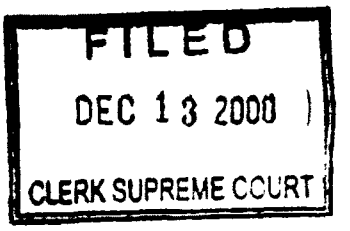
IN THE COURT OF APPEALS OF IOWA

No. 0-421 / 99-1531
Filed December 13, 2000



WILLIAM DANKER, JOHN DANKER, and DAVID DANKER, Individually and d/b/a DANKER FARMS,
Petitioners-Appellants/Cross-Appellees,

vs.

BRIAN WILIMEK,
Respondent-Appellee/Cross-Appellant.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

Employers appeal, and employee cross-appeals, from a district court ruling on judicial review affirming the industrial commissioner's award of workers' compensation benefits to the employee. **AFFIRMED.**

John B. Grier of Cartwright, Druker & Ryden, Marshalltown, for appellants.

R. Eugene Knopf of Walker, Knopf & Billingsley, Newton, for appellee.

Heard by Zimmer, P.J., and Hecht and Vaitheswaran, JJ.

ZIMMER, P.J.

The employer appeals, and the employee cross-appeals, from a district court ruling on judicial review affirming the industrial commissioner's award of workers' compensation benefits to the employee. The employer, Danker Farms, argues the industrial commissioner erred by failing to apply the agricultural exemption in this case and by incorrectly calculating the employee's weekly rate of compensation. In his cross-appeal, the employee, Brian Wilimek, contends: (1) the industrial commissioner should have awarded industrial disability benefits instead of a scheduled injury award; (2) interest should accrue on certain unpaid medical expenses; (3) the industrial commissioner erred by denying him recovery for the expenses of his substance abuse treatment; and (4) the deputy industrial commissioner abused his discretion in excluding an additional doctor's report as a sanction for Brian's failure to comply with discovery rules and orders. We affirm.

Brian Wilimek was injured on September 17, 1989, while working for Danker Farms, a family farming partnership in Traer composed of William Danker and his two sons, John and David. The partnership was created and continued to operate as a farm partnership which plants, cultivates and harvests seed corn, field corn, and soybeans. Outside the family farm partnership, David Danker owned two semi-tractor-trailers and operated a contract trucking business as a sole proprietor. One semi was used by David for the commercial hauling business conducted during the off-season. The other was designed exclusively for hauling seed corn. David had a contract with Ciba-Geigy, a seed corn

processing facility, to haul corn with this specially designed semi. While the contract permitted David to also haul Danker Farms seed corn after its harvest, the Ciba-Geigy contract required David to haul corn primarily from other producers as directed by Ciba-Geigy and transport bagged seed corn during winter months.

Brian began working for David's commercial hauling business on August 28, 1989. David and Brian agreed that Brian would take one of the semi tractors, rent a trailer, and haul asphalt to Sioux City. Brian would get twenty percent of the net as his pay. This particular job took Brian seven days. As a favor to David, the farm partnership paid Brian for all of his trucking work, but it did not receive any of the proceeds, since the Sioux City job was part of David's side business.

It was David's practice to put his commercial hauling business on hold during the fall harvest season. Normally, the three men who formed the farm partnership conducted the harvest. William ran the corn picker and John ran the wagons from the picker to the semi-tractor-trailer operated by David, who hauled the corn for processing. However, in 1989, William was unable to participate in the harvest because his wife was terminally ill. Brian became the third person in the harvest operation that year. Once Brian finished the asphalt hauling to Sioux City, he returned to Traer to drive the seed corn semi, so that David would be available to perform the harvesting duties his father normally assumed.

The seed corn harvest begins around Labor Day and lasts four to six weeks. Brian hauled seed corn on September 11, 12, 13, 14, 15 and 17. No

work was available on September 16. On September 17, he was hauling other farmers' seed corn to Ciba-Geigy for David Danker. During the unloading process, Brian's left arm was nearly severed after it became entangled in a moving conveyor belt. The arm has been re-attached but is much weaker and less flexible than before the injury.

