

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RAYANA AGOIK,

Claimant,

vs.

DEE ZEE, INC.,

Employer,

and

WEST BEND MUTUAL INSURANCE,
COMPANY,Insurance Carrier,
Defendants.

File No. 20700596.01

ARBITRATION DECISION

Head Note Nos.: 1800, 1803, 1803.1,
2200**STATEMENT OF THE CASE**

The claimant, Rayana Agoik, filed a petition for arbitration seeking workers' compensation benefits from Dee Zee, Inc., ("Dee Zee") and its insurer West Bend Mutual Insurance Company. Randall Schueller appeared on behalf of the claimant. James Ballard appeared on behalf of the defendants.

The matter came on for hearing on August 5, 2021, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner related to the COVID-19 pandemic, the hearing occurred via CourtCall. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-10, Claimant's Exhibits 1-6, and Defendants' Exhibits A-C. The claimant testified on her own behalf. Sue Ann Jones was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on August 26, 2021, after briefing by the parties.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.

2. The claimant sustained an injury arising out of, and in the course of, employment, on October 1, 2019.
3. That the alleged injury is a cause of temporary disability during a period of recovery.
4. That the commencement date for permanent partial disability benefits, if any are awarded, is January 20, 2020.
5. That the claimant's gross earnings were five hundred twenty-eight and 95/100 dollars (\$528.95) per week, and that the claimant was single and entitled to five exemptions. This equates to a weekly compensation rate of three hundred seventy-four and 62/100 dollars (\$374.62).
6. That prior to the hearing, the claimant was paid zero (0) weeks of compensation.

The defendants waived their affirmative defenses. Neither entitlement to temporary disability and/or healing period benefits nor medical benefits are in dispute.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the alleged injury is a cause of permanent disability.
2. The extent of permanent disability, if any is awarded.
3. If the injury is found to be a cause of permanent disability, whether the claimant sustained an injury to her body as a whole, or an injury to a scheduled member.
4. If the injury is found to be a cause of permanent disability, whether the disability is an industrial disability.

FINDINGS OF FACT

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

Rayana Agoik, the claimant, was 39 years old at the time of the hearing. (Testimony). She is single. (Testimony). She has six children. (Testimony). Her

children range in age from 5 years old to 21 years old. (Testimony). Five of her children still live with her. (Testimony).

Ms. Agoik is originally from South Sudan. (Testimony). She fled war and violence in Sudan for Egypt in 2000. (Testimony). While in Sudan, she completed school through eighth grade. (Testimony).

Upon arriving in the United States of America in 2003, Ms. Agoik did not speak or understand English. (Testimony). She learned English from watching television, at work, and from an English as a second language class. (Testimony). Ms. Agoik indicated that she did not know how to use a computer very well, and has never worked in an office. (Testimony).

Ms. Agoik first lived in Phoenix, Arizona. (Testimony). She moved to Orlando, Florida, for work as a housekeeper in a hotel at Universal Studios. (Testimony; Claimant's Exhibit 3:9). She found better work in Des Moines, Iowa, at Tyson, and moved to Iowa 16 years ago. (Testimony). At Tyson, Ms. Agoik was a line worker boxing pork bellies. (CE 3:9). While working at Tyson, Ms. Agoik suffered a work injury to her right shoulder. (Defendants' Exhibit C). She reported that she was fired from Tyson "because they did not have work within my restrictions." (CE 3:9).

After leaving Tyson, Ms. Agoik worked on the production line at JBS/Swift. (CE 3:9). Again, this was a meat packing plant. (CE 3:9). She worked at JBS/Swift until about September of 2013, when she was let go. (CE 3:9). Eventually, Ms. Agoik found employment with Loffredo where she performed a variety of food service related tasks. (CE 3:8). These tasks included peeling and slicing produce, and monitoring food for the presence of foreign objects. (CE 3:8). After leaving Loffredo, she worked at a Marriott Hotel "for a few weeks" in 2018. (CE 3:9).

Finally, Ms. Agoik worked for Dee Zee. (Testimony). At Dee Zee, she worked second shift. (Testimony). This was due to her children's schedule, and her need to be home with them. (Testimony). At Dee Zee, she worked on an assembly line. (Testimony; CE 3:8). She worked eight hours per day, up to 40 hours per week. (Testimony). She earned thirteen and 36/100 dollars (\$13.36) per hour. (Testimony; CE 3:8). She enjoyed her job, and would continue to do it if she was offered the opportunity to return. (Testimony).

Around 6:30 p.m. on October 1, 2019, Ms. Agoik was on the job at Dee Zee. (Testimony). The power went out, and she tripped over a rack on the floor. (Testimony; DE A:2). She landed on her right knee, and did not strike any other part of her body upon falling. (Testimony; DE A:2; DE C). This contradicts her answers to interrogatories which indicated that she fell and hit her "right knee, right hip, and right leg hard on the floor." (CE 3:10). She felt pain. (Testimony). She reported to the office at Dee Zee, where they placed ice on the knee. (Testimony). Management returned Ms. Agoik to the assembly line. (Testimony). Ms. Agoik claimed that she wanted to go to the doctor, but Dee Zee employees told her that workers' compensation would not

cover the billing from her visit unless she waited until the next day. (Testimony). Ms. Agoik testified that eventually the pain worsened to the point that she needed to go to the hospital. (Testimony).

