

CHAPTER 8
SUBSTANTIVE AND INTERPRETIVE RULES

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 8]

876—8.1(85) Transportation expense. Transportation expense as provided in Iowa Code sections 85.27 and 85.39 shall include but not be limited to the following:

1. The cost of public transportation if tendered by the employer or insurance carrier.
2. All mileage incident to the use of a private auto. The per-mile rate for use of a private auto from August 1, 2005, through June 30, 2006, shall be 40.5 cents. For annual periods beginning July 1, 2006, and thereafter, the per-mile rate shall be the rate allowed by the Internal Revenue Service for the business standard mileage rate in effect on July 1 of each year.
3. Meals and lodging if reasonably incident to the examination.
4. Taxi fares or other forms of local transportation if incident to the use of public transportation.
5. Ambulance service or other special means of transportation if deemed necessary by competent medical evidence or by agreement of the parties.

Transportation expense in the form of reimbursement for mileage which is incurred in the course of treatment or an examination, except under Iowa Code section 85.39, shall be payable at such time as 50 miles or more have accumulated or upon completion of medical care, whichever occurs first. Reimbursement for mileage incurred under Iowa Code section 85.39 shall be paid within a reasonable time after the examination.

The workers' compensation commissioner or a deputy commissioner may order transportation expense to be paid in advance of an examination or treatment. The parties may agree to the advance payment of transportation expense.

This rule is intended to implement Iowa Code sections 85.27 and 85.39.

876—8.2(85) Overtime. The word "overtime" as used in Iowa Code section 85.61 means amounts due in excess of the straight time rate for overtime hours worked. Such excess amounts shall not be considered in determining gross weekly wages within Iowa Code section 85.36. Overtime hours at the straight time rate are included in determining gross weekly earnings.

This rule is intended to implement Iowa Code sections 85.36 and 85.61.

876—8.3 Rescinded, effective July 1, 1982.

876—8.4(85) Salary in lieu of compensation. The excess payment made by an employer in lieu of compensation which exceeds the applicable weekly compensation rate shall not be construed as advance payment with respect to either future temporary disability, healing period, permanent partial disability, permanent total disability or death.

This rule is intended to implement Iowa Code sections 85.31, 85.34, 85.36, 85.37 and 85.61.

876—8.5(85) Appliances. Appliances are defined as hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes.

Appliances which are for the correction of a condition resulting from an injury or appliances which are damaged or made unusable as a result of an injury or avoidance of an injury are compensable under Iowa Code section 85.27.

876—8.6(85,85A) Calendar days—decimal equivalent. Weekly compensation benefits payable under Iowa Code chapters 85 and 85A are based upon a seven-day calendar week. Each day of weekly compensation benefits due may be paid by multiplying the employee's weekly compensation benefit rate by the decimal equivalents of the number of days as follows:

| | | | | |
|--------|---|------|---|-------------|
| 1 day | = | .143 | × | weekly rate |
| 2 days | = | .286 | × | weekly rate |
| 3 days | = | .429 | × | weekly rate |
| 4 days | = | .571 | × | weekly rate |
| 5 days | = | .714 | × | weekly rate |
| 6 days | = | .857 | × | weekly rate |

This rule is intended to implement Iowa Code sections 85.31, 85.33 and 85.34.

876—8.7(86) Short paper. All filings before the workers' compensation commissioner shall be on white paper measuring 8½ inches by 11 inches.

This rule is intended to implement Iowa Code section 86.18.

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, 2018, through June 30, 2019, are the tables in effect on July 1, 2018, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A [2018].)
2. Iowa Withholding Tax Guide. (Iowa Department of Revenue Iowa Withholding Tax Rate Tables [Effective April 1, 2006].)
3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [2018].)

This rule is intended to implement Iowa Code section 85.61(6).

