BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

THEODORE MOELLERS, Claimant, vs. JOHN DEERE DUBUQUE WORKS, Self-Insured Employer, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 19006740.01 ARBITRATION DECISION Headnotes: 1108; 1402.30; 2206; 2601; 2701; 3202

STATEMENT OF THE CASE

Claimant, Theodore Moellers, filed a petition in arbitration seeking worker's compensation benefits against John Deere Dubuque Works, self-insured employer, and the Second Injury Fund of Iowa ("Fund"), for an alleged work injury date of August 7, 2019. Claimant also alleges a first qualifying loss, for purposes of his Fund claim, occurred in 2006. The case came before the undersigned for an arbitration hearing on January 30, 2023. Pursuant to an order of the Iowa Workers' Compensation Commissioner, this case proceeded to a live video hearing via Zoom, with all parties and the court reporter appearing remotely. The hearing proceeded without significant difficulties.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted, and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 6, Defendants' Exhibits A through F, and the Fund's Exhibits AA-DD.

Claimant testified on his own behalf. The evidentiary record closed at the conclusion of the evidentiary hearing on January 30, 2023. The parties submitted post-hearing briefs on March 24, 2023, and the case was considered fully submitted on that date.

ISSUES

1. Whether claimant sustained a sequela injury to his lumbar spine as a result of the August 7, 2019 right leg injury;

2. The nature and extent of permanent disability;

3. Payment of claimant's independent medical evaluation under Iowa Code section 85.39;

4. Whether claimant is entitled to alternate medical care related to the disputed lumbar spine injury;

5. Whether claimant is entitled to benefits from the Second Injury Fund of Iowa;

6. If so, the extent of benefits and the Fund's credit; and

7. Taxation of costs.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

Claimant's testimony was consistent as compared to the evidentiary record, and his demeanor at the time of hearing gave the undersigned no reason to doubt his veracity. Claimant is found credible.

At the time of hearing, claimant was a 58-year-old person. (Hearing Transcript, p. 16) He graduated from high school in 1983, and has no other education or vocational training. (Tr., pp. 16-17) After high school, claimant worked as a truck driver for a fish farm for two to three years. (Tr., p. 18) He then worked doing general construction and painting work until about 1990. (Tr., pp. 18-19) In 1990, he started working at Iroquois Foundry pouring iron. (Tr., p. 19) In 1993, claimant left the foundry and went to work at Nelson Muffler running presses and welders. (Tr., pp. 19-20) Claimant worked at Nelson Muffler until 2006, when he started working at John Deere Dubuque. (Tr., p. 20)

Claimant's first job at John Deere was in welding. (Tr., p. 21) After about 18 months, he was laid off for a short time, and then he was transferred to the Quad Cities location. At the Quad Cities location, he did several different jobs, including re-packing parts and running presses. (Tr., pp. 21-22) In 2010, claimant returned to the Dubuque plant, and resumed welding for a short time. (Tr., p. 22) He was then moved to assembly, and first worked in roof install on the backhoe line. (Tr., pp. 22-23) After that, he moved to mini backhoes, and by 2019, he was working on backhoe cabs. (Tr., p. 23) His job on backhoe cabs involved preparing the cabs on the rails of the assembly line, and then sending them down the line for additional parts. (Tr., pp. 23-24)

Claimant testified that prior to 2019, he was generally in good health. (Tr., p. 24) He had never had any injury to his right knee, or any issues with his hip or back. However, he did have an injury to his right foot in 2006. (Tr., pp. 24-25) He was loading parts on while working, and a piece fell off and landed on his right foot. (Tr., p. 25) Claimant testified that he was on crutches and wore a walking boot following that injury, and also did physical therapy. (Tr., pp. 45-46) Since completing his treatment, he has not had any other treatment for the right foot prior to August 7, 2019. (Tr., p. 46) He was released from the 2006 injury to return to work with no restrictions. (Tr., p. 47)

On August 7, 2019, claimant was working between the cabs putting decals on windows. (Tr., p. 25) He testified that it was really hot, and that he turned around to throw his scraps away and "the next thing I know, I was on the floor." (Tr., pp. 25-26) He said that he went over a guardrail and landed on his hands and knees. (Tr., p. 26) He reported the incident to a supervisor, and was taken to John Deere's in-house occupational health. The incident report indicates claimant got dizzy and his legs gave out, and he landed on the cement with both knees, landing harder on his right knee. (Joint Exhibit 1, p. 1) He reported pain in his right knee and right dorsal foot, with a history of the work related right foot fracture in 2006. (Jt. Ex. 1, p. 2)

