Section A

Workers Compensation 101

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WORKERS' COMPENSATION 101

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Thank you to current and alumni members of the IAJ Workers' Compensation Core Group for compiling prior versions of the following outline.

RESOURCES

1. IAJ List Serve

Join the Workers Compensation section of IAJ, and use the Workers' Compensation Forum to collaborate with the "largest claimant's law firm in Iowa." Also, consider using the search engine incorporated into the list serve. This feature allows previous list serve entries to be searched, by author, date, subject or phrase: iajworkcomp@lists.trialsmith.com

2. Commissioner's Website: www.iowaworkcomp.gov

Copies of the mandatory and suggested forms can be downloaded from the Commissioner's website. Be sure to keep your form collection current; the Commissioner's office may refuse a document composed on an out-of-date form. The Commissioner's site includes a link to the current hearing schedule and arbitration and appeal decisions. This location also includes current and past rate books in PDF format. The Commissioner announces proposed rule changes and other significant developments on his website. There are numerous publications available under the Agency's website's "Forms & Publications" tab, and practitioners should review all of the documents in that section of the Agency's site. Many of these forms and publications are new since the implementation of the efiling system. Practitioners should review all of the materials published on the Agency website. There, you will find the Agency's guidelines for the submission of hearing exhibits, rules for efiling, as well as publications intended for the general public, such as the "Workers Compensation – Questions & Answers Brochure". If you are a new practitioner of workers' compensation law, it would serve you well to spend time reviewing the forms and publications available on the Commissioner's website.

The Commissioner's website also includes information regarding deputy preferences for hearings, and most deputies are amendable to counsel contacting them directly for clarification on hearing preferences.

3. Iowa Workers' Compensation Law and Practice, (Iowa Practice Series), James R. Lawyer, Judith Ann Graves Higgs (Ret.) (Thompson West Publishing).

This treatise is often cited by the Commissioner and Deputies as authoritative and provides theoretical and practical assistance such as references to proper library materials and instructions on how to obtain a hearing or appeal. It also provides numerous citations to agency decisions, appeal decisions and statutes (current through the most-recent legislative session). This is an excellent one-volume treatise on Iowa Workers Compensation law, and can be a good starting point when researching an issue. It is informally referred to as "Lawyer & Higgs".

4. Iowa Workers' Compensation Laws (Iowa Workers' Compensation Advisory Committee, Inc.).

This spiral bound publication is an unofficial compilation of workers' compensation statutes, case law, and administrative rules. It is published by the "Advisory Committee" which is made up of persons representing various constituency groups with a stake in workers' compensation in Iowa, including claimant's attorneys. The publication is updated and published annually.

Note that the 2017 and 2018 versions of the Advisory Committee's law book contain a numbering error in section 85.34(2). Specifically, section 85.34(2)(n), which begins "For the loss of a shoulder . . .", is mistakenly listed in the Advisory Committee book as "85.34(2)(0n)", causing all subsequent subparagraph letting to be different from what appears in the actual published Code. Be sure to use the subsection lettering that is published in the actual Code, not the lettering that appears in the Advisory Committee's book.

OVERVIEW OF WORKERS' COMPENSATION

I. INTRODUCTION

The workers' compensation system is entirely a creature of statute; absent the statute creating it, there would be no such thing as workers' compensation. For this reason, the only benefits an injured worker can receive—and the responsibilities for employers and insurance carriers for claims handling—are those specifically provided for in the statute. The only rules governing procedure are those created in the workers' compensation statutes, the administrative rules of the Iowa Workers' Compensation Commissioner's office, and the Iowa Administrative Procedures Act (Chapter 17).

When a person suffers a work-related injury, they are primarily entitled to only three things: (1) medical benefits; (2) temporary disability or healing period benefits (to compensate for time off work while recovering from the injury); and, (3) permanent disability benefits (if the worker has suffered permanent functional impairment as a result of the injury).

The statute is silent with respect to employment rights because it is not a job security law. Whatever right a worker had to his or her job before the injury is completely unaltered by the fact s/he has suffered a work injury. However, it is against public policy to take adverse employment action against an injured worker for asserting their rights under Iowa's workers' compensation law. If an injured worker believes they are being treated unfairly due solely to their assertion of their workers' compensation rights, they should receive (or be referred to counsel that can provide) advice regarding employment law.

In addition to the substantive law, the claim procedure itself is also a creature of statute. Although the Workers' Compensation Commissioner's office has adopted the Iowa Rules of Civil Procedure for arbitration proceedings (876 IAC 4.35), there are important exceptions and variations. Moreover, because workers' compensation claims are treated as administrative claims, they are governed by a completely different set of evidentiary rules (i.e. more relaxed evidentiary standards) than civil cases. Iowa Code §§17A.14 and 85.18(1).

The rules of procedure and evidence in arbitration proceedings before the Commissioner are supposed to make the claims quicker, simpler, and easier to pursue. Also, unlike most litigation, the statute and the rules of the Commissioner's office place certain burdens on defendant employers and insurance carriers with respect to claims handling. For instance, the employer and their insurance carrier must adequately investigate claims and to promptly pay benefits or, in the case of denial, communicate the denial, and the reasons for it, to the injured worker. A failure to abide by these requirements is a compliance violation, and the employer and insurance carrier can be fined by the Commissioner's office or be subjected to penalty benefits for such failure. A failure by the insurance carrier to meet these obligations can also result in a bad faith case.

The same law governs not all workers' compensation injuries. Applicable Iowa statutes are:

1. Chapter 85 - Workers Compensation
2. Chapter 85A - Occupational Disease Compensation
3. Chapter 85B - Occupational Hearing Loss
4. Chapter 86 - Division of Workers Compensation [organization of the WC Division]
5. Chapter 87 - Compensation Liability Insurance Insurance

Applicable federal statutes are:

1. FECA- "Federal Employees Compensation Act", administered by the Office of Workers' Compensation Programs (OWCP), which is a division of the Department of Labor. An injury is compensable if the employee is "killed or disable" as a "result of an injury that is sustained while in the performance of duty".
2. FELA- "Federal Employers Liability Act- providing compensation for federal employees engaged in interstate transportation, such as railway workers.
3. Jones Act- Providing Compensation for Seamen injured at work.
4. Longshore and Harbor Workers' Compensation Act- providing benefits to longshoremen and others engaged in maritime activities on navigable waters.

II. ELEMENTS OF A WORKERS' COMPENSATION CASE

In order to prove entitlement to workers' compensation benefits, the injured worker really only has to show that: (1) s/he was an employee at the time of injury, and (2) s/he suffered an injury "arising out of" and "in the course of" employment.

A. EMPLOYEE / INDEPENDENT CONTRACTOR

Employees are covered by the workers' compensation act. Independent contractors are not covered, and neither are their employees, generally. Once a worker has proven that at the time of the injury the worker was rendering services for the employer, the burden shifts to the employer to prove that the worker was an independent contractor and not an employee. Whether a particular individual doing a particular job is an "employee" or an "independent contractor" is a question of fact. Neither the intent of the parties nor one particular factor is determinative. The relevant factors were set out in *Malinger v. Webster City Oil Co*., 234 N.W. 254 (Iowa 1931), and over time, eight factors have developed:

1. The existence of a contract for performance by a person of a certain piece or kind of work at a fixed price.
2. The independent nature of the worker's business or of his distinct calling.
3. The worker's employment of assistants with the right to supervise their activities.
4. His obligation to furnish necessary tools, supplies, and materials to perform the work.
5. His right to control the progress of the work, except as to final result.
6. The time for which the worker is employed.
7. The method of payment, whether by time, or by the job.
8. Whether the work is part of the regular business of the employer.

B. ARISING OUT OF / IN COURSE OF EMPLOYMENT

In order to be compensable, an injury must both arise out of and occur in the course of employment: "Every employer, not specifically excepted by the provisions of this chapter, shall provide, secure, and pay compensation according to the provisions of this chapter for any and all personal injuries sustained by an employee *arising out of and in the course of the employment* . . . ." Iowa Code § 85.3(1) (emphasis added).

The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place and circumstances of the injury. *Sheerin v. Holin Co*., 380 N.W.2d 415 (Iowa 1986); *McClure v. Union County*, 188 N.W.2d 283 (Iowa 1971).

"Arising out of," means that employment activity contributed in some fashion to the injury. "In the course of" means the injury happened at work or because of work. So, for instance, if a person has a heart attack at work, that may be in the course of employment (since it happened at work), but it is not necessarily arising out of employment (since the heart attack may have been caused by non-employment factors such as atherosclerosis or high blood pressure). If a worker is injured by a co-worker when both are engaged in horseplay, the injury meets the arising out of requirement, but not the in the course of requirement.

The Iowa Supreme Court has distinguished the "arising out of" standard from the concept of proximate cause: "It is accurate to say that an injury must proximately cause the disability, but it is not accurate to say the employment must proximately cause the injury. The injury need only 'arise out of' the employment—a less onerous standard than the proximate-cause standard from tort law." *Meyer v. IBP*, 710 N.W.2d 213, 222 (Iowa 2006).

