650.48.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable

rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

As discussed above, considering claimant's delayed reporting, failure to respond to a nerve block and the opinions of Dr. Schmitz, among other facts, I found insufficient evidence that claimant sustained a neck injury resulting from his work-related slip and fall on May 1, 2019. I therefore conclude claimant failed to satisfy his burden to prove he sustained a work-related injury to his neck or cervical spine.

Having determined claimant failed to prove causation with respect to his neck or cervical spine, I conclude claimant failed to prove his entitlement to additional medical care for his neck.

Claimant did, however, sustain a stipulated injury to his right shoulder. The question is whether that injury is limited to a scheduled "shoulder" under the legislature's 2017 amendments to Iowa Code section 85.34 or extends into claimant's body as a whole.

The Iowa legislature modified section 85.34 in 2017 by adding the shoulder to the list of scheduled members. The new subsection states, in its entirety: "For the loss of a shoulder, weekly compensation during four hundred weeks." Iowa Code § 85.34(2)(n).

In Deng v. Farmland Foods, Inc., File No. 5061883 (App. September 29, 2020) and Chavez v. MS Technology, LLC, File No. 5066270 (App. September 30, 2020), the Commissioner addressed what constitutes "shoulder" under the law. In Deng, the Commissioner determined the muscles that make up the rotator cuff are included within the definition of "shoulder" under section 85.34(2)(n). In Chavez, the Commissioner determined both the labrum and the acromion are likewise included in the definition.

In this case, claimant underwent a right shoulder arthroscopy rotator cuff repair with labral debridement and subacromial decompression followed by a subsequent arthroscopic acromioplasty with extensive arthroscopic debridement. As discussed, the rotator cuff, labrum and acromion have all been deemed by the Commissioner to be injuries to the scheduled member shoulder. In fact, like claimant in this case, the

claimant in Chavez similarly underwent a rotator cuff repair, along with debridement of the labrum and a subacromial decompression. Thus, I conclude claimant's injury is limited to the "shoulder" under section 85.34(2)(n) and does not extend into the body as a whole.

Claimant asserts the extent of his entitlement to permanent partial disability (PPD) benefits is not ripe for determination. As discussed, however, I found claimant reached MMI on August 27, 2020. Iowa Code section 85.34(2), as amended by the legislature in 2017, provides that "[c]ompensation for permanent partial disability shall begin when it is medically indicated that maximum medical improvement from the injury has been reached . . . . "Iowa Code § 85.34(2). Having found claimant reached MMI, I conclude the extent of claimant's permanency is ripe for determination and that claimant's PPD benefits should commence on August 27, 2020.

Permanent partial disability compensation for the shoulder shall be paid based on a maximum of 400 weeks. Iowa Code § 85.34(2)(n). Having adopted Dr. Wenzel's 17 percent right upper extremity impairment for range of motion deficits, I conclude claimant is entitled to 68 weeks of permanent partial disability (PPD) benefits.

Claimant asserts he is entitled to a running award of temporary benefits. Iowa Code section 85.33, as amended in 2017, states:

> 3.a. If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of injury offers to the employee suitable work consistent with the employee's disability the employee shall accept the suitable work, and be compensated with temporary partial benefits. If the employer offers the employee suitable work and the employee refuses to accept the suitable work offered by the employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. . . .
>
> b. The employer shall communicate an offer of temporary work to the employee in writing, including details of lodging, meals, and transportation, and shall communicate to the employee that if the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing and that during the period of the refusal the employee will not be compensated with temporary partial, temporary total, or healing period benefits, unless the work refused is not suitable. If the employee refuses the offer of temporary work on the grounds that the work is not suitable, the employee shall communicate the refusal, along with the reason for the refusal, to the employer in writing at the time the offer of work is refused. Failure to communicate the reason for the refusal in this manner precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

Iowa Code § 85.33(3) (emphasis added).

The statute first requires defendants to communicate their offer of temporary work in writing. The offer in question in this case occurred on April 2, 2020, in writing, and I found it included all of the details required in section 85.33(b).

As discussed in the findings of fact, claimant admitted there were many days during which he failed to show up for work despite defendant-employer's offer of suitable work. While claimant testified he notified defendant-employer via phone call, the statute requires ("shall") claimants to communicate such refusals in writing.

The legislature set forth specifically what occurs if a claimant fails to comply with the statutory requirements when refusing an offer of temporary work: "[D]uring the period of the refusal the employee will not be compensated with temporary partial, temporary total, or healing period benefits, unless the work refused is not suitable." Iowa Code § 85.33(3)(b).