Claimant was sent for an x-ray of the right foot and right knee. The right knee x-ray was negative for fracture but showed mild medial predominant tricompartmental osteoarthritis and a small joint effusion. (Claimant's Exhibit 3, pp. 29-30) The x-ray of the right foot showed a healed, second toe proximal phalanx base fracture. (Cl. Ex. 3, p. 30) The joint spaces were normal, and there was no acute fracture. He returned to work the remainder of his shift, and was to follow up the next day. (Jt. Ex. 1, p. 2) On August 8, 2019, claimant saw Peggy Barton, ARNP, at Finley Occupational Health. (Jt. Ex. 2, pp. 12-13) On examination, ARNP Barton found some swelling in the lower knee, and it was painful to palpation in the joint line medially. (Jt. Ex. 2, p. 12) She noted fluid on top of the tibia. She also found the right foot was bigger than the left foot, which claimant reported had been the case since his 2006 foot injury. He indicated pain in the arch of his foot, coming back across the ankle and across the top of his foot. ARNP Barton recommended physical therapy and over the counter pain medication. She also recommended ice and heat to the knee and foot 1 to 3 times per day.

Apparently, claimant was initially sent to a chiropractor for treatment rather than a physical therapist. However, on September 17, 2019, he started physical therapy for the knee at Dubuque Physical Therapy. He continued physical therapy through November 13, 2019, noting no change in his symptoms. (Cl. Ex. 3, p. 30)

Claimant saw Robert Bartelt, M.D. on November 6, 2019. On examination, Dr. Bartelt noted bursitis of the knee and limited range of motion. (Cl. Ex. 3, p. 31) He was diagnosed with infrapatellar bursitis of the right knee and arthritis of the right knee. He was prescribed Meloxicam and given options to consider, including excision of the infrapatellar bursa or an injection. On November 19, 2019, he started another course of physical therapy.

On November 27, 2019, Dr. Bartelt authored a letter to Amanda Addison, NP with John Deere Occupational Health. (Jt. Ex. 3, p. 14) He noted that an MRI of the right knee showed chondromalacia or early arthritis of the knee. He also noted swelling in the infrapatellar bursa and some inflammation in the fat pad. In response to NP Addison's questions, he stated that the purpose of a knee arthroscopy and chondroplasty would be to treat the chondromalacia or arthritis of the knee. He said the arthritis is a preexisting condition, not caused by claimant's fall at work. However, he stated that the swelling in the infrapatellar bursal was related to the fall, and that surgery would be related to the injury. However, the knee arthroscopy and chondroplasty would be best described as being related to a personal underlying medical condition.

On December 9, 2019, claimant saw Dietmar Grentz, M.D., at John Deere Occupational Health. (Jt. Ex. 1, p. 3) Claimant reported overall his knee pain was about the same, and that the physical therapy and medication were not helping. On December 16, 2019, he saw NP Addison, and reported he was continuing the physical therapy stretches at home, and had discontinued the Meloxicam because it was not helping and causing an upset stomach. He reported intermittent numbness in his toes. He was to continue working with restrictions, and continue home exercises. He also asked about a second opinion.

Claimant testified that Dr. Bartelt did not seem to listen to what he had to say. (Tr., p. 27) He also recalled some confusion regarding Dr. Bartelt's causation opinion in discussions with John Deere, such that he was eventually sent for a second opinion. (Tr., pp. 27-28)

Claimant saw Geoffrey Baer, M.D., Ph.D., at University of Wisconsin Hospitals and Clinics on March 3, 2020. (Jt. Ex. 5, p. 25) At that time, claimant reported fairly constant pain on the medial side of his knee, worse with prolonged use. (Jt. Ex. 5, p. 26) Conservative treatment had not provided any lasting relief. After his review of the MRI and examination, Dr. Baer's assessment was post-traumatic right knee pain and physical finding of a plica band, as well as slightly inflamed prepatellar bursa. He noted that claimant's symptoms seemed to be temporally related to his work injury, as claimant did not have significant right knee symptoms before the injury and has had pain since. (Jt. Ex. 5, pp. 26-27) He also felt the plica was exacerbated by the work trauma, as well as the prepatellar bursal swelling. (Jt. Ex. 5, p. 27) Dr. Baer recommended arthroscopic surgery, given that claimant had failed conservative management. Dr. Baer issued a brief letter after his examination, again stating his opinion that claimant's knee pain was not secondary to degenerative arthritis, but more likely related to the work injury. (Jt. Ex. 5, p. 28)