Generally, when an injury occurs in the course of employment, the employer is liable for all of the consequences that naturally and proximately flow from the work injury are also compensable. *Oldham v. Scofield & Welch*, 266 N.W. 480, 481 (Iowa 1936). For example, low back pain from an injured worker's altered gait due to a work-related knee injury is compensable, as would be depression that results from the injury. These 'flowing from' injuries are referred to as *sequela*. Similarly, an injured worker's pre-existing condition that is materially aggravated, accelerated, worsened or lighted up is covered as a work-related disability. *Nicks v. Davenport Produce Co.*, 115 N.W.2d 812 (Iowa 1962).

The meaning of "arising-out-of" has developed over time. While older courts have looked to whether the employment presented an "increased risk" or "peculiar risk" other than a harm to which all people have equal exposure, the modern courts look to whether there is a "direct causal connection between the plaintiff's injury and the general and incidental requirements or duties contemplated by her employer." *Crowe v. De Soto Consol. Sch. Dist*., 68 N.W.2d 63 (Iowa 1955). Other descriptions have been made as well: "when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury." *Burt v. John Deere Waterloo Tractor Works*, 73 N.W.2d 732 (Iowa 1955). Accordingly, "arising-out-of" has included situations where a teacher fell on the road outside of the school building when she was checking road conditions for co-employees and students and coverage for an employee who was injured by assault from a co-employee who had an insane delusion. In *McIlravy*, a torn meniscus was

compensable because the nature of the employment required more physical labor, but in *Miedema v. Dial Corp*, a worker who injured his back while turning to flush the toilet did not recover because the particular injury could have occurred at any toilet.

Injuries are non-compensable when they are the result of an employee's willful intent to injure one's self or another, or from the willful act of a third party directed against the employee for reasons personal to such employee. Iowa Code § 85.16; *Dillavou v. Plastic Injection Molders*, 856 N.W.2d 3 (Iowa App. 2014). Similarly, injuries caused by "gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another" are non-compensable. Iowa Code §85.20(2).

The meaning of "in the course of" - 85.61(7) provides that injuries to employees who provide services on, in, or about the premises which are occupied, used, or controlled by the employer and injuries occurring in places where the employer's business requires their presence and subjects them to dangers incident to business are compensable. Departure by the employee from the usual place of employment must not amount to abandonment of employment or be an act wholly foreign to usual work.

- Injuries in employer-provided parking are generally compensable, while those in public parking are not. *Ruvalcaba v. Tyson Foods*, File No. 1859173 (WC Arb. 2008).

- A fall on ice on sidewalk in front of the employer's business was so closely related in time, location, and employee usage to the work premises to be covered. *Frost v. S.S. Kresge Co.*, 299 N.W.2d 646 (Iowa 1980).

- Sometimes an employee living on the premises has a compensable injury, or may have a compensable injury occur during break. *Sister Mary Benedict v. Saint Mary's Corporation*, 124 N.W.2d 548 (Iowa 1963); *Halstead v. Johnson's Texaco*, 264 N.W.2d 757 (Iowa 1978).

- Traveling employees are generally covered, while on the road. *Medical Associates Clinic, P.C. v. First Nat. Bank of Dubuque*, 440 N.W.2d 374 (Iowa 1989).

- Injuries at company social events (i.e. the company picnic or entertaining clients) may be covered if the employer is shown to benefit from the activity. *Linderman v. Cownie Furs*, 13 N.W.2d 677 (Iowa 1944).

Generally, the going and coming rule states that injuries are not compensable if the employee is going or coming to or from work except when the employee shows additional facts to bring himself under an exception to the rule. Contrast someone injured taking her usual in-town commute to work (not usually in the course of work) with a traveling salesperson driving to his next appointment on the road (typically in the course of work). *Bulman v. Sanitary Farm Dairies*, 73 N.W.2d 27 (Iowa 1955) (general rule described). See also, *2800 Corp. v. Fernandez*, 528 N.W.2d 27, 30 (Iowa 1995) ("zone of danger" created by workforce intoxication, extended to provide work comp benefits to bar employee who was seriously injured in car crash after mandatory drinking with patrons).

C. IDIOPATHIC INJURIES

The issue of so-called "idiopathic" injuries relates specifically to the "arising out of" requirement for work injuries. The idea is that an injury that occurs at work, but for reasons that are either unexplained or entirely personal to the worker, does not arise out of the work activity and, therefore, is not compensable.

Effective July 1, 2019, section 85.61(7) was amended to include the following:

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

Iowa Code § 85.61(7)(c).

Under pre-July 1, 2019 law, to be compensable an idiopathic injury must be shown to either contribute to the risk, or aggravate the injury. Consequently, injuries from idiopathic falls from heights and stairways or hitting one's head on a structure on the way down to the floor are generally sufficient to be compensable, and falls onto a level surface are a closer factual question. The most recent statement of the pre-July 1, 2019 law regarding idiopathic falls is contained in *Bluml v. Dee Jay's, Inc.*, 920 N.W.2d 82 (Iowa 2018). In *Bluml*, the Court held that there is "no blanket rule rendering certain categories of workplace idiopathic falls noncompensable so long as the employee proves that a 'condition of his employment increased the risk of injury.'" More specifically, the *Bluml* Court noted that it is a factual question "whether the condition of a floor, just like any other workplace condition, posed an increased risk of injury." *Id.* So, under pre-July 1, 2019 law, the hardness of the surface could potentially make an idiopathic fall onto a level surface compensable.

D. INTOXICATION – 2017 AMENDMENT

Even if the employee satisfies the arising out of and in the course of requirements listed above, section 85.16 provides an affirmative defense of intoxication. To deny benefits based upon the intoxication defense, the following needs to be shown under <u>both</u> pre- and post-2017 law:

- The intoxication did not arise out of and in the course of employment.
- The intoxication is the result of use of alcohol or a drug not prescribed by an authorized medical practitioner.
- The intoxication must be a substantial factor in causing the injury.

Those elements are the same under the old and new law. Thus, under the old law, employers had to prove that the intoxication was a substantial factor in causing the injury. Under the new law, the burden has shifted because the 2017 amendment now provides:

> If the employer shows that, a<u>t the time of the injury, or immediately following the injury</u>, the employee had positive test results reflecting the presence of alcohol, or another narcotic, . . . which drug either was not prescribed by an authorized medical practitioner or was not used in accordance with the prescribed use of the drug, it shall be <u>presumed that the employee was intoxicated</u> at the time of the injury and that

intoxication was a substantial factor in causing the injury.

Once the employer has made a showing as provided [above], the burden of proof shall be on the employee to overcome the presumption by establishing that the employee was not intoxicated at the time of the injury, or that intoxication was not a substantial factor in causing the injury.

Iowa Code § 85.16(2)(b)(1)–(2) (emphasis added).

So, under post-2017 law, the mere presence of a drug or alcohol in the employee's system results in a presumption they were intoxicated. A few practice pointers to keep in mind when evaluating cases with a possible intoxication defense:

- Find out exactly when the testing was performed—statute says "at the time of the injury, or immediately following the injury", but "immediately following" has not been defined yet.
- Consider retaining a toxicologist to opine whether the substances detected in the claimant's system were at a level that would have been intoxicating.
- Consider obtaining lay witness testimony regarding the claimant's behavior, appearance, etc., just prior to the injury. For example, coworkers who would have observed claimant behaving normally, possessing good motor function, not smelling of any substances, not having bloodshot eyes, etc.

III. LIMITATION PERIODS

A. TWO-YEAR STATUTE OF LIMITATIONS

If no weekly benefits have been paid to the injured worker, the injured worker has two years from the date of injury to file a workers' compensation claim. Iowa Code § 85.26. Medical benefits DO NOT count as weekly benefits.

B. THREE-YEAR STATUTE OF LIMITATIONS

If weekly benefits have been paid, then the injured worker has 3 years from the date of last payment (not date of last receipt of benefits) to file a claim. *Kiesecker v. Webster City Custom Meats, Inc.*, 528 N.W. 2d 109, 112 (Iowa 1995) (payments made when mailed not when received). Again, however, medical benefits do not count as weekly benefits. The three-year limitations period from the last date of payment of weekly benefits is clear and definite. There is no room for ambiguity as to when the period starts and ends (as with the two-year statute and the discovery rule or cumulative injury rule, where each scenario is examined on a case by case basis). *Whitmer v. Internat'l Paper Co.*, 314 N.W.2d 411 (Iowa 1982).

There are several ways to confirm whether weekly benefits have been paid and the date of last payment. The first is to ask the client, however, this can be notoriously unreliable, particularly when specific dates are involved or if the client received some other form of private or non-occupational disability benefit that they mistakenly thought was workers compensation. The payment of these types of benefits does NOT extend the statute of limitations.

Sometimes the client will have the original or a copy of the last weekly benefit check received, and that is a reliable source for pinning down this date. Another option is to obtain from the Commissioner's office a copy of the periodic activity report (PAR) the insurance carrier should have filed with the Commissioner's office when benefits were stopped. If properly completed and filed, this document will state exactly the last date of payment of any weekly benefits. However, insurance carriers are often lax in filing documents, so don't be surprised if nothing is on file. Note that you will need two forms to obtain a copy from the Commissioner's office: 1) request form; and, 2) waiver.

Another option is to simply contact the insurance carrier directly and request a copy of their file or an itemization of benefits paid.

The agency has held that payment of wages in lieu of compensation constitutes payment of weekly compensation. *Moffitt v. Super Valu Stores*, File No. 1059425 (App. 6/19/98).