Around 10:00 p.m. on October 1, 2019, Ms. Agoik reported to the emergency department at UnityHealth Des Moines. (JE 3:26-32). She reported pain in her right knee caused by a fall. (JE 3:26). She had mild pain after falling, but the pain progressed to 9 out of 10. (JE 3:26). She told the physician that the pain radiated to her proximal thigh. (JE 3:26). She denied any other orthopedic pain. (JE 3:26). Upon physical examination, the doctor observed pain, reduced range of motion, and swelling in the right knee. (JE 3:27, 29). X-rays showed no fractures or acute abnormalities. (JE 3:30). The doctor also opined that Ms. Agoik's ligaments were intact. (JE 3:30). The doctor provided an Ace bandage wrap, crutches and recommended rest, ice, and elevation. (JE 3:30). Upon discharge, the doctor diagnosed Ms. Agoik with a contusion of the right knee, and a right knee strain. (JE 3:31).

Ms. Agoik testified that she returned to work the next day. (Testimony). She discussed the injury with "Safety" at Dee Zee, who sent her to Mercy Euclid. (Testimony). Jeff Henson at MercyOne East Des Moines Occupational Health examined Ms. Agoik. (JE 5:37-40). Ms. Agoik complained that she fell at work and injured her right knee. (JE 5:37). She rated her pain 8 out of 10. (JE 5:37). She had knee pain and swelling with mild radiation of pain into the right thigh and hip area. (JE 5:37). Ms. Agoik denied any other musculoskeletal complaints during the examination. (JE 5:37). Dr. Henson diagnosed Ms. Agoik with a contusion of the right knee. (JE 5:40). She was allowed to bear weight as tolerated, but restricted to sit down duty only. (JE 5:40). Dr. Henson also advised that she should use crutches. (JE 5:40).

Ms. Agoik presented to MercyOne West Des Moines Occupational Health on October 4, 2019. (JE 4:33-36). Dr. Henson re-examined her for complaints of right knee pain following a fall at work. (JE 4:33). Ms. Agoik had pain, tightness, and swelling in her right knee, right lower leg, and right thigh. (JE 4:33). The swelling extended to her foot. (JE 4:33). She rated her pain 8 out of 10. (JE 4:33). She could work within her restrictions on light duty. (JE 4:33). Dr. Henson allowed Ms. Agoik to continue bearing weight as tolerated, no prolonged standing or walking, limited bending and squatting, no kneeling, and no pushing/pulling/carrying over 10 pounds. (JE 4:35). She also may keep her right leg elevated if needed, use a single crutch if needed, and use a "DME" while working. (JE 4:35). Dr. Henson recommended continued physical therapy. (JE 4:35-36).

On October 11, 2019, Ms. Agoik visited MercyOne Urbandale Family Medicine Clinic. (JE 6:52-54). Ms. Agoik complained that she had a cough "on and off for months." (JE 6:52). The active problems portion of her record indicated that Ms. Agoik had low back pain. (JE 6:52). There was no mention of her alleged hip pain during this visit.

Ms. Agoik returned to Dr. Henson's office at MercyOne East Des Moines Occupational Health on October 14, 2019. (JE 5:41-44). Ms. Agoik complained of constant, sharp pain in her right knee. (JE 5:41). She rated the pain 8 out of 10, and indicated that she could not bend her knee back. (JE 5:41). She wore a knee brace while at work, and indicated that her knee pain was stable. (JE 5:41). There was no mention of hip pain in this record. Dr. Henson continued to diagnose Ms. Agoik with a contusion of the right knee. (JE 5:43). Dr. Henson allowed Ms. Agoik to bear weight as tolerated. (JE 5:43). She was restricted to no prolonged standing or walking, limited bending or squatting, no kneeling, and no pushing/pulling/carrying over 10 pounds. (JE 5:43). Ms. Agoik could keep her right leg elevated, and use one crutch as needed. (JE 5:43). Dr. Henson ordered an MRI of the right knee, and asked Ms. Agoik to return on October 25, 2019. (JE 5:44).

Ms. Agoik reported to Alliance Radiology on October 22, 2019, for an MRI of the right knee as ordered by Dr. Henson. (JE 7:59-60). John Tentinger, M.D., reviewed the results of the MRI. (JE 7:60). The MRI showed an acute nondisplaced nondepressed fracture of the posterior aspect of the proximal tibia at the insertion of the posterior cruciate ligament ("PCL"). (JE 7:60). The fracture line did not extend to the lateral tibial plateau. (JE 7:60). The MRI also revealed a grade 1 MCL sprain, and a small popliteal cyst. (JE 7:60).