Claimant's surgery was delayed due to the COVID-19 pandemic. (Cl. Ex. 3, p. 32) However, on September 16, 2020, claimant underwent right knee arthroscopy with resection of medial parapatellar plica, shaving chondroplasty patella and trochlea, and shaving chondroplasty medial femoral condyle. (Jt. Ex. 5, p. 35) At his first post-operative follow up on September 24, 2020, he reported attending physical therapy with no difficulties, and rated his pan at a 2 or 3 out of 10. (Jt. Ex. 5, p. 41) At his next follow up

on October 29, 2020, he reported continued posterior knee pain and swelling, especially with driving greater than 30 minutes. (Jt. Ex. 5, p. 42) He rated his pain at a 4 out of 10. The record notes claimant was making slow progress with respect to pain and range of motion, and he was to continue with physical therapy. The note further states that Dr. Baer wanted physical therapy to work on some lumbar exercises as well, in consideration of a possible nerve irritation component to claimant's posterior leg/knee pain when driving.

Claimant testified that this visit was not the first time he had experienced pain in his low back area. (Tr., p. 28) He stated that he had reported lumbar pain to Dr. Baer and to occupational health at John Deere two or three weeks prior to his surgery as well. (Tr., pp. 28-29) He testified that he had been favoring his right leg when walking since the injury occurred, and described the pain as coming from his hip. (Tr., p. 29) He indicated at hearing that the pain starts in the lower right side of his back, just above his right buttock, and goes all the way down his right leg and eventually his toes go numb. (Tr., pp. 29-30)

At his physical therapy session on November 11, 2020, it is noted that Dr. Baer requested evaluation and treatment of claimant's back. (Jt. Ex. 4, p. 15) Claimant reported no low back pain, no buttock pain, and no thigh pain, but noted pain in the popliteal fossa and above and below that area. He also noted intermittent numbness in his calf, typically occurring when driving or sitting for a long time. He indicated the onset of the popliteal fossa pain was about one and a half months, prior to surgery, but it had become worse since surgery. The therapist noted on evaluation that no significant symptoms were reproduced with claimant's back testing, but that he had significant right sciatic dural tension and hamstring tightness. (Jt. Ex. 4, p. 19)

At claimant's next follow up with Dr. Baer's office on November 19, 2020, he noted he had been working on "nerve glides" related to the sciatic nerve irritation. (Jt. Ex. 5, p. 44) Claimant noted significant improvement, but still did not feel like he could safely return to work. He was to continue with physical therapy, and call with a status update in two weeks to determine whether he could return to sedentary work at that time. Claimant did call the clinic two weeks later, and it is noted that he was still having some trouble driving due to sciatica, but physical therapy did not think he would get any better. (Jt. Ex. 5, p. 47) The therapist recommended a foam wedge for his seat, which he eventually obtained through occupational health. (Jt. Ex. 5, p. 47; Jt. Ex. 1, p. 5) He was released to return to work on December 9, 2020, no more than 8 hours per day for the first two weeks and limited pulling. (Jt. Ex. 5, p. 47)

Claimant's next follow up took place on January 22, 2021. (Jt. Ex. 5, p. 52) At that time, claimant reported ongoing pain medial to his patellar border that worsened significantly when sitting in his truck and climbing in and out of the cab. He had no other pain or issues with sedentary work. He reported cramping and pain radiating through his quadriceps and down his hamstrings, along with occasional numbness and tingling in his toes, loosely following the L4-5 and S1 distributions. On physical exam, he had a positive straight leg raise with posterolateral pain and tightness and some numbness and tingling

into his foot. The assessment was status post right knee scope, ongoing medial knee pain, and possible radicular symptoms. He was told to resume physical therapy to work on quad control and low-back exercises for a "possible radicular component." (Jt. Ex. 5, p. 53) It was also noted to consider future corticosteroid injections for his right knee pain, and consider a lumbar MRI to evaluate for nerve root compression if not improving. He was released with no specific restrictions, although the note indicates he was going to start a new position the following week that would involve less climbing and driving.