The 2017 amendment to section 85.26, states that "the 'date of the occurrence of the injury' means the date that the employee knew or should have known that the injury was work related." Iowa Code § 85.26(1). That amended language was recently reviewed by the Agency, which held "The new statutory provisions for notice and statute of limitations are consistent with the discovery rule that has been followed in workers' compensation cases in Iowa for many years." *Stiles v. Annett Holdings, Inc.*, File No. 5064673 (Arb. 11/15/19).

C. DISCOVERY RULE AND THE SOL

Both the 90-day notice requirement (Iowa Code §85.23) and the statute of limitations (Iowa Code § 85.26) can be extended based upon the discovery rule. Under the discovery rule, the Claimant must have actual or imputed knowledge of the nature, seriousness and probable compensable character of the injury or disease before the statute begins to run. *Swartzendruber v. Schimmel*, 613 N.W.2d 646, 650 (Iowa 2000); *see also Orr v. Lewis Central School District*, 298 N.W.2d 256, 261 (Iowa 1980).

The two-year statute of limitations does not begin to run until the claimant: 1) knows of the injury; and, 2) is aware of its probable, compensable nature. *Herrera v. IBP, Inc.*, 633 N.W.2d 284 (Iowa 2001). The discovery rule applies to traumatic injuries. *Baker v. Bridgestone/Firestone*, 2015 Iowa Sup. LEXIS 103 (Dec. 18, 2015) (citing to *Rudd v. Midwest Ambulance Service*, File No. 5008925 (App. Dec. 10/27/05), affirmed 745 N.W.2d 95 (Iowa App. 2007).

The Commissioner has held that the defense was waived when the employer didn't plead it in the answer as an affirmative defense. *Shirley v. Shirley Ag. Serv.*, 90-91 IAWC 339 (App. Dec. 1990).

The "Cumulative Injury Rule" applies to injuries, which develop over the course of time. The date of injury is the date on which the disability "manifests itself." A cumulative injury manifests itself "… when the injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person." *Oscar Mayer Foods Corp. v Tasler*, 483 N.W.2d 824, 829 (Iowa 1992). The Iowa Supreme Court has stated that a cumulative injury is "manifested" when the person is plainly aware that: 1) He or she suffers from a condition or injury; and, 2) The

condition or injury was caused by employment. *Herrera v. IBP, Inc.*, 633 N.W.2d 284, 284 (Iowa 2001). In order for the two-year statute of limitations to be triggered, the claimant must know "that the condition is serious enough to have a permanent adverse impact on the claimant's employment or employability, i.e. the claimant knows, or should know the 'nature, seriousness and probable compensable character' of his injury or condition." *Herrera,* at 288. Minor pain or symptoms may not trigger the discovery rule. *Perkins v. HEA of Iowa*, 651 N.W.2d 40 (Iowa 2002).

D. NINETY-DAY NOTICE REQUIREMENT

Iowa Code § 85.23 requires that an injured worker give notice to their employer of their injury within 90 days of the injury. Actual notice (i.e., first-hand knowledge) of the injury by the employer or the employer's representative is sufficient.

The discovery rule may apply to the notice requirement: the 90-day notice begins to run from the occurrence of the injury. An injury occurs when the employee, acting as a reasonable person, recognizes its nature, seriousness, and probable compensable nature. *McKeever Custom Cabinets v. Smith*, 379 N.W.2d (Iowa 1985).

If, during an intake meeting with a new client, you have any doubts whatsoever about whether the employer received notice, it is prudent to send a letter that same day giving notice of the work injury.

The notice requirement is waived if the employer or its insurance company paid benefits on the claim.

No particular form of notice is required. Iowa Code § 85.24. Verbal statements to the employer will suffice. There may many times be cases of he-said-she-said on notice; that situation is not a bar to pursuing a workers' compensation claim, the case will simply rest upon the claimant's testimony regarding statements made to a supervisor regarding their injury.

The 2017 amendment to section 85.26, states that "the 'date of the occurrence of the injury' means the date that the employee knew or should have known that the injury was work related." Iowa Code § 85.26(1). That amended language was recently reviewed by the Agency, which held "The new statutory provisions for notice and statute of limitations are consistent with the discovery rule that has been followed in workers' compensation cases in Iowa for many years." *Stiles v. Annett Holdings, Inc.*, File No. 5064673 (Arb. 11/15/19).

IV. MEDICAL BENEFITS AND RELATED MATTERS

Iowa Code § 85.27 provides that the employer has to pay the medical bills for treating a work-related injury.

A. EMPLOYER CHOICE OF CARE

So long as the employer is paying the bills, the employer gets to pick the doctor. Generally speaking, if the injured worker incurs medical expenses treating with an "unauthorized" doctor, the employer will not be obligated to pay the bill. However, there are exceptions to this rule.

Pursuant to *Haack v. Von Hoffman Graphics*, File No. 1268172 (App. 7/31/02): An employer waives the right to choose the care and loses any subsequent lack of authorization defense by either abandoning care or denying liability for the worker's medical problem. Where an alternate care proceeding was not initiated under Iowa Code § 85.27(4) and rule 876 IAC 4.48, the reasonable cost of subsequent care chosen by the injured worker, following the employer's abandonment of care or a failure to assume liability for the condition sought to be treated, may be reimbursed upon a showing that the care was reasonable and necessary treatment of the work injury. When there has been no abandonment of care and liability is admitted, an injured worker may be reimbursed for unauthorized care without initiating an alternate care proceeding upon a showing that the unauthorized care was successful and beneficial toward improving the employee's condition in a way that benefited the employer as well as the employee.

B. ALTERNATE CARE

If the injured worker is not satisfied with the care provided by the employer's chosen physician, the injured worker may petition the Commissioner's office for alternative care. Iowa Code § 85.27(4); Rule 4.48. In order to prevail the injured worker must show that the employer- provided care is "unreasonable." This evidence often takes the form of a medical opinion from another provider. The employee must communicate the reason he or she is dissatisfied with the care prior to filing a Petition for Alternate Care, to allow the parties to reach an agreement voluntarily. The Petition is filed using Form 100C. There is no filing fee. Rule 4.8(2).

A telephone hearing will be scheduled within ten days of the Petition being filed. Note that an Alternate Care Petition will be dismissed, if the defendant denies that the claimant's condition is related to his or her work injury.

One basis for filing an Alt Med Care Petition occurs when an authorized treating doctor has no further care to offer, even though the claimant is still symptomatic. In this situation, the defendant has failed to offer care reasonably suited to treat the injury and alternate care may be ordered. *Rapoport v. Morrell & Co*., File No. 1254301 (Arb. 11/20/01); *Pirelli- Armstrong Tire Co. v. Reynolds*, 562 N.W.2nd 433 (Iowa 1997).

Alternate Medical Care may be sought where an employer refuses to authorize a referral to a specialist or tests. Referrals and prescriptions by authorized medical providers are usually found to be authorized care.

A claimant may seek alternate care if he or she is unduly inconvenienced by being made to travel outside of his or her local area, if suitable care is available locally. *West Side Transport v. Cordell*, 601 N.W.2d 691 (Iowa 1999).

The Alternate Care Petition may be used as a means of getting treatment for a client who has group health insurance coverage. Health insurance policies typically exclude work-related injuries and will not pay treatment bills. Accordingly, a problem arises when some work comp carriers don't want to admit OR deny the injury and instead, want to "investigate".

If the client needs a denial to get group health insurance coverage or you want the work comp

carrier to admit or deny the claim, formally, then filing a Petition for Alternate Care is a good way to achieve these results. If the work comp carrier denies the claim, group health insurance becomes liable for medical benefits, pursuant to Iowa Code §85.38(2). In addition, the employer and work comp carrier lose the right to assert the defense of unauthorized treatment.

C. RELEASE OF MEDICAL INFORMATION

The injured worker is required to give a patient's waiver to the employer. Rule 3.1(17) provides for an official WCC patient waiver form. This form is available in PDF format from the Commissioner's website.
It is a good idea to have your client fill out a couple of blank waivers so that you can keep them in your file to be copied and used as information is needed in the case.

D. DEBT COLLECTION PROHIBITION

Iowa Code § 85.27 provides that while a contested case is pending, no debt collection may be pursued over a disputed medical bill. Debt and Debt Collection are defined in Iowa's Commercial Code, §537.7102(4)–(5). Also, Iowa Code § 85.38(2) provides that if an employer denies liability for a workers' compensation claim, a private health insurer cannot deny payment for medical expenses on the basis that the employer's liability is unresolved. You should write to providers or collection agencies informing them that a petition is pending and also informing them of their duty to halt collections while a case is pending.

E. INDEPENDENT MEDICAL EVALUATION

Pursuant to Iowa Code § 85.39, an injured worker may get an Independent Medical Evaluation—at the employer's expense. This is a one-time, second opinion from a doctor of the injured worker's choice, regarding permanency. There is a Form 100A Petition, which is used for asking the Commissioner to order such an IME, if an employer-selected physician has provided a rating, and claimant thinks the rating is too low, or incomplete in some way. However, most IME evaluations are agreed to between the parties, without the necessity of filing a Petition. This is an evaluation, not treatment.

The most-recent, in-depth discussion of section 85.39 is *Des Moines Area Reg'l Transit Auth. v. Young*, 867 N.W.2d 839 (Iowa 2015). *DART* called for a strict application of the procedure set forth in section 85.39. Per *DART*, the employee's right to reimbursement of a section 85.39 examination is triggered by an employer-retained physician providing an impairment rating. If the employer's rating is not obtained first, the cost of the IME is not recoverable under section 85.39.