On October 25, 2019, Dr. Henson examined Ms. Agoik following her right knee MRI. (JE 5:45-51). Ms. Agoik rated her pain 10 out of 10. (JE 5:45). She told Dr. Henson that her right knee pain was stable. (JE 5:45). Dr. Henson diagnosed Ms. Agoik with a nondisplaced fracture of the tibial spine. (JE 5:50). Dr. Henson recommended a consultation with an orthopedic physician for the tibial plateau fracture. (JE 5:50). Dr. Henson indicated that Ms. Agoik should be non-weight bearing on the right knee, and limit her bending, twisting, kneeling, and squatting. (JE 5:50). She was to use crutches, and work sit down duty only. (JE 5:50).

On November 5, 2019, Ms. Agoik was examined by Eric Dolash, PA-C, and Christopher Vincent, M.D., at Iowa Ortho. (JE 1:3-4). Ms. Agoik reported right knee pain, which she rated 8 out of 10. (JE 1:3). She reiterated the work incident. (JE 1:3). The physical examination of her right and left hip range of motion was normal and pain free. (JE 1:4). Her left knee had active painful range of motion. (JE 1:4). Her right knee had difficulty. (JE 1:4). The imaging results indicated to the providers that Ms. Agoik suffered a closed avulsion fracture of the right tibial plateau. (JE 1:4). She also had a posterior cruciate ligament injury. (JE 1:4). Dr. Vincent observed that Ms. Agoik had atrophy of her quad muscles. (JE 1:4). Her intake form indicated that the pain radiated to her toes with bending. (JE 1:5).

On December 2, 2019, Athletico Physical Therapy issued a Functional Status Report that appears to be authored by Paul Brummond, P.T. (JE 8:61-64). Since beginning physical therapy, Ms. Agoik reported a 40 percent improvement. (JE 8:61). She continued to have "a lot of pain, numbness, and clicking within the knee joint." (JE 8:61). She also experienced numbness on the entire right side of her body. (JE 8:61).

She had difficulty being on her feet for long times. (JE 8:61). Mr. Brummond determined that therapy would be held pending a follow-up visit with Dr. Vincent. (JE 8:63).

Ms. Agoik returned to Iowa Ortho on December 3, 2019. (JE 1:7-9). She rated her pain 7 out of 10 and aching. (JE 1:7). She also felt numbness and tingling in her leg. (JE 1:7). Dr. Vincent observed that she was walking better, but that her right side was weak. (JE 1:7). The swelling had subsided. (JE 1:7). Dr. Vincent clarified Ms. Agoik's diagnosis to be "a nondisplaced avulsion fracture of the posterior cruciate ligament insertion at the posterior tibia." (JE 1:8). Dr. Vincent observed that Ms. Agoik was most concerned about "radicular-type symptoms" on the right starting at the buttock and radiating down the posterior and lateral thigh, calf, and top of the foot. (JE 1:8). Dr. Vincent told Ms. Agoik that the focus of his care was the knee injury. (JE 1:8). Dr. Vincent recommended that Ms. Agoik slowly stop using crutches, and continue physical therapy. (JE 1:8). Dr. Vincent allowed her to return to modified work while avoiding repetitive kneeling, squatting, and twisting. (JE 1:9).

Ms. Agoik continued therapy with Athletico Physical Therapy on December 9, 2019. (JE 7:65-66). This was Ms. Agoik's ninth appointment. (JE 7:65). She canceled four visits. (JE 7:65). Ms. Agoik told the therapist that her entire right leg continued to hurt, and that she could not work based upon Dr. Vincent's new restrictions. (JE 7:65). She told the therapist that "if she continues to work, she will likely have to quit due to pain within right leg." (JE 7:65).

On December 11, 2019, Ms. Agoik continued her treatment with Athletico Physical Therapy. (JE 7:67-68). She reported pain within her right knee that radiated to her right lateral hip. (JE 7:67). This is the first mention of hip pain in the physical therapy records provided. Ms. Agoik did not feel that she should be working and felt that Dee Zee was not accommodating her injury. (JE 7:67). The therapist found increased pain with "all movement of the right knee." (JE 7:68). Stretching the calf and straightening the knee brought relief of the pain. (JE 7:68). Subsequent to this appointment, Ms. Agoik received a warning from Dee Zee which indicated, "Rayana is coming in late nearly every day from her [a]ppointments set up by the company for her leg. She has gotten a lot of points because of the fact, that she does not get here right after her appointments. And does not have the PTO to cover the time she [c]ontinues to miss work." (DE A:3).

Ms. Agoik returned to Athletico Physical Therapy on December 13, 2019. (JE 7:69-70). Ms. Agoik complained of "some pain in her knee" especially while walking. (JE 7:69). She indicated to the therapist that she was working full time without restrictions. (JE 7:69). Ms. Agoik tolerated the therapy session well, but required frequent verbal cueing and demonstration on proper performance of exercises. (JE 7:70).

On December 16, 2019, Mr. Brummond of Athletico Physical Therapy issued another Functional Status Report with regard to Ms. Agoik's condition. (JE 7:71-76). Ms. Agoik indicated a 50 percent improvement in her right knee. (JE 7:73). She had right-sided low back pain which radiated into the lateral three toes. (JE 7:73). Her pain increased with standing and walking, as well as work tasks. (JE 7:73). She rated her pain 9 out of 10 in her right knee, and told Mr. Brummond that her right knee gave out at times. (JE 7:73). She reiterated that she did not want to be working due to her pain. (JE 7:73).