At the time of hearing, claimant still worked on the backhoe cab line, but his job involved steering column subs. (Tr., p. 23) In the steering column position, claimant does not have to deal with the heavy cabs on the rails or work in between the rails where it is hot. (Tr., pp. 23-24) He said it is physically a little easier of a job. (Tr., p. 24)

Occupational health records indicate claimant continued with physical therapy in February of 2021. (Jt. Ex. 1, p. 6) He continued to complain of pain when driving, noting he could only drive for 30 to 45 minutes before getting severe pain in the posterior knee that radiated upward to the back of his leg and down into his calf. Claimant saw Dr. Baer on March 2, 2021, and reported that his pre-operative knee pain was resolved, but posterior, radiating pain up and down the leg continued. (Jt. Ex. 5, p. 55) The record notes that claimant was experiencing this pain after his work injury, prior to surgery. He had been attending physical therapy with a focus on treating the lumbar spine as a potential cause of pain, with some mild improvement. X-rays taken that day showed mild degenerative changes in the lumbar spine. Dr. Baer did not believe claimant's knee was the source of his ongoing symptoms, and thought it was likely related to lumbar disc pathology versus sciatica. As such, he recommended a lumbar spine MRI. (Jt. Ex. 5, pp. 55; 59)

At his physical therapy session on March 11, 2021, it was noted that Dr. Baer wanted him to continue formal physical therapy until after his lumbar MRI. (Jt. Ex. 4, p. 21) However, John Deere denied the lumbar spine MRI. (Jt. Ex. 1, p. 8) A note from John Deere Occupational Health, authored by ARNP Miranda Brower and dated March 19, 2021, states that she reviewed Dr. Baer's note and determined that claimant's current symptoms were not related to the knee. (Jt. Ex. 1, p. 11) There is no information in the note as to how she reached that conclusion. There is another entry from Edwin Chelli, M.D., dated April 20, 2021, that states claimant was told that the lumbar MRI was denied because Dr. Baer's assessment was that the knee was not the source of his pain, but that it was likely related to lumbar pathology versus sciatica. (Jt. Ex. 1, p. 10) Again, there is no further explanation or basis provided for the denial of the lumbar claim. Claimant testified that he has not gotten the MRI under his personal insurance because he was waiting to see if John Deere "was going to take care of me because I feel like they should take care of me." (Tr., p. 44) John Deere continues to deny the low back claim. (Defendant's Exhibit B, p. 2; C, p. 3)

On May 27, 2021, Dr. Baer provided a 2.5 percent impairment rating for claimant's knee, noting "injury to anterior knee with cartilage damage to patella and trochlea, also had aggravation of lumbar back pain." (Jt. Ex. 5, p. 60) However, he used the Wisconsin

"Medical Report on Industrial Injury" form for the rating, which is not consistent with the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Jt. Ex. 5, pp. 60-61) He also noted on the form that he recommended further evaluation of claimant's lumbar spine for the source of his radiculopathy. (Jt. Ex. 5, p. 60)

Dr. Chelli wrote to Dr. Baer on June 11, 2021, seeking a rating using the AMA Guides. (Jt. Ex. 5, p. 61) On June 18, 2021, Dr. Baer provided an updated rating, using the same Wisconsin form, but his rating came out to 7 percent of the knee based on the calculations he outlined. (Jt. Ex. 5, p. 62) He also stated that claimant "should have lumbar spine imaging as this is related to his work related injury." Dr. Chelli again wrote to Dr. Baer on July 21, 2021, as it was unclear from his second rating whether he was using the Fifth Edition of the AMA Guides, as required in Iowa. (Jt. Ex. 5, p. 63) Dr. Baer did not respond to the second letter, despite follow up communications from John Deere Occupational Health in August and September. (Jt. Ex. 1, p. 9)

On September 1, 2022, claimant had a functional capacity evaluation (FCE) at Short Physical Therapy. (Cl. Ex. 2, p. 8) At that time, claimant reported that he was able to sit for about 60 minutes before needing to stand and/or walk due to right hip pain. (Cl. Ex. 2, p. 13) He also noted that his pain increased with bending, standing, walking, and twisting, and he experiences disrupted sleep due to pain if he has a more active day. He described the pain in his right hip and foot as constant, and his right knee as intermittent. The FCE results determined that based on decreased functional strength and endurance of his right knee, hip, and foot, claimant's capabilities were in the lower medium category of physical demand, up to 30 pounds on an occasional basis. (Cl. Ex. 2, p. 9) The report also noted that claimant ambulates with an antalgic limp on his right lower extremity due to pain and decreased functional strength in his right hip, knee, and foot. Claimant testified that he was sore and tired following the FCE. (Tr., p. 32)

On November 1, 2022, claimant underwent an independent medical evaluation (IME) with Robin Sassman, M.D. (Cl. Ex. 3, p. 28) Dr. Sassman's report is dated December 19, 2022. Dr. Sassman provided a detailed review of medical records, and interviewed claimant. (Cl. Ex. 3, pp. 28-34) She noted at the time of her examination, claimant was working with no restrictions, and the heaviest item he lifted at work was a brake valve at waist height. (Cl. Ex. 3, p. 34) He described his low back pain as starting in the right gluteus, radiating to the knee and then to the foot. He said that he reported the pain before surgery, and it did not improve after surgery. He reported that driving, bending, riding his lawn mower, and sitting aggravated his symptoms. He denied any prior back or hip injuries.