Danker Farms did not carry workers' compensation insurance. As a result, in January of 1991, Brian commenced a suit against Danker Farms and the individual partners. On September 12, 1991, Brian also filed a workers' compensation claim against Danker Farms. On December 3, 1992, a deputy industrial commissioner stayed the workers' compensation proceeding in light of the ongoing district court suit. However, following extensive proceedings in district court, the lawsuit was stayed on May 13, 1993, pending the outcome of the administrative proceeding. On December 9, 1994, a deputy industrial commissioner filed a decision, awarding Brian workers' compensation benefits for the injury to his arm. On November 29, 1995, the industrial commissioner filed an appeal decision affirming the deputy. Danker Farms and Wilimek petitioned the district court for judicial review. On August 2, 1996, the district court concluded the commissioner should have dismissed the workers' compensation action based on an election of remedies issue. That decision was appealed and in 1998 the Iowa Supreme Court reversed and remanded for a ruling by the district court on the remaining issues that had been presented for judicial review. *See Danker v. Wilimek,* 577 N.W.2d 634 (Iowa 1998). On remand, the district court concluded the industrial commissioner correctly

determined the agricultural exemption contained in Iowa Code section 85.1(3) did not apply, Wilimek's injury was a scheduled one, substance abuse treatment expenses should be denied, and a second doctor's report was inadmissible.

The Dankers and Danker Farms now appeal. They assert the agricultural exemption contained in Iowa Code section 85.1(3) (1991) applies in this case. They also claim the industrial commissioner incorrectly calculated Brian's weekly rate of compensation. Brian cross-appeals and contends: (1) the industrial commissioner should have awarded industrial disability benefits instead of a scheduled injury award; (2) interest should accrue on certain unpaid medical expenses; (3) the industrial commissioner erred by denying him recovery for the expenses of his alcohol abuse treatment; and (4) the deputy industrial commissioner abused his discretion in excluding a certain doctor's report as a sanction for failing to comply with discovery rules and orders.

I. Scope of Review. We review a district court's ruling on judicial review of a workers' compensation case for correction of errors of law. *Blanchard v. Belle Plaine/Vinton Motor Supply Co.*, 596 N.W.2d 904, 906 (Iowa App. 1999) (citation omitted). In determining whether the law has been correctly applied, we give weight to the industrial commissioner's interpretation of the relevant statutory provisions, but are not bound by it. *Id.* (citation omitted). We are bound by the commissioner's factual findings if they are supported by substantial evidence in the record. *Id.* at 907-08. In reviewing the industrial commissioner's findings of fact, the question is not whether the evidence might support a different finding, but whether it supports the findings actually made. *St. Luke's Hosp. v.*

Gray, 604 N.W.2d 646, 649 (Iowa 2000) (citation omitted). The industrial commissioner weighs the evidence, and we should broadly and liberally apply those findings in order to uphold, rather than defeat, the industrial commissioner's decision. *Id.* (citation omitted).

II. The Dankers' Appeal. The Dankers raise two issues on appeal. First, they contend the agricultural exemption, contained in section 85.1(3), applies because the sole basis of Wilimek's employment was an agricultural enterprise—to haul seed corn for the 1989 fall harvest. Second, the Dankers argue Wilimek was a seasonal employee and, therefore, the commissioner erred in not calculating his weekly benefits accordingly.

A. Applicability of the Agricultural Exemption. The industrial commissioner concluded that when Brian was injured, he was engaged in David's commercial trucking business, only incidentally connected to Danker Farms' agricultural enterprise by David's ability to haul the Dankers' corn under his contract with Ciba-Geigy. On September 17, 1989, the day Brian was injured, the commissioner concluded he was not engaged in agriculture but rather in hauling other farmers' seed corn under David's trucking contract with Ciba-Geigy. Therefore, the commissioner determined the agricultural exclusion did not apply. The Dankers claim the commissioner erred in applying the legal standard to the facts of this case by failing to consider the reason why Brian was hired--to help with the 1989 fall harvest, a clearly agricultural pursuit. We point out the Dankers do not dispute the commissioner's factual findings. Indeed, they concede in their brief that "the critical facts are uncontroverted." They challenge

only the legal conclusion reached on those findings.

Section 85.1 sets forth the persons to whom Iowa's workers' compensation law does not apply. Iowa Code section 85.1(3) provides:

> . . . [T]his chapter does not apply to:
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> . . .
>
> 3. Persons engaged in agriculture, insofar as injuries incurred by employees while engaged in agricultural pursuits or any operations immediately connected therewith whether on or off the premises of the employer, except:
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> a. This chapter applies to persons not specifically exempted by paragraph "*b*" of this subsection if at the time of injury the person is employed by an employer whose total cash payroll to one or more persons other than those exempted by paragraph "*b*" of this subsection amounted to two thousand five hundred dollars or more during the preceding calendar year.