In this case, claimant testified he was unable to perform the work offered to him due to pain, but claimant failed to assert the work was not suitable in writing as required by the statute. As such, the statute indicates he is unable to claim suitably of the work as the reason for his refusal. Iowa Code § 85.33(3)(b). I therefore conclude claimant should not be compensated with temporary benefits on any of the days after April 2, 2020 when he failed to appear for work through the date of the hearing.[1]

With respect to claimant's rate, Iowa Code section 85.36(6) provides that if an employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. In this case, however, claimant worked for defendant-employer less than 13 calendar weeks immediately preceding his injury. As such, section 85.36(7) indicates the rate is supposed to be determined by looking at the earnings of other similarly situated employees. The parties, however, neglected to include any such evidence.

As such, the best evidence available in this case is claimant's earnings in the weeks preceding his injury, even though the full 13 weeks are not available. I found defendants' rate calculation to be post persuasive because it relies on claimant's actual hours worked and wage records. Defendants also excluded a week that did not reflect claimant's customary earnings, as required by section 85.36(6). Thus, I adopt defendants' rate calculation and found claimant's average weekly wage to be $650.48.

Relying on the parties' stipulations, claimant was single and entitled to two exemptions at the time of his injury. Using the rate book in effect at the time of claimant's injury (July 1, 2018 through June 30, 2019), I conclude claimant's rate is $423.22.

Per the stipulations in the hearing report, defendants paid some of claimant's benefits at an inflated rate. Iowa Code section 85.34(5), as amended in 2017, indicates that defendants are entitled to a credit for those overpayments against "any future

[1] Claimant sought a running award of temporary benefits starting on September 26, 2019. Per the parties' stipulation on the hearing report, however, claimant was already paid temporary benefits from June 19, 2019 (the date of his first right shoulder surgery) through April 5, 2020. Thus, to the extent claimant was entitled to temporary benefits before April 2, 2020, he has already received them.

weekly benefits due pursuant to subsection 2 [relating to permanent partial disabilities], for any current or subsequent injury." Thus, defendants are entitled to a credit for their overpayment against any outstanding PPD benefits.

Claimant also seeks reimbursement for his IME with Dr. Wenzel and his costs. Turning first to the IME, the reimbursement provisions of Iowa Code section 85.39 are not triggered until "an evaluation of permanent disability ha[s] been made by a physician retained by the employer." Iowa Code § 85.39(2). In this case, Dr. Wenzel issued his report on August 27, 2020. At that point, no physician retained by the employer had performed an evaluation of permanent disability; Dr. Galles did not issue his rating until November of 2020. I therefore conclude claimant is not entitled to reimbursement under Iowa Code section 85.39.

Per the Iowa Supreme Court's holding in Des Moines Area Regional Transit Authority v. Young, (hereinafter "DART"), however, claimant still may be able to recover the costs of the IME report under the administrative rules. 867 N.W.2d 839, 846-47 (Iowa 2015); 876 IAC 4.33(5).

Per a health insurance claim form provided by claimant, Dr. Wenzel charged $1,299.00 for his IME examination and $2,641.50 for the report itself. (Cl. Ex. 8, p. 32a). Under DART, I conclude claimant is entitled to reimbursement in the amount of $2,641.50.

Claimant is also seeking reimbursement for $350.00 for Dr. Palit's "medical conference and report." (Cl. Ex. 8, p. 32) Per DART, however, only the cost of the report itself can be assessed. Dr. Palit charged $200.00 for his conference and $150.00 for the letter containing his opinions. As such, I conclude claimant is only entitled to a cost assessment in the amount of $150.00.

Claimant is also seeking reimbursement for his filing fee, which defendant does not dispute. Defendants are therefore taxed $100.00 for claimant's filing fee. 876 IAC 4.33(7).

Lastly, claimant seeks an assessment in the amount of $79.00 for obtaining copies of medical records. This is not an allowable cost under the rules.

In total, defendants are assessed with $2,891.50.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant sixty-eight (68) weeks of permanent partial disability benefits commencing on August 27, 2020, at the rate of four hundred twenty-three dollars and 22/100 ($423.22) per week.

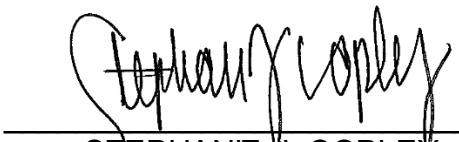
Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendants are entitled to a credit for their overpayment of benefits against any outstanding permanency benefits.

Pursuant to rule 876 IAC 4.33, defendants shall reimburse claimant's costs in the amount of two thousand eight hundred ninety-one and 50/100 dollars ($2,891.50).

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

Signed and filed this 14th day of April, 2021.



STEPHANIE U. COPLEY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Robert Gainer (via WCES)

Jennifer Clendenin (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.