With respect to his right knee, he reported aching, but said it did not feel unstable. He reported discomfort going up stairs, but felt his range of motion was okay. He denied any prior right knee injury. Finally, with respect to the right foot, he reported an aching and burning pain in the arch of his foot. (Cl. Ex. 3, p. 35) He said sometimes his toes felt numb, and some days were worse than others. He also reported a sharp pain in his great toe at times.

After physical examination, Dr. Sassman's diagnoses were right knee pain status post right knee arthroscopy, and low back pain with radiculopathy. (Cl. Ex. 3, pp. 35-36) Dr. Sassman opined that the work injury on August 7, 2019 was a substantial aggravating factor of claimant' underlying degenerative changes in his right knee. (Cl. Ex. 3, p. 36) Her opinion was based on the mechanism of injury, as well as claimant's lack of prior symptoms in his knee. (Cl. Ex. 3, pp. 36-37) She also opined that based on the information available at that time, which did not include an MRI of the lumbar spine, the work injury was a direct and causal factor in claimant's lumbar pain with radicular symptoms. (Cl. Ex. 3, p. 36) This was based on the initial notes from John Deere occupational health, which noted some complaints consistent with radicular symptoms, and his worsening of symptoms over time due to his gait change related to the right knee symptoms. (Cl. Ex. 3, p. 37) While no lumbar spine examination was done at that time, Dr. Sassman noted that when a thorough back examination was done on January 22, 2021, claimant had a positive straight leg raise and loss of sensation in a dermatomal pattern. Those findings were consistent with her own examination, and lead her to opine that the low back symptoms were directly and causally related to the work injury.

Using the Fifth Edition of the AMA Guides, Dr. Sassman provided a 10 percent lower extremity rating for loss of flexion, and a 7 percent lower extremity rating for degenerative changes. She noted that impairment for range of motion cannot be combined with impairment for degenerative changes under the Guides, so he was assigned the 10 percent range of motion impairment. For the lumbar spine, she placed claimant into DRE Lumbar Category lll, and assigned 13 percent impairment of the whole person. (Cl. Ex. 3, pp. 37-38) Combined, the lumbar spine and right knee gave claimant a total of 16 percent impairment of the whole person. (Cl. Ex. 3, p. 38)

With respect to restrictions, Dr. Sassman recommended claimant avoid kneeling and crawling, and limit lifting, pushing, pulling, and carrying to 30 pounds at waist height and to 10 pounds above waist and shoulder height on an occasional basis. She also recommended he avoid uneven surfaces and ladders, and should not work at heights. She noted those restrictions might change with additional treatment. With respect to future medical care, Dr. Sassman recommended an MRI of the lumbar spine to assess for nerve root irritation. After the MRI, she recommended referral to pain management to determine if an epidural steroid injection would be beneficial. (Cl. Ex. 3, pp. 38-39) In light of that recommendation, she did not believe claimant had reached maximum medical improvement (MMI). (Cl. Ex. 3, p. 38) However, she stated that if the recommendations were not completed, she would place him at MMI one year after the date of surgery, on September 16, 2021.

With respect to claimant's 2006 right foot injury, Dr. Sassman provided a 2 percent lower extremity impairment rating due to the ongoing pain and swelling of the foot. However, it is unclear what portion of the Guides she used in reaching this conclusion. (Cl. Ex. 3, p. 39) She cites Table 17-3, but that is the table for converting the 2 percent lower extremity rating to a 1 percent whole person impairment. She also recommended claimant limit standing and walking to a frequent basis, change positions occasionally, and take care in his choice of footwear due to the swelling in his right foot.

Claimant testified at hearing that he continues to have pain in his knee off and on all the time. (Tr., p. 34) He said he has knee pain every day at some point, depending on what he does. Stooping, squatting, and bending aggravate his symptoms. He also noted stability issues, and said he does not climb ladders anymore because it hurts and feels like he cannot stand for very long. (Tr., pp. 34-35) With respect to his hip/right low back, he testified that he has ongoing symptoms every day. (Tr., p. 35) He takes Motrin several times per day, which "takes the edge off", but never completely takes the pain away. Bending, squatting, and sitting for an extended time aggravates his symptoms. He tries to avoid activities that aggravate his symptoms, and no longer gardens or goes fishing or hunting since his injury. (Tr., pp. 36-37) He also avoids long car rides, and said that he and his wife used to take long trips every summer but have not since his injury. (Tr., p. 38)