[ARC 7947B, IAB 7/15/09, effective 7/1/09; ARC 8943B, IAB 7/28/10, effective 7/1/10; ARC 9586B, IAB 6/29/11, effective 7/1/11; ARC 0222C, IAB 7/25/12, effective 7/1/12; ARC 0835C, IAB 7/10/13, effective 6/30/13; ARC 1517C, IAB 7/9/14, effective 7/1/14; ARC 2611C, IAB 7/6/16, effective 7/1/16; ARC 3044C, IAB 4/26/17, effective 5/31/17; ARC 3884C, IAB 7/4/18, effective 8/8/18]

876—8.9(85,86) Exchange of records. Whether or not a contested case has been commenced, upon the written request of an employee or the representative of an employee who has alleged an injury arising out of and in the course of employment, an employer or insurance carrier shall provide the claimant a copy of all records and reports in its possession generated by a medical provider.

Whether or not a contested case has been commenced, upon the written request of the employer or insurance carrier against which an employee has alleged an injury arising out of and in the course of employment, the employee shall provide the employer or insurance carrier with a patient's waiver. See rules 876—3.1(17A) and 876—4.6(85,86,17A) for the waiver form used in contested cases. Claimant shall cooperate with the employer and insurance carrier to provide patients' waivers in other forms and to update patients' waivers where requested by a medical practitioner or institution.

A medical provider or its agent shall furnish an employer or insurance carrier copies of the initial as well as final clinical assessment without cost when the assessments are requested as supporting documentation to determine liability or for payment of a medical provider's bill for medical services. When requested, a medical provider or its agent shall furnish a legible duplicate of additional records or reports. Except as otherwise provided in this rule, the amount to be paid for furnishing duplicates of records or reports shall be the actual expense to prepare duplicates not to exceed: \$20 for 1 to 20 pages; \$20 plus \$1 per page for 21 to 30 pages; \$30 plus \$.50 per page for 31 to 100 pages; \$65 plus \$.25 per page for 101 to 200 pages; \$90 plus \$.10 per page for more than 200 pages, and the actual expense of postage. No other expenses shall be allowed.

EXAMPLE 1. For 7 pages of records the amount to be paid for furnishing duplicates shall not exceed \$20.

EXAMPLE 2. For 28 pages of records the amount to be paid for furnishing duplicates shall not exceed \$28 (\$20 plus (8 times \$1)).

EXAMPLE 3. For 41 pages of records the amount to be paid for furnishing duplicates shall not exceed \$35.50 (\$30 plus (11 times \$.50)).

EXAMPLE 4. For 127 pages of records the amount to be paid for furnishing duplicates shall not exceed \$71.75 (\$65 plus (27 times \$.25)).

EXAMPLE 5. For 210 pages of records the amount to be paid for furnishing duplicates shall not exceed \$91 (\$90 plus (10 times \$.10)).

This rule is intended to implement Iowa Code sections 85.27, 85.31, 85.33 to 85.37, 85.39, 85.61, 86.8, 86.10, 86.18 and 86.39.

876—8.10(85B) Apportionment of age-related loss for occupational hearing loss claims.

8.10(1) Effective date. This rule is effective for claims for occupational hearing loss filed on or after July 1, 1998.

8.10(2) Purpose. The purposes of this rule are to adopt tables and the method for calculating age-related hearing loss and to adopt a worksheet for apportionment of age-related hearing loss for occupational hearing loss claims.

8.10(3) Table. In 1972 the National Institute for Occupational Safety and Health (NIOSH) published the Criteria for a Recommended Standard: Occupational Exposure to Noise (NIOSH Publication No.73-11001). Table B-1, page I-16, provides the Age Corrections Values to be Used for Age Correction of Initial Baseline Audiograms for Males and Table B-2, page I-17, provides the Age Corrections Values to be Used for Age Correction of Initial Baseline Audiograms for Females. These NIOSH tables are used to calculate the correction value for age for males and females for 500, 1000, 2000 and 3000 hertz.

For example, the age correction for a male 21 years of age is 10 decibels at 500 hertz, 5 decibels at 1000 hertz, 3 decibels at 2000 hertz and 4 decibels at 3000 hertz. The correction for age is 5.50 decibels (the sum of 10+5+3+4 divided by 4).