One of the more recent, substantive discussions of *DART* at the Commissioner level is *Henry-Pete v. Medical Associates of Clinton Iowa, P.L.C.*, File No. 5055779 (App. 2/4/19). In *Henry-Pete*, the Commissioner clarified that if the right to reimbursement is triggered, the cost of the report and the examination are both recoverable under section 85.39. Previously, there had been some Agency decisions holding that only the cost of the examination, not the report, was recoverable under section 85.39.

The 2017 changes to section 85.39 now contain a provision stating that the reasonableness of an

examination fee is based on the "typical fee charged by a medical provider to perform an impairment rating in the area where the examination is conducted." The Agency has not specifically addressed this issue yet. To avoid having to present evidence on what is a "typical fee", it would be advisable to seek an admission or stipulation from defendants that the fee is reasonable.

The 2017 amendment also provides that if the injury is determined not to be compensable, the employee cannot recover the cost of the evaluation under section 85.39.

If an evaluation is not compensable under section 85.39, the cost of the report can still be taxed as a cost per Rule 4.33, at the Deputy's discretion. In that case, only the cost of the report is taxable, so having an itemized bill from the IME provider is necessary, and the itemization must not lump "records review and report" into one category—the charge for "report" has to be set out separately. *See, e.g.*, *Berte v. Snap-On Logistics Co.*, File No. 5065025 (App. 11/22/19) (denying taxation of the cost of a report because the IME physician's bill itemization provided a charge for "record review and report", with no way of separating the record review charges from report charges).

F. MILEAGE

Injured workers are entitled to have their mileage expense reimbursed for traveling to and from doctor's appointments. The mileage reimbursement rate for workers compensation purposes is the same as allowed by the IRS for business travel. Rule 8.1(2). The mileage rates are available on the Commissioner's website.

V. WEEKLY BENEFIT RATE

The weekly benefit rate is 80% of the injured worker's after tax average weekly wage. Iowa Code §§ 85.35, 85.36 and 85.37. However, this simple concept can become a huge issue in a case since there are many ways of calculating the "average weekly wage" of an injured worker. *See*, Iowa Code § 85.36. Weekly rate tables are available at the Commissioner's website, in downloadable formats.

In order to calculate the correct average weekly wage (and, therefore, the correct weekly benefit rate) both sides must have access to all payroll records in the employer's possession regarding the injured worker. For hourly workers, "non-representative" weeks are not to be used in figuring an average weekly wage. Thus, it's important to see all the payroll records to see what the representative weeks really are, and also to know the reasons for the non-representative weeks. If an injured worker has fewer hours one week because they were sick or took a vacation, which is not a representative week. However, if the hours are short because of a natural work slowdown, then arguably that would still be a representative week.

Also remember that some certain non-wage items can be included in figuring the average weekly wage of the injured worker, such as regular bonuses or per diem payments. The key point on bonuses is whether it was "regularly" paid or not, as irregular bonuses are excludable. *Burton v. Hilltop Care Center*, 813 N.W.2d 250, 266 (Iowa 2012). Additionally, if a per diem is paid to an employee and it does not have any relation to expense reimbursement, and instead appears to be part of the overall package of compensation paid by the employer to its employees, then it is

includable in rate. *See, e.g.*, *Hecht v. Highline Construction, Inc.*, File No. 5052175 (App. 1/25/18) (affirming arbitration decision finding that per diem was includable in AWW when it was paid regardless of whether the employee was traveling and the employee did not have to turn in expense receipts).

A practice pointer for beginners is to remember to ask your client during your initial interview whether he or she is married or has dependents. The applicable rate increases depending upon how many dependents the client has. The agency has typically looked to the claimant's tax filings, if a dispute arises over the number of exemptions an injured worker may claim for rate calculation purposes. As a matter of law, a claimant is entitled to an extra exemption for a dependent that is age 65 (or over) or blind. See Iowa Code section 85.61(6)(a)–(b).

Another practice pointer for clients whose payroll records show a lot of overtime is that in workers' compensation, full credit is not given for overtime. Instead, a client who earns $10.00 per hour and works 50 hours per week will earn $650.00 gross if they were uninjured. However, in workers' compensation, time and one-half is not paid for overtime. Instead, the regular pay rate is used and in this instance, rate would be based upon 50 hours at $10.00 per hour, rather than 40 hours at $10 and 10 hours at $15.00.

VI. WEEKLY BENEFIT TYPES

A. TEMPORARY BENEFITS

Technically, temporary total (TTD) or temporary partial (TPD) and healing period (HP) benefits are different, even though they compensate for the same time periods. The point of temporary benefits is to replace the injured worker's wages while they are off work recovering from their injury. These benefits begin on the date of injury and run until the injured worker either: (1) returns to work; (2) is medically capable of returning to work; or, (3) has reached maximum medical improvement from the injury, whichever occurs first. Iowa Code § 85.34(1). Thus, these benefits can end even if the injured worker has not returned to work. In addition, a worker can fluctuate throughout their treatment from TTD and TPD, depending upon their ability to work on a part-time basis. An attorney should also keep an accounting of the amounts, weeks and dates of weekly benefits paid. Keep the envelopes as proof the date each check was mailed.

Occasionally, an attorney will have a client come in because they were terminated while they were off work and under a doctor's care. Some carriers believe that a termination is a license for them to cut off weekly benefits. Instead, Iowa Code section 85.33 provides that an employee is to be paid temporary benefits if: 1) no work within the employee's restrictions; or, 2) the employer refuses to offer suitable employment. If "suitable work consistent with the employee's disability" is offered, the employee must take it or risk the suspension of temporary benefits. *Id.*

B. TEMPORARY PARTIAL DISABILITY BENEFITS

Temporary partial disability (TPD) benefits come into play if the injured worker is still medically limited in what they can do because of the injury (and, therefore, still temporarily disabled), but is released to return to work in some partial or part time capacity. The employer pays for the hours worked, and the comp carrier pays two-thirds of the difference between the average weekly wage and the actual wages paid by the employer.

C. PERMANENT INJURIES

If an injury causes a worker to suffer a permanent functional loss of part of their body, then they are entitled to some measure of permanent disability benefits (PPD) in addition to medical and temporary disability benefits. The amount depends on three things: (1) the body part affected; (2) the degree of impairment or disability; and, (3) the weekly benefit rate.

1. Scheduled Injuries

Generally, "scheduled injuries" are limited to a specific body part listed in Iowa Code section 85.34(2)) and benefits will be paid based only on the impairment to the specific body part, without regard to whether the claimant has been terminated, has no other job skills, is very aged or uneducated, or other similar factor. Under pre-July 1, 2017 law, a claimant could potentially recover greater permanent impairment for a scheduled injury than the doctor's impairment rating. *See Arnold v. John Deere Waterloo Works*, File No. 5010617 (Arb. 7/25/05) (finding 20% impairment to lower extremity even though treating employer-selected physician provided 0% rating and claimant-selected physician provided 3% rating, citing claimant's "credible lay testimony as to the extent of her loss of use").

However, the July 1, 2017 amendment to section 85.34(2)(x) now provides that:

> when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides . . . Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment . . . .

This change applies to all scheduled injuries. The Agency has addressed this change regarding the use of lay testimony, and it held that lay testimony could still be used to ascertain which of the two doctors' ratings is more convincing or credible. *Streif v. John Deere Dubuque Works of Deere & Company*, File No. 5068621 (Arb. 12/3/19). Additionally, the Agency has held that where two doctors provided ratings, and one did not make reference to the *Guides*, the Agency accepted the opinion of the doctor who made reference to the *Guides*. *Reiter v. Incorporated City of Remsen*, File No. 5059413 (Arb. 10/25/18) (rejecting rating of opinion that "does not indicate [the doctor] utilized the Guides."). As of the date of this outline's update (January 2020), these are the only Agency decisions to substantively address this amendment.

Also note that if a claimant has an injury to a hand, arm, foot, leg, or eye, and sustains an injury in the same accident to a different hand, arm, foot, leg, or eye, it is to be compensated under section 85.34(2)(t), against 500 weeks, and can also allow for permanent and total disability.

2. Post-July 1, 2017 Shoulder Injuries

The 2017 amendments also listed "a shoulder" as a scheduled member, to be compensated against 400 weeks. Iowa Code § 85.34(2)(n). Prior to the 2017 amendments, a shoulder was considered an injury to the body as a whole and compensated under the industrial disability analysis.

When reviewing post-2017 "shoulder" cases, first consider: (1) anatomically, does the injured worker's injury extend beyond "a shoulder"; and (2) were other parts of the body, aside from "a shoulder", involved in the injury. If you have a post-2017 shoulder case you should contact the listserve or the Core Group to strategize. Very briefly, though, the outline of the anatomical argument is as follows:

- The term "a shoulder" is not defined by the Code.
- Prior Agency law defined the "shoulder" as the glenohumeral joint.
- Since the workers' compensation statute is to be interpreted for the benefit of the injured worker, any ambiguities should be interpreted in claimant's favor.
- The most favorable reading of the ambiguous statute is to narrowly define "shoulder" as the glenohumeral joint, with any injury proximal to that joint being one to the body as a whole.