With respect to his right foot, claimant testified that after the injury in 2006, his foot and all of his toes were numb for two or three months. (Tr., pp. 46-47) Following the 2019 injury, his foot hurt and burned, but it was not totally numb. (Tr., p. 47) Currently, he experiences numbness into the outside of his foot and his outer three toes when his low back/hip start to bother him. He testified that the more the hip flares up, the more his foot bother him, as the pain radiates down his leg. (Tr., p. 49) He also experiences a burning and aching pain in his foot, which he usually correlates to his low back/hip pain. He testified that after his treatment was completed for his 2006 foot injury, he had occasional symptoms that would flare up, causing his foot to ache and bother him. (Tr., p. 50) After the 2019 injury, he was never diagnosed with any specific foot injury, and he has not had any physical therapy or other specific treatment for his right foot as a part of that injury. (Tr., pp. 50-51)

Claimant testified that he continues to work at John Deere, but has some difficulties with his job. (Tr., p. 39) He has trouble bending down or squatting if he has to pick anything up. He also noted that it takes him about an hour to drive to work, and by the time he arrives his hip and leg are bothering him. (Tr., p. 38) He does not believe he would be able to perform any of the jobs he had before working at John Deere, due to the driving, lifting, stooping, and climbing involved. (Tr., pp. 39-40) He also does not believe he would be able to perform his prior jobs, welding or repacking at John Deere, due to the lifting, squatting, bending, and maneuvering around fixtures that would be required. (Tr., pp. 40-42) Even the job he had at the time of injury would be too much for him currently, due to the lifting and bending involved, as it was a more physically demanding job than his current position. (Tr., p. 42)

Based on the medical records and other evidence in the file, I find that claimant's lumbar pain issues are a sequelae of the right knee injury on August 7, 2019. Both Dr. Baer and Dr. Sassman have opined that the lumbar spine symptoms are related to claimant's fall at work and subsequent knee injury. Dr. Baer has provided treatment to claimant over the course of his recovery, and is familiar with his condition and the progress of his symptoms. Dr. Sassman performed a detailed record review and personally interviewed and examined claimant. Both doctors had an accurate

understanding of claimant's history, treatment, and symptoms, and both have determined that the low back symptoms are causally related to the August 7, 2019 work injury.

Defendant's denial is based on the opinions of Miranda Brower, ARNP, and Dr. Chelli, both of whom worked for John Deere Occupational Health at the time. Additionally, neither provider issued an actual report detailing the basis for the denial. The only records in evidence regarding their opinions are brief notes found within the John Deere clinic's records. The note from ARNP Brower simply states that she had looked over Dr. Baer's note and "current symptoms are not related to right knee." (Jt. Ex. 1, p. 11) Dr. Chelli's note is similar, and simply states that claimant was told the MRI was denied because Dr. Baer said his knee was likely not the source of his symptoms, but they were likely related to lumbar pathology versus sciatica. There is no opinion or analysis from either ARNP Brower or Dr. Chelli as to whether the knee injury and/or claimant's subsequent altered gait could have resulted in the lumbar symptoms. I do not find either opinion convincing when looking at the evidence as a whole.

The parties stipulated that claimant has not reached MMI for the low back injury. (Tr., pp. 6; 8) Claimant is entitled to medical care related to the low back claim, specifically a lumbar MRI as recommended by Dr. Baer, and any follow-up treatment recommended thereafter. Because claimant has not reached MMI, the issue of permanent disability with respect to the claim against the employer is not ripe for determination at this time.

With respect to claimant's Second Injury Fund claim, I find that claimant has not met his burden to prove a first qualifying injury. There are no medical records in evidence related to the 2006 injury. The only evidence regarding that injury is claimant's testimony, and Dr. Sassman's report. Based on claimant's testimony, he was able to return to work with no restrictions following that injury. His only treatment consisted of crutches and a walking boot, along with physical therapy. He has not received any treatment for his right foot since his release from care in 2006 or 2007. The only impairment rating related to the 2006 injury is Dr. Sassman's rating, which is unclear. Dr. Sassman did not provide the section of the AMA Guides used in calculating the rating related to the foot, and the fact that the injury occurred approximately 17 years ago is problematic for determining whether any potential disability is related back to the original injury. There is not enough evidence that claimant's 2006 foot injury caused permanent disability. As such, claimant is not entitled to benefits from the Second Injury Fund of Iowa.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e). The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996).