Paragraph "a" does not apply because the record is clear that Danker Farms' payroll did not exceed $2500 per year. Paragraph "b" exempts employers' spouses and relatives and is also not applicable. *See* Iowa Code § 85.1(3)(b). Therefore, the issue before the commissioner was whether Brian was engaged in agriculture or any operations immediately connected therewith.

For the exclusion to apply, two circumstances must exist: (1) the person is generally engaged in agriculture and (2) at the time of injury, the person is engaged in an agricultural pursuit or a closely connected operation. *Sheahan v. Plagge,* 255 Iowa 182, 184, 121 N.W.2d 120, 121 (1963); *Crouse v. Lloyd's Turkey Ranch,* 251 Iowa 156, 159, 100 N.W.2d 115, 117 (1959) (citation omitted). In *Sheahan,* the employer had two enterprises, a sand and gravel pit operation and a farm. The claimant in that case was a regular employee of the gravel pit, but on one particular occasion he was hurt when he did some work after hours helping irrigate the employer's farm. The Iowa Supreme Court found

that although the employee was not generally engaged in an agricultural pursuit in the gravel pit, at the time of injury the claimant *was* engaged in an agricultural pursuit—helping with irrigation of the farmland. *Sheahan,* 255 Iowa at 188, 121 N.W.2d at 123-24. Similarly, in *Crouse,* the employer raised turkeys on a farm and had a turkey processing operation on the same land. The claimant in that case was hired solely to work in the processing plant, a non-agricultural pursuit, and was injured in that pursuit. The Iowa Supreme Court found that while the employer was engaged in two occupations, the claimant was only hired to be engaged in one—the slaughter of the turkeys—and she was conducting that very activity when she was injured. *Crouse,* 251 Iowa at 162, 100 N.W.2d at 119. Therefore, the court concluded the exemption did not apply and she was entitled to workers' compensation benefits. *See Crouse,* 251 Iowa 156, 100 N.W.2d 115.

The Dankers claim the commissioner only applied one prong of the two-part standard. We conclude the commissioner did not err in applying this standard. The commissioner examined the purpose for which Wilimek was hired and concluded it was a nonagricultural one:

> In August 1989 David hired claimant to haul asphalt; in September 1989 Danker Farms hired claimant to haul corn from nonpartnership farm fields to a seed corn processing facility . . . . At the time of the injury claimant was involved in the hauling of corn from nonpartnership fields to the seed processing facility. It is that operation which must be evaluated to determine whether claimant was engaged in an agriculture pursuit or an immediately connected operation.

This quote reveals the commissioner also specifically found that at the time of injury, Wilimek was involved in hauling corn from nonpartnership fields pursuant to David's commercial hauling contract with Ciba-Geigy—the very purpose for

which he had been hired.

Furthermore, this conclusion is supported by substantial evidence in the record. David Danker had a separate contract with Ciba-Geigy to haul other producers' seed corn both during harvest time and in winter. The proceeds of the corn hauling went to David Danker's commercial trucking business. Brian Wilimek was hired to fulfill David's contractual obligation to Ciba-Geigy while David took up his father's role in the harvesting process. Because David's contract also permitted him to haul Danker Farms' seed corn, the partnership received an incidental benefit. However, that does not change the nature of the work Brian was hired to do—commercial hauling.

Danker Farms asserts Brian's work is converted to an agricultural pursuit by the fact that the farm partnership, not David, actually paid Brian's wages and the partnership was solely engaged in agriculture. We disagree. In *Crouse,* the supreme court pointed out that the exemption's phrase, "persons engaged in agriculture," does not apply only to the employer. *Crouse,* 251 Iowa at 160, 100 N.W.2d at 118. The fact that the employer was engaged in agriculture was not determinative--the law examines the pursuit in which the *employee* is engaged. *See id.* Here, Brian was hired by David Danker to work in a nonagricultural pursuit, the commercial trucking business, but was paid by Danker Farms which engages solely in agriculture. However, like the employee in *Crouse,* at the time of his injury, Brian was engaged in the very purpose for which he had been hired, which in this case was commercial trucking. The commissioner correctly concluded Brian was not engaged in agriculture.