Therefore, it is wise to ask the physicians whether there is any injury or impairment proximal to the glenohumeral joint. No Agency cases have addressed this anatomical argument yet. There will likely be Agency decisions addressing the anatomical issue soon, therefore it is important to reach out to the listserve or the Core Group to stay up to date, and to not rely solely on this outline.

The second way that "a shoulder" may not be properly compensated under section 85.34(2)(n) is if there is something more than "a shoulder" involved. For example, two shoulders is not the same as "a shoulder", and "shoulder" is not included in the bilateral loss statute (section 85.34(2)(t)). Therefore, the argument is that injury to "a shoulder" plus injury to another scheduled member should be compensated under section 85.34(2)(v) as a case "of permanent partial disability other than those hereinabove described." This argument has not been addressed by the Agency as of the date of this outline's update (January 2020).

3. Unscheduled Injuries

"Unscheduled injuries" to body parts not listed on the schedule, are known as "body as a whole" injuries, are compensated much differently. With unscheduled injuries, the injured worker will be compensated based on "industrial disability", which means that in addition to the degree of loss suffered from the injury, the finder of fact must take into account the particular worker's age, education, work experience, and similar factors. Industrial disability is essentially the employee's percentage of loss of access to the labor market available to that individual at the time of their injury, which is caused by the injury.

The industrial disability analysis evaluates and compensates each injured worker on a case-by-case basis. For example, a back injury to an unskilled laborer will result in greater industrial disability than if the exact same injury happened to a bank manager—the unskilled laborer may lose his job and not be able to find another job, whereas the bank manager will have no change in the way she works or how she is compensated. The impairment ratings assigned by the doctors are just one of many factors considered under the industrial disability analysis, and they will typically be the "floor" of industrial disability; whereas in a scheduled injury case the impairment rating is most likely the "ceiling" for permanent disability awarded.

The 2017 amendments to the workers' compensation statute significantly changed industrial

disability, specifically who is eligible to be compensated with industrial disability. None of these changes were favorable to injured workers.

The post-July 1, 2017 section 85.34(2)(v) states that if an employee:

> returns to work or is offered work for which the employee receives or would receive the same or greater wage, salary, or earnings than the employee received at the time of the injury, the employee shall be compensated based only on the employee's functional impairment resulting from the injury . . . .

That subsection goes on to state that:

> if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

These changes have not been applied by the Agency as of the date of this outline's update (January 2020). A few things to consider, and issues that need to be addressed by the Agency and the courts, are (1) at what point is the determination made—for example, if the employee returns to work at the same wage for one day and is then terminated, are they precluded from industrial disability; (2) will the "or" in "wages, salary, or earnings" be interpreted strictly even if it produces an absurd result—for example, if the employee returns to work at the same hourly wage, but the employer is only scheduling them for a quarter of the hours they used to receive, are they precluded from industrial disability; or (3) are there Constitutional issues created by these changes. Again, if you have cases going to hearing that address either of these issues, you are encouraged to contact the listserve or the Core Group.

The 2017 amendments also added a new factor to be considered in the industrial disability analysis: "the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury." Iowa Code § 85.34(2)(v). Note that the amendment does not say what impact that is to have on an industrial disability award, only that it shall be taken into account. Regardless, for older injured workers, it is likely prudent to present evidence on how much longer they anticipated working. It may be wise to have your clients consult with a financial advisor to determine how long they will *need* to keep working prior to retirement—the advice they receive from a financial advisor may differ significantly from how long they had *hoped* they would have to work. Similarly, this amendment can be used offensively for younger workers. Specifically, if a 25-year-old sustains an injury, it will have an impact on them for at least 40 years of their earning life, therefore their industrial disability award should be higher.

D. SECOND INJURY FUND BENEFITS

If a worker has suffered two scheduled injuries to separate body parts from separate incidents, they may be entitled to Second Injury Fund (SIF) benefits. Eligibility for these benefits is somewhat

technical and is covered by Iowa Code §§ 85.63 through 85.69. Essentially, the idea is that compensation for two separate scheduled injuries may not adequately compensate a worker for the resulting loss of earning capacity (industrial disability) the combination of two injuries may create. The employer pays any scheduled benefits, and the Second Injury Fund pays any extra industrial disability resulting from the two injuries.

Be aware that only the SECOND injury need be work-related; the first injury can be from any cause whatsoever. So it is usually a good idea to ask a potential client with a scheduled injury claim about any other injury, disease or source of disability in their life preceding that injury. Also be sure to ask your clients about their vision—eyes will work as a first loss.

Note that the injuries must be to a hand, arm, foot, leg, or eye. There can sometimes be a close question of whether an injury is to a finger or to the hand, or to a toe or to the foot. The dividing line is the metacarpophalangeal joint for the hand, and the metatarsophalangeal joint for the foot. If asking a doctor to evaluate a first loss that may arguably be to the finger and not to the hand, obtain their opinion of whether the anatomical situs of the injury is at or proximal to the MCP or MTP joint.

In order to obtain SIF benefits, both injuries must be to scheduled members; a body as a whole injury does not work as either the first or second injury. However, if the first injury was one to the body as a whole and to a scheduled member (e.g., in a car accident 10 years ago and injured both hand and neck), you can still use the scheduled member as your first loss despite it being injured in the same incident as the body as a whole. The same is not true for second losses—it must be limited only to the scheduled member.

E. DEATH BENEFITS

Death benefits are covered by Iowa Code §§ 85.28, 85.29, 85.31, 85.42, and 85.44. A surviving spouse receives weekly benefits for the remainder of his or her life, unless they remarry. In the case of remarriage, the surviving spouse receives a lump sum of two years of benefits, if there are no surviving children entitled to benefits. Surviving children may receive benefits until age 18 or, if they are a student, until age 25.

In some instances, a worker may leave a widow but also have dependents from a previous relationship. In these instances, there is no "black and white" rule to determine which individuals should receive benefits. Instead, the deputy will "equitably apportion" the benefits among all eligible beneficiaries.

VII. COMMENCEMENT AND TERMINATION OF TTD, HP & TPD BENEFITS

A. COMMENCEMENT OF BENEFITS

1. Temporary Total Disability (TTD)

Iowa Code § 85.32:

Except as to injuries resulting in permanent partial disability, compensation shall begin on the

fourth day of disability after the injury. If the period of incapacity extends beyond the fourteenth day following the date of injury, then the compensation due during the third week shall be increased by adding thereto an amount equal to three days of compensation.

2. Temporary Partial Disability (TPD)

Iowa Code § 85.33(2):

> "Temporary partial disability" or "temporarily, partially disabled" means the condition of an employee for whom it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, but is able to perform other work consistent with the employee's disability.

3. Healing Period (HP)

Iowa Code § 85.34(1):

> If an employee has suffered a personal injury causing permanent partial disability . . . the employer shall pay to the employee compensation for a healing period . . . beginning on the first day of disability after the injury . . . .

4. When Benefits Start – The "Waiting Period"

TTD and TPD benefits are only due after the third day of missed work. Healing period benefits, on the other hand, are due beginning on the first day of missed work. The potential difficulty is that healing period benefits are only defined in reference to whether the injury has caused some degree of permanent disability, which certainly may not be known for months following the injury. So whether these benefits should start on the first or fourth day following the injury is often unknown at the time the benefits are actually due.

In any event, if the period of disability (i.e., time off work following the injury) extends beyond two weeks, then any benefits not paid during the 3-day "waiting period" must now be paid.

5. TPD: Partial Return to Work with Same or Different Employer

TPD benefits start when the injured worker is able to return to some type of work, but not the same work they were doing before. This is true whether the period of total disability is considered TTD or HP. Iowa Code § 85.33(2) (". . . in lieu of temporary total disability and healing period benefits . . .").

TPD benefits only become payable when the injured worker resumes work for pay less than the work the injured worker was receiving when injured. Iowa Code § 85.33(2) (TPD benefits are paid to an employee "because of the employee's temporary partial reduction in earning ability as a result of the employee's temporary partial disability."). Obviously, this reduction in earnings could be due to fewer hours, fewer dollars per hour, or both, but there must be an actual reduction in earnings.

Iowa Code § 85.33(4) states that TPD benefits are paid based upon two-thirds of the difference between the employee's weekly earnings at the time of injury and the employee's actual gross weekly income from employment during the period of temporary partial disability.

Note that TPD benefits are paid when the partially disabled worker returns to work—at less money—with the same employer OR with a different employer. Iowa Code § 85.33(3) ("If suitable work is not offered by the employer for whom the employee was working at the time of the injury and the employee who is temporarily partially disabled elects to perform work with a different employer, the employee shall be compensated with temporary partial benefits.").

B. TERMINATION OF BENEFITS

1. Temporary Total & Temporary Partial Disability

Iowa Code § 85.33(1):

> . . . Until the employee has returned to work or is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

2. Healing Period

Iowa Code § 85.34(1):

> . . . until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first.

3. Difference Between TTD/TPD and HP

Technically, there is a difference between what terminates temporary as opposed to healing period benefits. TTD /TPD benefits terminate when one of TWO things happens: (1) the employee returns to work; or, (2) is medically capable of returning to work.

HP benefits terminate when one of THREE things happens: (1) the employee returns to work; (2) is medically capable of returning to work; or (3) reaches maximum medical improvement (MMI).