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. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d at 311. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000); Miedema, 551 N.W.2d at 311. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d at 150. An employee does not cease to be in the course of employment merely because the employee is not actually engaged in doing some specifically prescribed task, if, in the course of employment, the employee does some act which he or she deems necessary for the benefit or interest of the employer. United Parcel Serv. v. Miller, No. 99-1596, 2000 WL 1421800, at *1 (Iowa Ct. App. Sept. 27, 2000) (citing Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979)).

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

When an injury occurs in the course of employment, the employer is liable for all the consequences that "naturally and proximately flow from the accident." Iowa Workers' Compensation Law and Practice, Lawyer and Higgs, section 4-4. The Supreme Court has stated: "If the employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable." Oldham v. Scofield & Welch, 222 Iowa 764, 767, 266 N.W. 480, 481 (1936). The Oldham Court opined that a claimant must present sufficient evidence that the disability was naturally and proximately related to the original work injury.

An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012). A sequela can be an after-effect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154, (Arb. September 11, 1989). One form of sequela is an adverse effect from medical treatment for the original injury. Where

treatment rendered with respect to a compensable injury itself causes further injury, the subsequent injury is also compensable. Yount v. United Fire & Casualty Co., 256 Iowa 813, 129 N.W.2d 75 (1964). For example, the death of a claimant who died on the operating table during surgery for a work injury may be compensable, since the injury caused the need for surgery. Breeden v. Firestone Tire, File No. 966020, (Arb. February 27, 1992). As another example, a claimant who fell as a result of dizziness from medication he was taking to treat a work injury is to be compensated for both the original injury and the resulting fall as a sequela of the first injury. Hamilton v. Combined Ins. of America, File Nos. 854465, 877068, (Arb. February 21, 1991).

A sequela can also take the form of a secondary effect on the claimant's body stemming from the original injury. For example, where a leg injury causing shortening of the leg in turn alters the claimant's gait, causing mechanical back pain, the back condition can be found to be a sequela of the leg injury. Fridlington v. 3M, File No. 788 758, (Arb. November 15, 1991).

A sequela can also take the form of a later injury that is caused by the original injury. For example, where a leg injury leads to the claimant's knee giving out in a grocery store, the resulting fall is compensable as a sequela of the leg injury. Taylor v. Oscar Mayer & Co., III Iowa Ind. Comm. Rep. 257, 258 (1982).

In this case, having reviewed all of the evidence in the record, I found that claimant sustained a sequela injury to his low back/lumbar spine as a result of the August 7, 2019 right knee injury. I found the opinions of Dr. Baer and Dr. Sassman to be the most convincing and reliable on this matter, as opposed to the brief conclusory statements offered by ARNP Brower and Dr. Chelli. The parties stipulated that claimant has not reached MMI for the low back injury. Therefore, the issue of permanent disability with respect to the claim against the employer is not ripe for determination at this time.

Because claimant's low back injury is compensable, he is entitled to ongoing reasonable and causally related medical care, pursuant to Iowa Code section 85.27. Specifically, defendants shall authorize and pay for a lumbar MRI as recommended by Dr. Baer, and any follow-up treatment recommended thereafter.

With respect to claimant's Second Injury Fund Claim, I found that claimant did not meet his burden to prove he sustained a qualifying first injury. Iowa Code section 85.64 states:

> If an employee who has previously lost, or lost the use of, one hand, one arm, one foot, one leg, or one eye, becomes permanently disabled by a compensable injury which has resulted in the loss of or loss of use of another such member or organ, the employer shall be liable only for the degree of disability which would have resulted from the latter injury if there had been no preexisting disability. In addition to such compensation, and after the expiration of the full period provided by law for the payments thereof by the employer, the employee shall be paid out of the "Second

> Injury Fund" created by this subchapter the remainder of such compensation as would be payable for the degree of permanent disability involved after first deducting from such remainder the compensable value of the previously lost member or organ.

Thus, an employee is entitled to Fund benefits if the employee establishes: (1) the employee sustained a permanent disability to a hand, arm, foot, leg, or eye, a first qualifying injury; (2) the employee subsequently sustained a permanent disability to another hand, arm, foot, leg, or eye, through a work-related injury, a second qualifying injury; and (3) the employee has sustained permanent disability resulting from the first and second qualifying injuries exceeding the compensable value of the "previously lost member." Gregory v. Second Injury Fund of Iowa, 777 N.W.2d 395, 398-99 (Iowa 2010).