Ms. Agoik continued her therapy with Athletico Physical Therapy on December 18, 2019. (JE 7:77-78). She continued to complain of symptoms to the right side of the low back. (JE 7:77). These symptoms traveled through her knee to her toes. (JE 7:77). She continued to complain that she felt that Dee Zee did not accommodate her. (JE 7:77). The therapist opined that Ms. Agoik progressed well with range of motion and strength in her right knee. (JE 7:78).

On December 20, 2019, Ms. Agoik returned to Athletico Physical Therapy. (JE 7:79-80). Ms. Agoik continued to report pain "within entire right leg into back." (JE 7:79). Ms. Agoik again noted that she felt she should not be working due to her pain. (JE 7:79). The therapist noted that the claimant continued to move better, and had less compensation with her gait. (JE 7:80).

Ms. Agoik had another therapy session with Athletico Physical Therapy on December 26, 2019. (JE 7:81-82). She indicated that she had "some" pain in her knee. (JE 7:81). She tolerated therapy well, but had some discomfort with certain exercises. (JE 7:82).

On January 8, 2020, Ms. Agoik continued physical therapy follow up with Athletico Physical Therapy. (JE 7:83-84). She had right hip, knee, and leg pain. (JE 7:83). She also had nerve pain in toes 3 and 4 on the right. (JE 7:83). After taking some time off work during the holidays, she reported improvement in walking. (JE 7:83). Ms. Agoik indicated frustration with Dr. Vincent and her employer, as she did not believe that they were "listening to her frustrations about her pain." (JE 7:83). She rated her pain 4 out of 10. (JE 7:83). The therapist continued to note that Ms. Agoik progressed well with her gait and balance. (JE 7:84). The range of motion of her right knee also improved. (JE 7:84).

Mr. Brummond issued another Functional Status Report on January 9, 2020. (JE 7:85-92). Ms. Agoik attended 17 appointments, canceled 8 and had 7 scheduled. (JE 7:85). Ms. Agoik should avoid squatting, according to Mr. Brummond. (JE 7:85). She could occasionally climb stairs. (JE 7:85). She had no functional limitations with sitting, or standing. (JE 7:85-86). She reported 50 to 60 percent improvement since commencement of physical therapy. (JE 7:86). She continued to claim pain within the entire right lower extremity. (JE 7:86). She told Mr. Brummond that her pain began within the right hip and radiated to toes 3 and 4 on her right foot. (JE 7:86).

Ms. Agoik continued therapy on January 10, 2020. (JE 7:93-94). She reported pain at 6 out of 10, which increased upon working and walking. (JE 7:93). Her treatment was cut short due to weather and the claimant's concerns with driving in snow. (JE 7:93).

The defendants obtained surveillance videos of the claimant on two separate occasions. The first occasion was January 20, 2020. (DE B). The investigative company that performed the videos also generated a report. (DE B:5-8). I reviewed both the report and the video. The report indicated that a woman that the investigator presumed to be Ms. Agoik was observed walking through a parking lot and depositing trash into a dumpster. (DE B:6). She was also observed shopping at a Hy-Vee grocery store and loading her vehicle with groceries. (DE B:7). Ms. Agoik returned to her residence from the Hy-Vee and carried several grocery bags up three flights of stairs. (DE B:7).

I personally reviewed the video. The video shows Ms. Agoik walking through a snowy parking lot while talking on a cell phone. She does not appear to be limping. She walks over several snowbanks. The video then shows her walking into and shopping for groceries at a Hy-Vee. Upon exiting the store, she continued to talk on a cell phone. Again, she did not appear to be limping, nor did she appear to have any issues walking or loading her vehicle with groceries. Upon returning to her apartment complex, Ms. Agoik carried several bags of groceries up several flights of stairs.

On January 22, 2020, Ms. Agoik returned to Athletico Physical Therapy. (JE 7:95-96). She reported pain of 5-6 out of 10. (JE 7:95). Her pain decreases in her knee when she rested. (JE 7:95). Her knee continued to give out on her, and she continued to complain of symptoms within the entire right lower extremity from her "back/hip." (JE 7:95).

Additional surveillance was performed on January 24, 2020. (DE B:8-9). Around 7:18 a.m., Ms. Agoik carried a broom to the passenger side of a van. (DE B:8). She cleaned snow off a vehicle, and eventually entered the vehicle. (DE B:8). She drove to Urbandale High School and dropped someone off. (DE B:8). She later dropped two boys off at a residence, proceeded to physical therapy, and then to Dee Zee. (DE B:8-9).

I personally reviewed the video from this date. It shows a hooded figure aggressively sweeping snow from a vehicle. It is difficult to tell from the video whether this was Ms. Agoik since the individual is wearing a hood. When the individual's face is shown on the video, it is rather blurry. Ms. Agoik is later shown carrying several bags of garbage and tossing them into a dumpster. She then walked through a snow covered parking lot without a limp. Ms. Agoik is then seen climbing in and out of her van to unload some children. The video concludes with Ms. Agoik parking her vehicle at Dee Zee. She exits the vehicle, rounds the front of the vehicle, and walks into Dee Zee, again without a visible limp.