From a practical standpoint this difference probably means very little, since the designation of benefits as "temporary" presupposes a full recovery. If that is indeed the case, then the day the doctor releases the injured worker to return to work would also, logically, be the date of maximum improvement and end entitlement to weekly benefits whether they are characterized as TTD, TPD or HP.

The Iowa Supreme Court has said:

> We have recognized that temporary total disability compensation and healing-period compensation refer to the same condition. ... For this reason, we believe that the payment of healing-period compensation is subject to the same restrictions that apply to temporary total disability payments . . .

Ellingson v. Fleetgaurd, Inc., 599 N.W.2d 440, 446 (Iowa 1999).

4. Termination of Temporary Benefits Due to Return to Work (RTW)

There are multiple RTW scenarios that may affect temporary disability (TTD, TPD and HP) benefits. The simplest scenario is when the injured worker is released by the doctor with a full recovery and simply returns to their old job. Under any definition of temporary disability, any entitlement to TTD, TPD or HP benefits ends at that point.

Note that in order for a return to work to terminate temporary benefits, the return must be to work "substantially similar" to that in which the worker was engaged at the time of injury. So, for instance, a return to work at restricted hours does not terminate all temporary disability benefits, it just makes the injured worker a temporarily partially disabled worker. *Bowers v. HyVee Food Stores*, File No. 1049057 (Appeal Dec., November 1995); *see also Mitchell v. IBP, Inc.*, File No. 980259 (Arb. Dec., March 1994) ("[N]othing in the statute provides that a release to return to light duty with work restrictions constitutes a termination of healing period. . . . A release to return to work light duty with significant restrictions cannot be equated to a return to work as that term is used in the statute or a return to substantially similar employment as those words are used in the statute.")

Nor does the return to work have to be completely without restrictions in order to end the temporary disability period. *Stephenson v. Furnas Electric Co.*, 522 N.W.2d 828, 832 (Iowa 1994).

Also, in order for a return to work to end the temporary disability period, the return must be successful. A failed return to work does not end the period of temporary disability. *Lithcote v. Ballenger*, 471 N.W.2d 64, 67 (Iowa App. 1991) (claimant attempted to return to work for 5 days in April 1985; attempt to return to work was unsuccessful; claimant had surgery in June 1985, returning to work again August 26, 1985. Held that healing period ran through August 26, 1985, except for the 5 days worked).

5. Termination of Benefits Due to Failure to Accept Suitable Work

The 2017 amendments modified Iowa Code section 85.33(3), which provides guidelines for termination of benefits due to failure to accept suitable work. Both the pre-2017 and post-2017 frameworks are addressed below.

Pre-2017, Iowa Code section 85.33(3) provided:

> If an employee is temporarily, partially disabled and the employer for whom the employee was working at the time of the 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 employee refuses to accept

> the suitable work with the same employer, the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal.

Thus, if the employer offers suitable work, and the employee refuses the work, then: ". . . the employee shall not be compensated with temporary partial, temporary total, or healing period benefits during the period of the refusal. During such a period of refusal, temporary benefits are simply not payable; that is, they are forfeited." *McCormick v. North Star Foods, Inc.*, 533 N.W.2d 196 (Iowa 1995). This is to be contrasted with permanent partial disability benefits, which may be suspended in certain circumstances, but are not forfeited. *Id.* at 198–99.

Post-2017, Iowa Code section 85.33(3) was amended to add requirements that (1) the employer's offer of work be communicated in writing; (2) the written offer must include details of lodging, meals, and transportation; (3) the written offer must tell the employee that any refusal from the employee must be in writing; and (4) the written offer must tell the employee that a refusal of suitable work will result in termination of temporary benefits. Iowa Code § 85.33(3)(b). The amended section provided similar requirements for employees—namely that any refusal must be communicated in writing along with the reason for the refusal.

It is important to note that if the employee refuses work on the basis of suitability and does not communicate their refusal in the manner required by the statute, the employee waives the right to assert suitability as the basis for refusal for as long as the refusal continues without being communicated in writing. In other words: if the claimant is refusing work on the basis of suitability, they must communicate that in writing immediately or risk loss of benefits.

The post-2017 section 85.33(3) also added language regarding geographic suitability. Specifically, section 85.33(3)(a) states that work offered "at the employer's principal place of business or established place of operation where the employee has previously worked is presumed to be geographically suitable for an employee whose duties involve travel away from the employer's principal place of business or established place of operation more than fifty percent of the time."

Under both pre-2017 and post-2017 law, the work offered by the employer must be "suitable." Suitability is often assumed to be only the exertional requirements of a job. However, the Court has stated that the work offered to an injured worker must be both "suitable" and "consistent with the employee's disability." *Neal v. Annett Holdings*, 814 N.W.2d 512, 521 (Iowa 2012). Thus, suitability addresses only the non-exertional requirements of the offered work, as the physical requirements are addressed by the second prong. The statute does not define suitability, and to date the Supreme Court has not provided a definition. The Court has given some guidance as to how the term will be defined in the future. Specifically, the Court has stated that the meaning given to "suitable work" in other contexts is persuasive in the workers' compensation scenario. *Neal v. Annett Holdings*, 814 N.W.2d 512, 522–23 (Iowa 2012). For example, the unemployment statute is persuasive. *See* Iowa Code § 96.5(3). The *Neal* Court also noted that the meaning given to "suitable work" by other states' courts and legislatures are persuasive. *Id.* at 521. The suitability issue will generally arise if the work will cause a disruption in the claimant's life (e.g., switching from third shift to first shift, interfering with the claimant's ability to care for a family member during the day).

Again, recall that suitability is separate from the exertional requirements of the job. The exertional requirements must be consistent with the employee's disability.

An offer of unreasonable work will not terminate benefits when refused. *West Side Transp. v. Cordell*, 601 N.W.2d 691, 693 (Iowa 1999).

Burden of Proof. It should also be noted that "failure to accept suitable work" is treated as an affirmative defense by the Commissioner, and defendants have the burden of proving that: (1) defendants' offer was suitable under the statute; and, (2) claimant's refusal was unreasonable under *McCormick, infra*.

6. Termination of Benefits Due to MMI

For a full discussion of the statutory history of the termination of temporary benefits due to "recuperation" (MMI) see, *Pitzer v. Rowley Interstate*, 507 N.W.2d 389, 390–92 (Iowa 1993).

The *Pitzer* decision also thoroughly discusses what is meant by the phrase "medically indicated that significant improvement from the injury is not anticipated" in Iowa Code § 85.34(1). It is important to understand exactly what this phrase means—and doesn't mean—since this phrase is the statutory basis for terminating healing period benefits when the injured worker has reached maximum medical improvement (MMI).

There are several holdings in *Pitzer* that are important in analyzing any MMI issue:

a. There is no statutory or common law limitation on how long healing period benefits may run. *Id*. at p. 391;

b. The healing period may be characterized as that period during which there is reasonable expectation of improvement of the disabling condition. *Id*. at p. 391, citing *Armstrong Tire & Rubber Co. v. Kubli*, 312 N.W.2d 60 (Iowa App. 1981); and,

c. The persistence of pain after the underlying injury has stabilized may or may not extend the healing period. In such an instance, the question becomes whether the claimant's 'industrial disability' has stabilized, rather than the medical condition. *Id*. at pp. 391–92.

Note also that the 2017 amendments provided additional language regarding the time period for PPD to commence. Specifically, section 85.34(2) was amended to state:

> Compensation for permanent partial disability shall begin when it is medically indicated that maximum medical improvement from the injury has been reached and that the extent of loss or percentage of permanent impairment can be determined by use of the guides . . .

Thus, not only does the injured worker have to be at MMI for PPD to be payable, but the extent of their loss must be determinable by the *Guides*. This provision of amended section 85.34(2) has not

been applied by the Agency yet, as of the date of this outline's update (January 2020). However, issues that may arise as a result of this amendment:

Some insurance carriers are arguing that PPD is not payable until they receive a rating from the physician, despite the claimant being at MMI. Similarly, if a physician opines that they are not able to perform a rating until a certain amount of time since surgery, the injury, or some other date, carriers may be able to avoid paying PPD until such time as a rating is provided. As a result of this, there will likely be instances of claimants having an interruption in workers' compensation benefits. Specifically, whereas PPD used to be payable beginning immediately at the end of the healing period, there could be a scenario in which the employee's healing period has ended because they have returned to work, but the physician has not placed them at MMI and provided a rating.

If a carrier refuses to commence PPD at the time of MMI because no rating has yet been provided, the best argument to make is that permanency is obvious based on the claimant's injury, restrictions, functional limitations at the time of MMI, etc. Basically, point to evidence showing that there is impairment, and argue that failure to commence PPD at the time of MMI under these circumstances will result in penalty.

7. Intermittent Temporary Disability Periods

Generally, the Commissioner's office recognizes that there may be situations where it appears the period of temporary disability is over, only to turn out that the period is not over. Therefore, it is entirely possible to have more than one healing period or, more accurately, intermittent periods for which temporary disability benefits are payable. Since, generally speaking, there are only two situations that terminate the temporary period (return to work and MMI), there are two common situations where this issue arises: (1) a failed return to work; and (2) additional medical treatment after MMI or RTW.

Failed Return to Work. The law encourages injured workers to return to work—even partially—as soon as possible after an injury. This is accomplished by terminating temporary benefits when a doctor releases an injured worker to return to work (whether there is a job waiting for them or not) and also by penalizing them by forfeiture of benefits for those workers who do not accept suitable employment when offered during a period of temporary disability.