While claimant sustained an injury to his right foot in 2006, he failed to prove that injury resulted in any permanent disability. There are no medical records in evidence related to the 2006 injury. The only evidence regarding that injury is claimant's testimony, and Dr. Sassman's report. Based on claimant's testimony, he was able to return to work with no restrictions following the 2006 injury. His only treatment consisted of crutches and a walking boot, along with physical therapy. He has not received any treatment for his right foot since his release from care in 2006 or 2007. The only impairment rating related to the 2006 injury is Dr. Sassman's rating, which is unclear. Dr. Sassman did not provide the section of the AMA Guides used in calculating the rating related to the foot, and the fact that the injury occurred approximately 17 years ago is problematic for determining whether any potential current disability is related back to the original injury. Claimant has not met his burden to prove that the 2006 foot injury caused permanent disability. As such, he has not proved a first qualifying injury, and is not entitled to benefits from the Second Injury Fund of Iowa.

The only remaining issues to determine are reimbursement for claimant's IME, and taxation of costs. Defendant employer made no argument in its brief regarding the IME. Iowa Code section 85.39(2) states, in relevant part:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.

The Iowa Workers' Compensation Commissioner has noted that the Iowa Supreme Court adopted a strict and literal interpretation of Iowa Code section 85.39 in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015) (hereinafter "DART"). See Cortez v. Tyson Fresh Meats. Inc., File No. 5044716 (Appeal December 2015). If an injured worker wants to be reimbursed for the expenses associated with a disability evaluation by a physician selected by the worker, the process

established by the legislature must be followed. This process permits the employer, who must pay the benefits, to make the initial arrangements for the evaluation and only allows the employee to obtain an independent evaluation at the employer's expense if dissatisfied with the evaluation arranged by the employer. DART, 867 N.W.2d at 847 (citing Iowa Code § 85.39). This includes an employer-chosen physician's opinion that there was no causation, as such an opinion is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 966 N.W. 2d. 326 (Iowa Ct. App., 2021).

In this case, defendant employer based its denial of the lumbar sequela injury on the causation opinions of ARNP Brower and Dr. Chelli. Under Kern, those opinions are tantamount to a zero percent impairment rating. Therefore, claimant is entitled to additional reimbursement of his IME under Iowa Code section 85.39.

The parties agree that defendants have previously reimbursed claimant for $1,000.00 of his total IME cost. Claimant concedes defendant employer is not liable for the portion of Dr. Sassman's IME related to the Fund claim. However, Dr. Sassman itemized her bill, and the portion related to the Fund claim totals $330.00. (Cl. Ex. 4, p. 45) Dr. Sassman's total bill came to $4,125.00. Less the $330.00 for the Fund claim and the $1,000.00 defendant employer have already paid, claimant is entitled to additional reimbursement in the amount of $2,795.00.

The final issue to address is costs. Assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. Claimant seeks reimbursement of the filing fee, in the amount of $100.00, and the bill for claimant's FCE at Short Physical Therapy, in the amount of $950.00. (Cl. Ex. 5, pp. 46-49)

As claimant was generally successful in his claim, I find an award of costs is appropriate. Rule 876-4.33(6) allows the reasonable cost of no more than two doctors' or practitioners' reports. Under DART, the only allowable taxable costs are the reports themselves, not the underlying examination. DART, 867 N.W.2d at 846-847. The FCE bill is itemized, and shows that $350.00 of the total bill is allocated to the FCE report. As such, claimant is entitled to reimbursement of $350.00 for the FCE report, as well as the $100.00 filing fee.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing from the Second Injury Fund of Iowa.

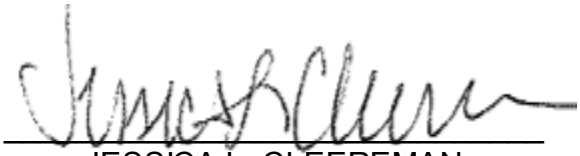
Claimant is entitled to alternate medical care from defendant employer related to the compensable low back/lumbar spine sequela injury. Specifically, defendants shall authorize and pay for a lumbar MRI as recommended by Dr. Baer, and any follow-up treatment recommended thereafter.

Defendants shall reimburse claimant in the amount of two thousand seven hundred ninety-five and 00/100 dollars ($2,795.00) for Dr. Sassman's IME.

Defendants shall reimburse claimant's costs in the total amount of four hundred fifty and 00/100 dollars ($450.00), as outlined above.

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

Signed and filed this 29th day of August, 2023.



JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Zeke McCartney (via WCES)

Dirk Hamel (via WCES)

Stephanie Techau (via WCES)

Rebecca Duffy (via WCES)

Meredith Cooney (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 10A) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.