While it is possible on this record that the commissioner could have reached the opposite conclusion, our standard of review requires us to affirm if the record contains substantial evidence to support the commissioner's findings. We have concluded there is such substantial evidence. We find no errors of law. Accordingly, we affirm the award of benefits to Brian Wilimek.

B. Calculation of Weekly Benefit Amount. In total, Brian earned $1232 in wages from Danker Farms in 1989: $185 for farm work, $521.52 for hauling asphalt, and $525.48 for hauling seed corn. The commissioner determined that only the wages for hauling seed corn could be used to calculate Wilimek's weekly benefit amount. The commissioner then determined that in September of 1989, Brian hauled seed corn six out of seven days in one week: September 11, 12, 13, 14, 15 and 17. Under the 1989 rate table, the weekly rate of compensation for a six-day week at a gross weekly wage of $525.48 was $301.62.

The Dankers argue the commissioner incorrectly calculated Brian's weekly rate of compensation. They contend Brian's employment hauling seed corn during the harvest was seasonal and thus his compensation should have been computed under Iowa Code section 85.36(9), instead of under section 85.36(7). Brian does not challenge this argument but contends his weekly benefits should have been computed according to section 85.34(1). He also challenges the commissioner's use of a six-day work week in the calculation, claiming it should have been a seven-day work week.

We reject the arguments of both parties. Section 85.36(9)[1] provided:

> 9. In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the weekly earnings shall be taken to be one-fiftieth of the total earnings which the employee has earned from all occupations during the twelve calendar months immediately preceding the injury.

The commissioner concluded that trucking was not seasonal, but an occupation that could be carried on throughout the year. This finding is supported by substantial evidence. Seed corn hauling was not necessarily a seasonal job. David's contract with Ciba-Geigy also required him to haul bagged seed corn in the winter. Furthermore, David's commercial trucking business went on the rest of the year after the harvest. The commissioner correctly calculated weekly benefits under section 85.36(7).

Brian was not paid on a weekly basis such that section 85.36(1) applies, as he contends on appeal. Brian was paid a percentage of what he hauled, akin to pay on an output basis under section 85.36(6). However, section 85.36(6) uses a figure based on what the employee earned in the thirteen weeks of work preceding injury. Brian was employed less than thirteen weeks immediately preceding his injury, so the commissioner correctly moved on to section 85.36(7), which governs that situation. We also find no merit to Brian's contention that he should have been credited with a seven-day work week. As the commissioner noted, this is simply too speculative. He actually worked a six-day week and this is the best evidence on which to base the calculation. We affirm the commissioner's calculation of Brian's weekly rate of compensation.

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[1] This section was deleted from the code in 1995 but governs this claim which arose in September of 1989.

III. Wilimek's Cross-appeal. Brian contends: (1) the industrial commissioner should have awarded industrial disability benefits, instead of a scheduled injury award; (2) interest should accrue on certain unpaid medical expenses; (3) the industrial commissioner erred by denying him recovery for the expenses of his alcohol abuse treatment; and (4) the deputy industrial commissioner abused his discretion in excluding a certain doctor's report as a sanction for Brian's failure to comply with discovery rules and orders.

A. Scheduled vs. Unscheduled Injury. Iowa's workers' compensation law divides permanent partial disability into either a scheduled or unscheduled loss. *See* Iowa Code § 85.34(2); *Gray,* 604 N.W.2d at 653. Subparagraphs (a)-(t) of section 85.34(2) specify the scheduled injuries, such as loss of a hand, and set forth the compensation payable for such injuries. Scheduled disability is limited to the loss of the physiological capacity of the body part, *Mortimer v. Fruehauf Corp.,* 502 N.W.2d 12, 14 (Iowa 1993), and is not based on the claimant's loss of earning capacity. *Sherman v. Pella Corp.,* 576 N.W.2d 312, 320 (Iowa 1998). Unscheduled losses, on the other hand, are compensated by determining the employee's industrial disability. *See* Iowa Code § 85.34(2)(u); *Mortimer,* 502 N.W.2d at 15. Industrial disability measures an injured worker's lost earning capacity. *Myers v. F.C.A. Servs., Inc.,* 592 N.W.2d 354, 356 (Iowa 1999). Impairment of body function is just one factor in assessing industrial disability. *Mortimer,* 502 N.W.2d at 14.