An unsuccessful attempt to return to work does not end the period of temporary disability. *Lithcote v. Ballenger*, 471 N.W.2d 64, 67 (Iowa App. 1991) (claimant attempted to return to work for 5 days in April, 1985; attempt to return to work was unsuccessful; claimant had surgery in June, 1985, returning to work again on August 26, 1985. Held that healing period ran through August 26, 1985, except for the 5 days worked).

Additional Treatment after RTW or MMI. Additional medical treatment following RTW or MMI does not automatically extend the healing period. It depends on the situation. Certainly, if the additional medical treatment does not lead to lost time from work there would be no temporary disability benefits due. Moreover, if the additional treatment is to treat ongoing pain or similar symptoms, rather than the underlying disabling condition, it will not be seen as starting a new period of temporary disability. *Pitzer v. Rowley Interstate*, 507 N.W.2d 389, 390 (Iowa 1993).

If, on the other hand, the additional treatment is directed at improving the underlying condition or the disability associated with the underlying condition, then additional treatment may give rise to an extension of the temporary disability period. *Pitzer v. Rowley Interstate*, 507 N.W.2d 389, 390 (Iowa 1993); *Hall v. Backman Sheet Metal*, 470 N.W.2d 52, 56 (Iowa App. 1991).

Additional Surgery. The Commissioner's office has consistently held that if a person has a second surgery, after MMI or RTW, then that person will be allowed two intermittent healing periods. *See Pinney v. Brower Construction Co*., File No.863234 (Arb. Dec., February 1991). *See also Bice v. ALCOA*, File No. 881267 (Arb. Dec., March 1991) (healing period found to be "intermittent.").

Putting it Together: *Ellingson v. Fleetguard*. The Iowa Supreme Court has examined these two situations (RTW and additional medical treatment) as they relate to intermittent healing periods:

> Ellingson's argument concerning a recommencement of the healing period based on a retrogression in a worker's disability has application, if at all, to situations where healing-period benefits have been terminated based on the employee's return to work prior to attaining maximum improvement of the injury. In contrast, once it has been established through a decision of the Commissioner or a reviewing court that further significant improvement is not anticipated, all temporary disability benefits from a single injury are finally terminated to be followed by an permanent partial disability benefit payments than are established by the Commissioner's order.

Ellingson v. Fleetguard, *Inc*., 599 N.W.2d 440 (Iowa 1999)

The holding in *Ellingson* must be read narrowly, since the facts upon which it was based are narrow. First, the Court clearly excludes from its analysis failed or intermittent return to work situations. Second, the court clearly limits its analysis to "retrogression," that is, the worsening of a condition, as opposed to additional medical treatment, such as surgery, that typically gives rise to a discrete period of temporary disability. Thus, the *Ellingson* decision does not apply to the two most common causes of intermittent temporary disability.

Finally, *Ellingson* only applies to cases where MMI has been established "through a decision of the Commissioner or a reviewing court." Reading *Pitzer* and *Ellingson* together seems to make clear that the Commissioner and reviewing courts are fully authorized to use hindsight and find and adjust healing periods according to the facts of the case.

VIII. PENALTY AND INTEREST

A. PENALTY BENEFITS

Iowa Code section 86.13 provides for penalty benefits of up to 50% of weekly benefits, which were improperly denied, delayed, or terminated. Section 86.13(4)(b) provides that the Agency **shall** award penalty benefits if an injured worker proves that a denial, delay in payment, or termination of benefits occurs and the employer fails to provide a reasonable or probable cause or excuse for the denial, delay in payment, or termination of benefits. In order for Defendants to prove a reasonable or probable cause or excuse for delaying permanency benefits, they would have to show **all** of the following: (1) the delay was preceded by a reasonable investigation or evaluation;

(2) the results of the investigation were the actual basis upon which Defendants delayed benefits; and (3) Defendants contemporaneously conveyed the basis for delay to the claimant at the time of the delay.

If the carrier denies, delays, or terminates benefits, it is wise to send a letter asking that they state each and every factor upon which they relied in denying, delaying, or terminating benefits. Similarly, if an explanation is provided and you believe it to be based on a mistaken understanding of the facts of the case or Iowa workers' compensation law, send a letter outlining your position and explaining why defendants' understanding is wrong. These letters will then serve as excellent exhibits at hearing.

Note that penalty benefits do not apply to unpaid or delayed medical benefits.

Attorneys who have penalties as a potential issue in the case should be sure to amend their standard discovery to include a penalty-specific question at least for injuries occurring after the effective date of the statute. Below is an example penalty interrogatory:

> State whether you deny compensability or have terminated Claimant's benefits for the injury alleged herein, and if so, pursuant to Iowa Code § 86.13(4), state the following:
>
> a) The nature and extent of your investigation into whether the benefits were owed;
> b) All facts and law you rely on for that denial/termination of benefits;
> c) Whether notice was given to the Claimant regarding the denial/termination of benefits;
> d) If notice was given, whether such notice was written or oral;
> e) If notice was given, the date of such notice;
> f) If notice was given, who gave the notice;
> g) If notice was given, the precise contents of the notice; and
> h) If you claim that claimant was non-cooperative, and that benefits were denied or terminated as a result of the non-cooperation, the specific acts of non-cooperation alleged, and whether claimant was notified of that non-cooperation.

B. INTEREST

Unlike penalty benefits, interest is due on delayed or unpaid benefits regardless of whether the delay was unreasonable. In other words, interest is simply due on unpaid benefits, regardless of the reason.

Interest for benefits accrued prior to July 1, 2017 is at 10%. Interest for benefits accrued after July 1, 2017 is due 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 the injury, plus two percent. See the Commissioner's claims handling guide, in the preface of the Rate Book, for instructions on calculating interest (this information is included in the on-line format of the rate books, available at the Commissioner's website).

Precise recordkeeping by the attorney helps to keep track of weekly benefits and potential penalties. Since workers' compensation cases are often handled in volume, an attorney should

teach a staff member how to account for benefit checks as they come in.
A simple spreadsheet may be set up for each client, indicating:

1. The date(s) the weekly benefit check was intended to cover.
2. The amount of the check.
3. The type of benefit paid (HP/TTD; TPD; PPD)
4. The date the check was mailed.
5. The day the check was received by the attorney.
6. The date the check was due.
7. Attorney fees and/or costs deducted from the check.

It is also wise to request an updated history of benefits paid from the carrier. The benefits history is useful when determining whether penalty benefits are owed.

IX. HEARING PROCEDURE

A. PRE-HEARING PROCEDURE

Pre-hearing procedure and deadlines are set out in Rule 4.19(3) (and in the Hearing Assignment Order sent out by the Commissioner's office once the case is set for hearing).

The parties have a window of 60 to 120 days after the filing of a Petition, to jointly schedule the place, date and time of the arbitration hearing. Hearings are now requested online through WCES. Detailed instructions for how to schedule hearings are published on the Commissioner's website under the Forms & Publications section, in a PDF document titled "Order -- In re Scheduling Hearings Using the Workers' Compensation Electronic System -- Oct. 7, 2019.

Note that hearings are to be set within 12 months of the filing of the Petition, or as soon as practicable thereafter. Rule 4.19(3)(a).

Important pre-hearing deadlines are as follows:

Window to Schedule Hearing	120 to 60 days after Petition filed
Claimant's Expert Disclosure	120 Days Before Hearing
Defendant's Expert Disclosure	90 Days Before Hearing
Rebuttal Expert Disclosure	60 Days Before Hearing
Deadline to Propound Discovery	60 Days Before Hearing
Exchange Witness and Exhibit Lists	30 Days Before Hearing
Discovery Closes	30 Days Before Hearing

Rule 4.19(3)(a)–(d).

B HEARING EXHIBITS

The Agency has published a document regarding hearing exhibit, which also available on the Commissioner's website under the Forms & Publications tab. That document, titled "Uniform Guidelines for Preparation of Hearing Exhibits -- Effective July 22, 2019", should be reviewed in detail, but the highlights are as follows:

- Each party can submit 50 pages of individual exhibits.
- The parties can collectively offer 100 additional pages of joint exhibits.
- Treatment records should be organized by provider, in chronological order.
- No duplicative material should be submitted.
- Highlighting is permitted but not required.
- Detailed instructions for page numbering are provided—learn them and follow them.
- You must include a table of contents with the submitted exhibits.
- A Deputy has discretion to allow a party to exceed the page limits if good cause shown.
- You need to submit exhibits electronically and also bring a paper copy to hearing for the Deputy.

Again, read and know all of the requirements listed in the Uniform Guidelines for Preparation of Hearing Exhibits. In addition to following those guidelines, a few practical tips regarding exhibits:

Work with defense counsel to create a joint exhibit for medical records (but not IME or DME reports).

Look for ways to reduce the number of pages submitted. For example, instead of submitting actual paystubs with your rate calculation, get defense counsel to stipulate that the rate calculation contains an accurate summary of the paystubs.