Ms. Agoik had another Functional Status Report issued by Athletico Physical Therapy on January 27, 2020. (JE 7:97-99). Ms. Agoik complained of pain from her hip to her foot, along with “tightness” in her right leg. (JE 7:97). She complained that working increased her pain, including when she stands or moves for too long. (JE 7:97). At times, her leg would “give out.” (JE 7:97). She had a 65 percent progression since beginning therapy, and noted that her symptoms progressively improved. (JE 7:97). She could safely lift 15 pounds from the floor to her waist, carry 20 pounds bilaterally, push 35 pounds, and pull 35 pounds. (JE 7:98). The therapist noted that Ms. Agoik could perform the beginning motions of work tasks, but could not lift the weights indicated in her job description. (JE 7:99). She continued to progress in her therapy including improved range of motion and strength in her right knee. (JE 7:99). Dr. Vincent checked a box at the end of the form that Ms. Agoik should be discharged to a home exercise plan. (JE 7:102).

Dr. Vincent examined Ms. Agoik again at Iowa Ortho on January 28, 2020. (JE 1:10-12). Ms. Agoik complained of right knee pain of 7 out of 10, which was intermittent and improving. (JE 1:10). Standing aggravated her pain. (JE 1:10). She continued to complain of pain radiating from her hip to her toes. (JE 1:10). Dr. Vincent noted, “[a]fter 3 months of treatment, I believe she is fully recovered. I do not believe she has any instability. Her ligamentous exam is normal.” (JE 1:11). Dr. Vincent recommended that Ms. Agoik continue her exercises to maintain good musculoskeletal health. (JE 1:11). Dr. Vincent also observed that Ms. Agoik had “minimal to no anticipated change in function, pain level, or need for future treatments.” (JE 1:11). Dr. Vincent returned her to work with no restrictions. (JE 1:12).

Eventually, Ms. Agoik claims that she lost trust in Dr. Vincent because he continually told her that he had nothing to do with pain in her right hip. (Testimony). He further told her that he was not treating her for any hip pain. (Testimony).

Ms. Agoik was working light duty. (Testimony). She returned with a full duty release from Dr. Vincent on January 28, 2020. (Testimony). She spoke to her supervisor, and was returned to the line. (Testimony). She indicated that she clocked in and reported to the line four minutes late. (Testimony). As soon as she clocked in, her supervisor approached her and told her that she was fired. (Testimony).

Ms. Agoik had a pattern of showing up late to work. (Testimony; DE A). This was due to her children causing her issues with attendance. (Testimony). Dee Zee had a point system. (Testimony). For every hour that someone was late, they accumulated one point. (Testimony). By July of 2019, Ms. Agoik had accumulated 48 points. (Testimony; DE A:1). She eventually reached 53 points. (Testimony; DE A:1).

She spoke to human resources about returning to work after being told that she was fired. (Testimony). Human resources told her that they would call her, which she assumed meant that she would be given her job back. (Testimony). They never called her. (Testimony).

On February 13, 2020, Dr. Vincent wrote a letter to Kimberly Westfall of "Argent-Westbend," presumably the insurer. (JE 1:13-14). Dr. Vincent outlined his treatment of Ms. Agoik. (JE 1:13-14). At the time of the final follow-up in January of 2020, Dr. Vincent indicated that he found no objective abnormalities of the right knee. (JE 1:13). He found a full, unrestricted range of motion of the right knee. (JE 1:13). Ms. Agoik reported high pain levels, but Dr. Vincent opined that no objective findings correlate to her subjective pain complaints. (JE 1:13). Dr. Vincent noted that Ms. Agoik reached maximum medical improvement ("MMI") on January 20, 2020. (JE 1:13). Dr. Vincent recommended no further medical treatment, no restrictions, and assigned zero percent permanent impairment. (JE 1:13).

Ms. Agoik returned to MercyOne Urbandale Family Medicine Clinic on September 2, 2020, due to vomiting. (JE 6:55-58). She had pain in her right abdomen that radiates into her chest. (JE 6:55). When she ate, she felt fullness or bloating in her stomach. (JE 6:55). She vomited green bilious fluid. (JE 6:55). She was diagnosed with right upper quadrant abdominal pain, GERD, and nausea. (JE 6:57). The provider recommended a referral for a limited abdominal ultrasound of the liver and gallbladder. (JE 6:58).

Ms. Agoik was deposed on November 17, 2020. (DE C). She testified that when she fell, she injured her right knee and that when she fell it hurt "all the way down" to her hip and "all the way down" to her foot due to the damage to her posterior cruciate ligament. (DE C). During her deposition, Ms. Agoik was asked about her knee and/or hip issues:

Q. Are you claiming an injury to your hip?

A. No. It's my knee, but it cause the pain the whole leg, you know. It's connected. That injury from my knee is causing the pain all over my leg.

(DE C, p. 8). She testified that the pain in her knee was always present. (DE C). She also claimed that two of her toes were "stuck together." (DE C). Ms. Agoik testified that the pain in her hip worsens when she bends. (DE C). She testified at her deposition that the pain was either venous or muscular. (DE C). She noted that she took Ibuprofen several times per day in order to manage her pain. (DE C).