Brian was compensated for a scheduled loss—the loss of a percentage of functioning of his left arm. *See* Iowa Code § 85.34(2)(m). However, Brian

claims, for various reasons, that his injury qualifies as impairment to the body as a whole and thus requires an award of industrial disability benefits. He contends his weakened left arm impairs his earning capacity. He has been unable to find employment in the area of his education and experience—operation of heavy equipment. He has had some seasonal farm work, but cannot perform some operations as quickly as other laborers. Surgery was also performed on Brian where a lattisimus dorsi muscle from his upper back was rotated and attached to his left arm to form a bicep and a tendon from his leg was placed in the arm to connect that muscle to the arm. He claims he suffers back and leg trouble as a result of this operation.

In determining whether an impairment is scheduled or unscheduled, we look beyond the situs of the original injury and consider the impact of the injury on all parts of the body. *Prewitt v. Firestone Tire & Rubber Co.,* 564 N.W.2d 852, 854 (Iowa App. 1997) (citation omitted). Substantial evidence supports a finding that Wilimek suffered a scheduled injury. In fact, to state that Brian has back and leg problems is a misrepresentation of the record. Brian himself testified he did not lose any range of motion in his shoulder. No examining physician gave a permanent disability rating attributable to loss of function to the body as a whole. No physicians gave testimony or evidence regarding back problems and Brian was not treated for any such problems. No back or leg maladies are mentioned in the physicians' assessments of Brian's impairment rating. Dr. Woods, who performed the muscle transfer surgery, gave Brian's impairment rating nearly two years after the surgery occurred. There is no mention of any back problems at

that time. There is, in fact, no evidence of any kind that Brian has significant back or leg problems or any functional impairments related thereto.

In support of the assertion that Brian has back problems, his attorney cites to page 95 of the appendix, part of Brian's direct testimony. The relevant portion of the record at pages 94-95 does not support such an assertion:

> Q. Do you have problems if your arm hangs down? A. Yeah. If for any significant amount of time—I've been to several like shows. I went recently to the Two Cylinder Club show in Grundy Center and was just walking around and looking at the tractors, and it began to throb and everything, and I'd have to hold my hand up over my head to, you know, -- for it to stop. It's most comfortable usually when it's something like in this position (indication). Otherwise you know, it's just like when I pull my arm up, it's always pulling up in here and across because of the fact that that muscle is took out of the back.

Brian simply stated there was some pulling in his back. He does not testify to ongoing pain anywhere but in his arm and certainly does not claim any back-related functional disability.

It is true that due to the loss of strength in his left arm, Brian will not be able to return to his former line of work. However, doctors did not place work restrictions on Brian, other than to recognize the limited strength and flexibility of his left arm. Approximately one year after his surgery to move the back muscle to the arm, Dr. Woods "advised him that he could return to work without specific restrictions, other than related to his limitation of strength and elbow flexion." The only limitation on his receiving retraining in other areas is his current inability to pay outstanding student loans incurred before his injury.

In support of his position, Brian also points out that Dr. Woods gave an impairment rating of 28.3 percent to the body as a whole. Dr. Woods first stated

that Brian had a permanent impairment of 47.5 percent of function to the left arm, which *translated* as 28.3 percent impairment of the whole body. In his testimony, Dr. Woods clarified that he derived the 28.3 percent merely by extrapolating from the 47.5 percent impairment of the upper limb—that number translates into the 28.3 percent deficit of the whole person functioning. He does not state that he assessed other impairments to Brian's back or legs to arrive at 28.3 percent industrial disability, as Brian contends. Brian's contention is without merit. The commissioner correctly concluded Brian's injury was a scheduled one.

B. Interest on Unpaid Medical Expenses. Brian was injured in 1989 and his workers' compensation claim was filed in 1991. He contends that he should receive interest that has accrued on unpaid medical bills since that time.

This contention has no merit. There is no statutory authority to support an award of interest or penalties for late payment of medical expenses allowed under Iowa Code section 85.27. *See Klein v. Furnas Elec. Co.*, 384 N.W.2d 370, 375 (Iowa 1986). We find no basis for distinguishing *Klein* from this case. The commissioner's denial of interest on unpaid medical bills is affirmed.