If your exhibits exceed the page limits, email the Deputy (cc to defense counsel, of course) at least two weeks prior to hearing letting them know that your exhibits exceed the page limits, and give a brief explanation of why. Examples of reasons that you are exceeding the page limits: extensive pre-existing medical records; number of body parts involved in the injury; number of surgical procedures; issues that are in dispute such as rate, medical benefits, etc. After explaining why you are having to exceed the page limit, ask the Deputy whether they prefer you file a written motion to exceed the page limits or if they prefer to handle it informally at the time of hearing. Some Deputies will prefer a motion, others may deal with it informally. The listserve is a good resource to learn about an individual Deputy's preferences in this regard. It is also wise to contact defense counsel prior to contacting the Deputy, that way if defense counsel does not object to you exceeding the page limits, you can indicate as much in your email to the Deputy. Again, this should be dealt with at least two weeks prior to hearing—do not come in the day of hearing and ask how the Deputy wants to handle the issue.

The Deputy presiding at the hearing may exclude evidence that is not timely disclosed to an opposing party, if an objecting party shows that receipt of the evidence would be "unduly prejudicial", in keeping with the rules. Rule 4.19(3)(e).

C. TAXABLE COSTS

Rule 4.33 sets forth the costs recoverable in a workers' compensation case. The Deputy has discretion in awarding costs. The most commonly sought costs under Rule 4.33 are practitioners' reports, filing fee, deposition transcript fee, etc., but the Rule contains a detailed list of allowable costs. The updated hearing report form contains language that indicates costs should be included as an exhibit, and that specific exhibit referred to in the hearing report. If there is a dispute as to

whether the costs have been paid, proof of payment should be included with the costs exhibit.

X. APPEALS

A. INTRA-AGENCY APPEAL

Intra-agency appeal is governed by Iowa Code § 86.24 and Rules 4.27 and 4.28, unless you feel like asking for a re-hearing, in which case you need to look at Rules 4.24 and 4.25 as well. An intra-agency appeal is commenced by filing a notice of appeal with the Commissioner's office within 20 days of the filing of the decision from which you are appealing. Rule 4.27. The non-appealing party may file a cross-appeal either within 20 days of the filing of the decision or within 10 days of the filing of the other party's appeal, whichever is later.

If you are appealing a decision, you must read the Rules cited above and familiarize yourself with the timelines listed there.

B. JUDICIAL REVIEW

If a party is still aggrieved by the Commissioner's appeal decision (which is the final agency action), that party may file a petition for judicial review under Iowa Code §§ 17A.19 and 86.26. Note that the petition for judicial review is just that, a petition filed in district court, with its own set of rules and requirements, which must be met, including proof of service.

A petition for judicial review must be filed within 30 days of the date the Commissioner's decision was filed. Iowa Code § 17A.19(3).

The filing of a petition for judicial review does not automatically stay enforcement of the Commissioner's decision. The party filing the petition must ask for and receive a stay from the district court pending resolution of the petition. *See* Iowa Code § 86.42.

Once the petition for judicial review is filed, the Commissioner's office is required pursuant to Iowa Code section 86.26, to transmit a certified copy of the record of the contested case within 30 days after receiving written notice from the party filing the petition that a Petition for Judicial Review had been filed. Therefore, it is always good to send a copy of the Petition for Judicial Review to the Commissioner's office so they know to transmit the record.

The Petition for judicial review is instituted by filing a Petition in Polk County or in the district court for the county in which the petitioner resides or has its principal place of business. The court may then transfer venue to a more appropriate county. An attorney should consult Iowa Code section 17A.9 for additional rules and procedures regarding judicial review.

C. FURTHER APPEAL

A district court's ruling may be appealed to the Iowa Supreme Court, just like any other ruling by a district court. The same rules apply with respect to the standard of review, briefing schedules and requirements, oral argument, etc. A Supreme Court Notice of Appeal must be filed within 30 days of the filing of the district court order. Iowa Rule of Appellate Procedure 6.5(1).

XII. OTHER CAUSES OF ACTION

Iowa Code § 85.20 provides that the rights and remedies provided under Iowa's workers' compensation laws are the only rights and remedies an injured worker has against his employer for work related injuries. Although workers' compensation is the exclusive remedy of an injured worker as against his employer for a work related injury, that same injury may give rise to other claims.

The workers' compensation carrier generally has a right of subrogation on any money recovered in the third party action pursuant to Iowa Code section 85.22. However, there has been much litigation regarding subrogation and it is always a good idea to research the issue. For instance, compensation received under the injured worker's own uninsured motorist coverage is NOT subject to subrogation. *March v. Pekin Ins. Co.*, 464 N.W.2d 852 (Iowa 1991).

A. THIRD PARTY CLAIMS

These are the most common types of "collateral" claims involved in workers' compensation. Typically the claim arises out of a motor vehicle accident or a construction site accident where the client was injured by somebody who was not his co-worker. Thus, the salesperson who is driving in the course and scope of his employment and is hit by another driver would have both a workers' compensation claim against his employer and a personal injury claim against the opposing driver. Another example would be the client who is working for a heating and plumbing subcontractor on a construction project who is hit in the head with a piece of sheathing being thrown off the roof by somebody working for the roofing subcontractor. If the subcontractors are separate entities, then the injured worker has both a workers' compensation claim against his employer AND a personal injury claim against the person who threw the sheathing AND that person's employer AND a possible premises liability claim against the general contractor.

B. PRODUCTS LIABILITY

When a production worker is injured in the course of employment while working with a machine, there may be a products liability claim against the manufacturer of that machine. Again, this is a third party claim subject to subrogation on behalf of the comp carrier. Of course, a products liability claim (or any third party claim) may be harder to make than a workers' compensation claim since fault has to be proven.

C. RETALIATORY DISCHARGE

Springer v. Weeks and Leo Co., Inc., 429 N.W.2d 558 (Iowa 1988) the Iowa Supreme Court held that an employer's discharge of an employee merely for pursuing the statutory right to compensation for work related injuries was against public policy and would support a claim for tortious interference with a contractual relation.

There have been several cases involving permutations on the principle stated in *Springer*:

> *Below v. Skarr*, 569 N.W.2d 510 (Iowa 1997) (employer's harassment of employee, including a threat to terminate employee for exercising workers' compensation rights, was

not actionable; termination must actually occur, threatened termination is not sufficient);

Yockey v. State, 540 N.W.2d 418 (Iowa 1995) (no retaliatory discharge if discharge was due to reasons other than work comp claim);

Sanford v. Meadow Gold Dairies, 534 N.W.2d 410 (Iowa 1995);

Clarey v. K-Products, Inc., 514 N.W.2d 900 (Iowa 1994);

Smith v. Smithway Motor Xpress, Inc., 464 N.W.2d 682 (Iowa 1990) (viable retaliatory discharge claim even if there was no interference with receipt of work comp benefits);

Weinzetl v. Ruan Single Source Transp. Co., 587 N.W.2d 809 (Iowa App. 1998) (termination due to absences was not actionable even where absenteeism was due to work related injuries); and,

Graves v. O'Hara, 576 N.W.2d 625 (Iowa App. 1998) (retaliation must only be determining factor in discharge, not only factor).

If you represent an injured worker who may have an employment law issue, and if you are not well-versed in employment law, you should reach out to the listserve to find out to whom you can refer your client for the employment law matter.

D. CO-WORKER GROSS NEGLIGENCE CLAIMS

Iowa Code section 85.20(2) provides that workers' compensation is the exclusive remedy for an injured worker against co-workers except where the injury is caused by "gross negligence amounting to such lack of care as to amount to wanton neglect for the safety of another." In other words, an injured worker can sue a co-worker if the injured worker can prove that co-worker was grossly negligent. The injured worker still cannot sue the employer. In *Hernandez v. Midwest Gas Co.*, 523 N.W.2d 300 (Iowa App. 1994) the Iowa Court of Appeals held that in order to establish a gross negligence case, the plaintiff has to show that the defendant knew that injury to the plaintiff was probable, not just possible.

E. OTHER AREAS

Other potential claims not excluded by the "exclusive remedy" provisions of Iowa Code section 85.20 include or which may come up and need to be looked at include, but are not limited to: unemployment claims; disability discrimination under the ADA; civil rights claims; bad faith claims against the work comp insurance carrier; and failure to insure under Iowa Code section 87.21.

XIII. PARTICULAR RECURRING ISSUES

Because of the nature of the practice, and the statutory scheme that is the workers' compensation law, there are issues that all parties involved in the system will confront on a regular basis:

- Continued employment or job security for the injured worker; trying to protect the

injured workers' job if he or she is fortunate enough to still be working.

- Should the injured worker who is not working be looking for work, and where does he or she go to find it.
- Medical care disputes with the company doctor, and explaining to the injured worker why he or she can't just go to their own doctor.
- Conflicts with medical and vocational consultants hired by the insurance carrier.
- Conflicts between private health insurance companies and the workers' compensation carrier as to who is paying the bills, and then trying to figure out who has paid what bills and the rights of subrogation that flow from that once the case is settled or tried.
- Explaining to the injured worker that fault doesn't matter.
- Getting benefits started and keeping them going, which becomes critically important for the injured worker who is off work and, therefore, has no income to feed his or her family.
- Dealing with medical providers who want to be paid, and the subrogation claims of insurance companies who have paid.
- Trying to figure out who has paid what on which medical expense, and what is outstanding, so the client knows where the money will go if his or her case is settled.
- Suing co-workers, but not the employer.
- Late or missing benefit checks.
- Improperly calculated weekly rates of compensation.
- Unpaid medical mileage benefits.
- The interplay between Social Security Disability, Medicare and Workers' Compensation Benefits.