The following table is to be used to determine an employee's age-related change in hearing level during the period of employment. To determine the age-related change in hearing level in decibels during the period of employment, subtract the value shown in the table for the employee's age at the beginning of employment from the value shown in the table for the employee's age on the date of injury.

NOTE: This table should not be used to compute standard threshold shift as required by rules of the Occupational Safety and Health Administration or Iowa occupational safety and health administration.

| <u>Age in Years</u> | <u>Correction in dB</u> | |
|---------------------|-------------------------|----------------|
| | <u>Males</u> | <u>Females</u> |
| 20 or younger | 5.50 | 7.25 |
| 21 | 5.50 | 7.75 |
| 22 | 5.50 | 7.75 |
| 23 | 5.50 | 8.00 |
| 24 | 5.75 | 8.00 |
| 25 | 6.00 | 8.25 |
| 26 | 6.25 | 8.50 |
| 27 | 6.50 | 8.75 |
| 28 | 6.75 | 8.75 |
| 29 | 6.75 | 8.75 |
| 30 | 6.75 | 9.00 |
| 31 | 7.25 | 9.25 |
| 32 | 7.50 | 9.50 |
| 33 | 7.50 | 9.75 |
| 34 | 7.75 | 9.75 |
| 35 | 8.00 | 10.00 |
| 36 | 8.25 | 10.25 |
| 37 | 8.75 | 10.25 |

| <u>Age in Years</u> | <u>Correction in dB</u> | |
|---------------------|-------------------------|----------------|
| | <u>Males</u> | <u>Females</u> |
| 38 | 8.75 | 10.50 |
| 39 | 9.00 | 11.00 |
| 40 | 9.00 | 11.00 |
| 41 | 9.25 | 11.25 |
| 42 | 10.00 | 11.50 |
| 43 | 10.25 | 11.75 |
| 44 | 10.25 | 12.00 |
| 45 | 10.50 | 12.25 |
| 46 | 10.75 | 12.50 |
| 47 | 11.00 | 12.50 |
| 48 | 11.50 | 13.00 |
| 49 | 12.00 | 13.25 |
| 50 | 12.25 | 13.50 |
| 51 | 12.25 | 13.75 |
| 52 | 12.75 | 13.75 |
| 53 | 13.25 | 14.25 |
| 54 | 13.50 | 14.50 |
| 55 | 14.00 | 15.00 |
| 56 | 14.25 | 15.00 |
| 57 | 14.50 | 15.25 |
| 58 | 15.25 | 15.75 |
| 59 | 15.50 | 16.00 |
| 60 or older | 16.00 | 16.25 |

8.10(4) Apportionment. The apportionment of age-related hearing loss shall be made by reducing the total binaural percentage hearing loss as calculated pursuant to Iowa Code section 85B.9(3) by the same percentage as the decibels of age-related change in hearing level occurring during the period of employment bears to the total decibel hearing level in each ear.

Age-related hearing loss is apportioned using the results of the audiogram determined to be the proper audiogram for measurement of the employee's hearing loss on the date of injury by using the following steps:

1. Separately for each ear, compute the average of the employee's decibel hearing levels at 500, 1000, 2000, and 3000 hertz for that ear.
2. Separately for each ear, compute the percentage loss for each ear.
3. Compute the employee's age-related change in hearing level in decibels during the period of employment using the table in subrule 8.10(3).
4. Separately for each ear, divide the result of step 3 by the result of step 1 to compute the age-correction factor for that ear.
5. Separately for each ear, multiply the total percentage hearing loss in that ear calculated pursuant to Iowa Code section 85B.9 by the age-correction factor for that ear.
6. Separately for each ear, subtract the result obtained in step 5 from the total percentage hearing loss in that ear to obtain the age-corrected hearing loss for that ear.
7. Multiply the age-corrected hearing loss in the better ear as calculated in step 6 by 5 and add the percentage hearing loss in the worse ear.
8. Divide the result obtained in step 7 by 6 to obtain the age-corrected binaural percentage hearing loss.