Brian also claims he was not awarded interest on his weekly benefits. However, the commissioner's decision clearly states that "[i]nterest is payable on weekly amounts to which claimant was entitled" beginning eleven days after Brian's injury. The district court did not alter this award. We cannot discern any reason for Brian's argument in this regard.

C. Expenses for Alcohol Abuse Treatment. Brian asserts that he became depressed after his injury and began to abuse alcohol. He received

substance abuse treatment at a cost of $6,095.65. He claims an entitlement to section 85.27 medical expense benefits for the cost of this treatment.

The commissioner concluded Brian failed to prove a causal connection between these expenses and his work of 1989. The burden rested upon Brian as the claimant to show by a preponderance of the evidence that this injury arose out of and in the course of his employment. *Dunlavey v. Economy Fire and Cas. Co.*, 526 N.W.2d 845, 849 (Iowa 1995). A possibility is insufficient; a probability is necessary. *Id.* (citation omitted). Furthermore, whether an injury has a direct causal connection with the employment or arose independently thereof is essentially within the domain of expert testimony. *Id.* at 853.

The record on this issue is limited. There is some indication Brian's alcohol abuse may have been related to his accident. At some point after the accident, Brian's treating physician, Dr. Hales, encouraged Brian to get treatment for an alcohol problem:

> Q. And I think the question was asked about psychological problems with Brian or did you ever visit with him or he with you about post trauma [sic] syndrome of any type? A. I did get Brian involved in a treatment program for some difficulties he was having with alcohol and he went through a treatment program. I attended his graduation for that . . . [H]e did talk about during the treatment phase that because of the injury, his depression and the boredom that he was using alcohol and that was a concern to me as his treating physician and I encouraged him strongly to get treatment for that.
>
> Q. But you didn't counsel him on any post trauma syndrome or anything like that; that's not your-- A. That's not my area of expertise, no. . . .

However, Brian's attorney never asked and Dr. Hales never opined during testimony that the alcohol abuse was caused or aggravated by the accident.

Also, Brian's own testimony indicates his alcohol abuse may have pre-dated his September, 1989 injury. In the case of a conflict in the evidence, we are not free to interfere with the commissioner's findings. *Id.* at 849. Since the claimant bears the burden of proof, we assess any failure of proof against his position. We affirm the commissioner's conclusion on this issue.

D. Admissibility of Dr. Miller's Report. Dr. Ray Miller evaluated Brian seven days before the December 5, 1994 evidentiary hearing in front of the deputy industrial commissioner. Dr. Miller gave Brian a higher impairment rating to his left arm (68 percent) than Dr. Woods had. Apparently, this rating took into account the arthritis which had developed in Brian's injured arm since Dr. Woods' rating of 47.5 percent in June of 1992. Danker Farms did not receive notice of this report until six days before the hearing. The deputy industrial commissioner excluded the report from evidence as a sanction for Brian's violation of the time limits set in the hearing assignment order.

The commissioner affirmed the exclusion of the report, concluding prejudice would have resulted. The commissioner pointed out that Dr. Miller's report presented a substantial change from previous evaluations. Because the report was generated and served so near the time of hearing, the commissioner reasoned that Danker Farms had no opportunity to effectively respond. We agree with the commissioner. The deputy's hearing assignment order clearly requires the claimant's case preparation, including discovery and responses, to be completed sixty days before the hearing date. It goes on to state "[w]hen admissibility of evidence is disputed, the completion date for case preparation will

be enforced under a prejudice standard." Exclusion is not to be imposed lightly and is justified only when prejudice would result. *Stephenson v. Furnas Elec. Co.*, 522 N.W.2d 828, 831 (Iowa 1994). The commissioner's finding that prejudice would have resulted is supported by substantial evidence. We affirm on this issue.

IV. Summary. The commissioner correctly concluded the agricultural exemption did not apply in this case and properly calculated Brian's weekly benefits as a non-seasonal employee. As for Brian's cross-appeal, substantial evidence supports the commissioner's finding that Brian's injury was a scheduled loss, not an unscheduled one. There is no statutory authority to award Brian interest on unpaid medical bills. Brian failed to provide sufficient evidence of a causal link between his alcohol abuse treatment and his accident. He was, therefore, correctly denied an award for the cost of this treatment. Finally, the deputy industrial commissioner did not err in excluding Dr. Miller's report as a sanction for Brian's violation of discovery rules and orders. We affirm the commissioner's decision in its entirety.

AFFIRMED.