Ms. Agoik returned to Dr. Vincent's office at Iowa Ortho on April 6, 2021. (JE 1:15-16). Ms. Agoik continued to complain of pain in the right knee that radiated to the hip and foot. (JE 1:15). Prolonged standing and driving aggravated her pain. (JE 1:15). Ms. Agoik indicated that she was not feeling better. (JE 1:15). Ms. Agoik related the pain in her hip to her knee injury. (JE 1:15). She told Dr. Vincent that she felt unstable, could not walk fast, or run. (JE 1:15). She indicated that physical therapy helped her issues. (JE 1:15). Upon examination, Dr. Vincent found weakness with a mild foot drop, decreased sensation in the dorsum of her right foot, and a positive straight leg raise. (JE 1:16). She complained that her pain from her knee radiated to

her hip. (JE 1:16). Dr. Vincent noted, “[i]t is my clinical impression that there may be a radiculopathy; however, the patient disagrees. She states she does not have a problem with her nerve. It is all in the knee.” (JE 1:16). Dr. Vincent reviewed repeated x-rays, which were normal. (JE 1:16). Ms. Agoik requested physical therapy, as she felt that was what she needed to heal her knee. (JE 1:16). Dr. Vincent noted that he would provide a referral for physical therapy, and released her from care. (JE 1:16). Dr. Vincent indicated that Ms. Agoik required no work restrictions. (JE 1:18).

Dr. Vincent wrote a letter to defendants’ counsel dated May 20, 2021. (JE 1:19-20). Dr. Vincent outlined the treatment provided to Ms. Agoik after the work incident. (JE 1:19). Dr. Vincent reviewed some medical records that predated the October 1, 2019, work incident. (JE 1:19). Records from March and August of 2019 indicated that Ms. Agoik complained of lower back pain. (JE 1:19). Dr. Vincent then outlined the post-accident treatment, and his release of Ms. Agoik in January of 2020. (JE 1:19). He continued by noting Ms. Agoik’s April visit wherein she reported pain in her knee and into her hip. (JE 1:19). Dr. Vincent opined that these symptoms appeared to be consistent with radiculopathy. (JE 1:19). He reiterated his recommendation that she see a spine specialist, and noted that she declined. (JE 1:19). Dr. Vincent opined that Ms. Agoik’s complaints of hip, buttock, and leg pain were unrelated to the knee injury of October 1, 2019. (JE 1:19). Dr. Vincent concluded that her current symptoms were due to a personal condition of radiculopathy. (JE 1:19-20).

Sunil Bansal, M.D., examined Ms. Agoik on June 8, 2021, for an independent medical examination (“IME”). (JE 9:103-112). He issued an IME report on June 30, 2021. (JE 9:112). Dr. Bansal is board certified in occupational health. (JE 9:103). Dr. Bansal began his report by reviewing Ms. Agoik’s medical records dating back to 2006. (JE 9:103-109). Some of these records are not in evidence, but indicate that she had some lower back issues and an injury in 2005 or 2006. (JE 9:104). In 2007, Ms. Agoik had complaints of bilateral hip and side pain. (JE 9:104). She also had bilateral knee pain. (JE 9:104). Ms. Agoik recounted the incident causing her right knee issues. (JE 9:109). At the IME she complained of radiating pain to her right knee from her hip. (JE 9:109). Her pain was constant between her hip and knee. (JE 9:109). She had difficulty standing, sitting, bending down, and with prolonged driving. (JE 9:109). She reported difficulties ascending stairs. (JE 9:109).

Upon examination of the right knee, Dr. Bansal observed inferior bursal swelling, +2 crepitus, posterior tenderness, and mild ligamentous laxity. (JE 9:110). She also displayed an antalgic gait. (JE 9:110). Dr. Bansal opined that Ms. Agoik had a loss of sensory discrimination over the posterior right knee. (JE 9:110). Dr. Bansal diagnosed Ms. Agoik with a tibial plateau fracture of the right knee, and a posterior cruciate ligament tear of the right knee. (JE 9:111). He also diagnosed her with trochanteric bursitis of the right hip. (JE 9:111). With regard to causation, Dr. Bansal opined that the mechanism of tripping and falling onto a flexed right knee was consistent with a tibial plateau fracture and posterior cruciate ligament tear. (JE 9:111). Dr. Bansal further opined that Ms. Agoik “aggravated her right hip from the impact of the fall,” which resulted in trochanteric bursitis. (JE 9:111). Dr. Bansal bases his opinion on the

records from the initial emergency room record in which Ms. Agoik claimed proximal thigh pain and continued hip pain during visits with Dr. Vincent. (JE 9:111).