8.10(5) Worksheet. The following worksheet is used to calculate the percentage of age-corrected binaural hearing loss.

| APPORTIONMENT OF PERCENT HEARING LOSS FOR AGE | | |
|---|---|-----------------------------------|
| Left Ear <u>Hearing Level</u> | Frequency <u>in Hertz</u> | Right Ear <u>Hearing Level</u> |
| 1. _____ | 500 | _____ |
| 2. _____ | 1000 | _____ |
| 3. _____ | 2000 | _____ |
| 4. _____ | 3000 | _____ |
| 5. _____ | total of lines 1 through 4 | _____ |
| divide by 4 | (divide the "total" by 4) | divide by 4 |
| 6. _____ | equals average equals | _____ |
| minus 25 | subtract "low fence" | minus 25 |
| 7. _____ | equals "Excess" | _____ |
| multiply by 1.5 | multiply % factor | multiply by 1.5 |
| 8. _____ | equals % loss each ear | _____ |
| (% loss left ear) | | (% loss right ear) |
| 9. Age on date of injury | _____ | |
| 10. Age at beginning of employment | _____ | |
| 11. _____ | correction for age on date of injury in dB from table minus | |
| 12. _____ | correction for age at beginning of employment in dB from table equals | |
| 13. _____ | age-related change in hearing level during employment in dB | |
| <u>LEFT EAR</u> | | <u>RIGHT EAR</u> |
| Divide age-related change in hearing level from line 13 by average hearing level from line 6 | | |
| To obtain | | |
| 14. _____ | age correction factor | _____ |
| multiply % loss from line 8 by age-correction factor from line 14 | | |
| To obtain | | |
| 15. _____ | deduction for age-correction | _____ |
| subtract line 15 from line 8 | | |
| To obtain | | |
| 16. _____ | age-corrected percent hearing loss | _____ |
| <u>BINAURAL PERCENTAGE LOSS</u> | | |
| 17. _____ | % loss better ear (smaller amount) from line 16, multiplied by 5 plus | |

18. _____ % loss worse ear (larger amount)
from line 16
19. _____ equals
divided
by 6
equals
20. _____ % age-corrected binaural hearing loss

This rule is intended to implement Iowa Code sections 85B.9A and 86.8.

876—8.11(85) Offer of suitable work. The employer shall communicate an offer of temporary work to the employee in writing, including the details of lodging, meals, and transportation. With each offer of temporary work, the employer shall notify the employee in writing that:

1. If the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing;

2. During the period of refusal, the employee will not be compensated with temporary partial, temporary total, or healing period benefits unless the work refused is not suitable; and

3. Failure to communicate the reason for the refusal to the employer in writing precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

This rule is intended to implement Iowa Code section 85.33.

[ARC 3528C, IAB 12/20/17, effective 1/24/18]

[Filed emergency 6/25/76—published 7/12/76, effective 7/1/76]

[Filed 8/3/77, Notice 6/29/77—published 8/24/77, effective 9/28/77]

[Filed 9/26/80, Notice 8/20/80—published 10/15/80, effective 11/19/80]

[Filed emergency 6/18/82—published 7/7/82, effective 7/1/82]

[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]

[Filed emergency 6/22/84—published 7/18/84, effective 7/1/84]

[Filed emergency 5/31/85—published 6/19/85, effective 7/1/85]

[Filed 9/4/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]

[Filed emergency 6/13/86—published 7/2/86, effective 7/1/86]

[Editorially transferred from [500] to [343] IAC Supp. 9/24/86]

[Filed emergency 5/22/87—published 6/17/87, effective 7/1/87]

[Filed emergency 5/31/88—published 6/29/88, effective 7/1/88]

[Filed emergency 5/12/89—published 5/31/89, effective 7/1/89]

[Filed emergency 5/31/90—published 6/27/90, effective 7/1/90]

[Filed emergency 7/1/91—published 7/24/91, effective 7/1/91]

[Filed emergency 6/5/92—published 6/24/92, effective 7/1/92]