Dr. Bansal placed Ms. Agoik at MMI effective June 8, 2021. (JE 9:111). He provided her with a 5 percent lower extremity impairment rating due to the tibial plateau fracture. (JE 9:111). He further provided a 7 percent lower extremity impairment rating due to the “mild ligamentous laxity” of the posterior cruciate ligament secondary to the ligamentous injury. (JE 9:112). Dr. Bansal noted that these combine to provide a 12 percent lower extremity impairment, which equates to a 5 percent whole person impairment. (JE 9:112). Regarding the right hip, Dr. Bansal assigned a 3 percent whole person impairment based upon the diagnosis of trochanteric bursitis. (JE 9:112). Dr. Bansal noted that Ms. Agoik should not lift more than 30 pounds, and should avoid frequent bending, twisting, kneeling or squatting. (JE 9:112). She also should avoid multiple stairs. (JE 9:112). Finally, Dr. Bansal recommended intermittent trochanteric bursal injections. (JE 9:112).

Phil Davis, M.S., C.B.I.S., a vocational specialist, wrote a letter to claimant’s counsel, dated July 5, 2021. (JE 10:114-117). Mr. Davis reviewed Ms. Agoik’s medical records, Dr. Bansal’s IME report, and Ms. Agoik’s answers to interrogatories, in order to formulate an opinion on Ms. Agoik’s current or future employability. (JE 10:114). Of note, Mr. Davis never interviewed Ms. Agoik. (JE 10:114). Mr. Davis outlined Ms. Agoik’s employment history, and noted that Ms. Agoik graduated from Urbandale High School in 1999. (JE 10:114-115). Ms. Agoik testified, however, that she completed school through the eighth grade in Sudan. (Testimony). Mr. Davis wrote his report based upon the restrictions offered by Dr. Bansal. (JE 10:116).

Mr. Davis opined that Ms. Agoik’s work history consisted of work classified as “medium.” (JE 10:116). “Medium” is defined as 50 pounds of maximum lifting with frequent lifting or carrying of up to 25 pounds, as “[a]ll of her employment required the full use and range of motion of her upper and lower extremities in the performance of essential job tasks.” (JE 10:116). Based upon Dr. Bansal’s restrictions, Mr. Davis opined that Ms. Agoik would be placed in the “sedentary” physical demand level. (JE 10:117). “Sedentary” work is defined as lifting a maximum of 10 pounds, occasional lifting or carrying of small articles, and occasional walking or standing. (JE 10:116). Therefore, Mr. Davis concluded that Ms. Agoik was precluded from “all the essential functions of any of her past jobs” based upon Dr. Bansal’s restrictions. (JE 10:117). Mr. Davis clarified this opinion to state that “she has lost access to greater than 70% of her pre-injury labor market and economy.” (JE 10:117).

On July 19, 2021, Dr. Vincent wrote another letter to defendants’ counsel. (JE 1:21-22). Dr. Vincent noted that he was a sports medicine fellowship-trained orthopedic surgeon who specialized in knee and shoulder conditions. (JE 1:21). He outlined his diagnoses and conservative treatment for Ms. Agoik’s knee injury. (JE 1:21). He reiterated that he believed that Ms. Agoik had neurologic findings consistent with radiculopathy. (JE 1:21). He did not believe that the neurologic findings were related to the knee or posterior cruciate ligament injury. (JE 1:21). He noted no evidence of

trochanteric bursitis, nor did he feel that trochanteric bursitis would explain her radicular symptoms. (JE 1:21-22). Dr. Vincent noted, “. . . I respectfully disagree with Dr. Bansal’s assessment of the trochanteric bursitis. I do not find findings of trochanteric bursitis. I also would not [*sic*] her radicular pain to a fall impacting the anterior aspect of the knee.” (JE 1:22). Dr. Vincent concluded that trochanteric bursitis is not caused by injury, but is rather caused by weakness and tendinopathy of the abductors. (JE 1:22).

Ms. Agoik filed for, and received unemployment. (Testimony). She has not worked since being fired on January 28, 2020. (Testimony). She has looked for jobs, but due to the initial wave of COVID-19, she could not find one. (Testimony). Then, her children participated in remote learning, and she did not have childcare, so she remained on unemployment. (Testimony). She testified that she has difficulty finding a second shift job. (Testimony).

Ms. Agoik claims that she has pain that begins in her knee and radiates to her hip and toes. (Testimony). She gets pain after driving for 30 minutes to 1 hour. (Testimony). She believes that she can still work, and wants to work to support her family. (Testimony). She has difficulties with standing too long and moving around. (Testimony). She needs to walk carefully, but does not use a cane to ambulate. (Testimony). She lives on the third floor of an apartment building, which requires her to take the stairs. (Testimony). She has no issues with the stairs. (Testimony).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable, rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of medical causation is “essentially within the domain of expert testimony.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall &

Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (u) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Iowa Code 85.34(2)(v) provides:

In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs 'a' through 'u' hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's function impairment resulting from the injury, and not in relation to the employee's earning capacity.