[Filed 8/13/92, Notice 6/24/92—published 9/2/92, effective 10/7/92]

[Filed 8/13/92, Notice 7/8/92—published 9/2/92, effective 10/7/92]

[Filed emergency 5/21/93—published 6/9/93, effective 7/1/93]

[Filed emergency 6/3/94—published 6/22/94, effective 7/1/94]

[Filed 1/13/95, Notice 12/7/94—published 2/1/95, effective 3/8/95¹]

[Filed emergency 5/10/95—published 6/7/95, effective 5/17/95]

[Filed emergency 7/7/95—published 8/2/95, effective 7/7/95]

[Filed 4/3/96, Notice 2/14/96—published 4/24/96, effective 7/1/96]

[Filed emergency 6/11/96—published 7/3/96, effective 7/1/96]

[Filed 1/10/97, Notice 12/4/96—published 1/29/97, effective 3/5/97]

[Filed emergency 6/17/97—published 7/16/97, effective 7/1/97]

[Filed 5/1/98, Notice 3/25/98—published 5/20/98, effective 6/24/98]

[Filed emergency 6/23/98—published 7/15/98, effective 7/1/98]

[Filed emergency 6/30/98—published 7/29/98, effective 7/1/98]

[Filed emergency 7/1/98—published 7/29/98, effective 7/1/98]
[Filed 1/5/99, Notice 7/29/98—published 1/27/99, effective 3/3/99]
[Filed emergency 6/25/99—published 7/14/99, effective 7/1/99]
[Filed 5/12/00, Notice 4/5/00—published 5/31/00, effective 7/5/00]
[Filed emergency 6/22/00—published 7/12/00, effective 7/1/00][◇]
[Filed 8/17/00, Notice 7/12/00—published 9/6/00, effective 10/11/00]
[Filed emergency 6/20/01—published 7/11/01, effective 7/1/01]
[Filed 2/15/02, Notice 1/9/02—published 3/6/02, effective 4/10/02]
[Filed emergency 4/12/02—published 5/1/02, effective 7/1/02]
[Filed emergency 6/30/03—published 7/23/03, effective 7/1/03]
[Filed emergency 6/11/04—published 7/7/04, effective 7/1/04]
[Filed emergency 6/27/05—published 7/20/05, effective 7/1/05]
[Filed emergency 7/27/05—published 8/17/05, effective 8/1/05]
[Filed 11/4/05, Notice 9/14/05—published 11/23/05, effective 1/1/06]
[Filed emergency 6/28/06—published 7/19/06, effective 7/1/06]
[Filed emergency 6/15/07—published 7/18/07, effective 7/1/07]
[Filed emergency 6/10/08—published 7/2/08, effective 7/1/08]
[Filed Emergency ARC 7947B, IAB 7/15/09, effective 7/1/09]
[Filed Emergency ARC 8943B, IAB 7/28/10, effective 7/1/10]
[Filed Emergency ARC 9586B, IAB 6/29/11, effective 7/1/11]
[Filed Emergency ARC 0222C, IAB 7/25/12, effective 7/1/12]
[Filed Emergency ARC 0835C, IAB 7/10/13, effective 6/30/13]
[Filed Emergency ARC 1517C, IAB 7/9/14, effective 7/1/14]
[Filed Emergency ARC 2611C, IAB 7/6/16, effective 7/1/16]
[Filed ARC 3044C (Notice ARC 2940C, IAB 2/15/17), IAB 4/26/17, effective 5/31/17]
[Filed ARC 3528C (Notice ARC 3414C, IAB 10/25/17), IAB 12/20/17, effective 1/24/18]
[Filed ARC 3884C (Notice ARC 3775C, IAB 5/9/18), IAB 7/4/18, effective 8/8/18]

[◇] Two or more ARCs

¹ Effective date of 343—8.9(85,86), second unnumbered paragraph, delayed 70 days by the Administrative Rules Review Committee at its meeting held February 13, 1995; delay lifted by this Committee May 9, 1995.