Where an injury is limited to a scheduled member, the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

Iowa Courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code 85.34(2)(a)-(u), this agency must only consider the functional loss of the particular scheduled member involved, and not the other factors which

constitute an “industrial disability.” Iowa Supreme Court decisions over the years have repeatedly cited favorably language in a 66-year old case, Soukup v. Shores Co., 222 Iowa 272, 277, 268 N.W. 598, 601 (1936), which states:

The legislature has definitely fixed the amount of compensation that shall be paid for specific injuries ... and that, regardless of the education or qualifications or nature of the particular individual, or of his inability ... to engage in employment ... the compensation payable ... is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong’s Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Iowa Code 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). “Loss of use of a member is equivalent to ‘loss’ of the member.” Moses v. National Union C.M. Co., 194 Iowa 819, 184 N.W. 746 (1921). Pursuant to Iowa Code 85.34(2)(w), the workers’ compensation commissioner may equitably prorate compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

The right of a worker to receive compensation for injuries sustained which arose out of and in the course of employment is statutory. The statute conferring this right can also fix the amount of compensation to be paid for different specific injuries, and the employee is not entitled to compensation except as provided by statute. Soukup, 222 Iowa 272, 268 N.W. 598.

Industrial disability was defined Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: “[i]t is therefore plain that the Legislature intended the term ‘disability’ to mean ‘industrial disability’ or loss of earning capacity and not a mere ‘functional disability’ to be computed in terms of percentages of the total physical and mental ability of a normal man.”

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee’s age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted, and the employer’s offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v.

Goodyear Service Stores, 255 Iowa 1112, 125 N.S.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code 85.34.

The first question in this matter is whether the injury caused a permanent disability. There are differing opinions as to whether that is the case. Dr. Vincent, a sports medicine fellowship trained orthopedic surgeon who specializes in knee and shoulder conditions, treated Ms. Agoik until her discharge in late January of 2020. He provided several subsequent letters indicating his opinions as to Ms. Agoik's alleged injuries. He provided Ms. Agoik with a full duty release effective January 28, 2020 with a declaration of MMI on January 20, 2020. He noted in later examinations and letters that she had no objective abnormalities of the right knee, even though she reported high subjective pain. Dr. Vincent recommended no further treatment or restrictions, and opined that Ms. Agoik suffered no permanent impairment.

Upon examining Ms. Agoik, he noted that the examination of her posterior cruciate ligament was normal. He opined that the symptoms described by Ms. Agoik of pain up and down her leg from her hip to her toes were consistent with radiculopathy. He advised that she should seek out treatment with a spine specialist, but noted that she declined to follow that recommendation. He further opined that Ms. Agoik's hip, buttock, and leg pain were not related to the October 1, 2019, knee injury. He continued in noting that he saw no evidence of trochanteric bursitis, as diagnosed by Dr. Bansal. Finally, he indicated that trochanteric bursitis would be caused by weakness or tendinopathy of the abductors, not an acute injury.

Dr. Bansal, a specialist in occupational medicine, opined that Ms. Agoik suffered a right tibial plateau fracture, a posterior cruciate ligament tear, and trochanteric bursitis to the right hip. He indicated that Ms. Agoik tripping and falling onto her right knee was consistent with her right knee injuries. He also indicated that Ms. Agoik "aggravated her right hip from the impact of the fall, resulting in trochanteric bursitis." He attributed this to her indications of thigh pain and hip pain during her visits with Dr. Vincent. Dr. Bansal opined that Ms. Agoik had a 5 percent lower extremity impairment due to her tibial plateau fracture, and a 7 percent lower extremity impairment due to mild ligamentous laxity of the posterior cruciate ligament secondary to the ligamentous injury. He combined these to get a 12 percent lower extremity impairment, which he transcribed to a 5 percent body as a whole impairment. Regarding the right hip, Dr. Bansal opined that Ms. Agoik suffered a 3 percent body as a whole impairment. He concluded that she achieved MMI effective June 8, 2021, and that she should avoid lifting greater than 30 pounds. She should also avoid frequent bending, twisting, kneeling, squatting, and also climbing multiple stairs.

Ms. Agoik testified that she continues to have issues with pain in her knee, which she claims radiates to her hip and foot. She also claims weakness in the right knee which periodically causes her right knee to “give out.” Finally, she claims difficulty standing for long periods, walking for long periods, and driving a car for long periods.

As in so many cases, this seems like it should be an “either-or” decision. Either Ms. Agoik has both a knee and hip injury that cause permanent impairment, or she does not. I reject that false choice for this matter. It is undisputed that Ms. Agoik suffered a fracture and ligament injury to her right knee joint. There is a dispute as to whether or not Ms. Agoik suffered a permanent impairment of her right knee and/or right hip.

With regard to the alleged hip injury, I find the opinions of Dr. Vincent to be most convincing. Dr. Vincent is an orthopedic surgeon who specializes in care for the knee. He also was Ms. Agoik’s treating physician. Ms. Agoik claimed that Dr. Vincent did not listen to her concerns about her hip pain, and that she continuously complained of pain in the hip; however, Dr. Vincent believed that the continued pain in Ms. Agoik’s right leg was due to radiculopathy. Dr. Vincent recommended that Ms. Agoik follow up with a spine specialist, which she declined. Dr. Vincent opined that Ms. Agoik’s knee had no abnormalities at the time of discharge. He also opined that she did not sustain a permanent disability, nor did she require permanent restrictions with regard to the right knee. Finally, he gave the clearer explanation as to why Ms. Agoik likely did not suffer from trochanteric bursitis, a diagnosis that was only made by the claimant’s IME doctor.

The claimant indicated that she continues to experience pain and weakness in her right knee. She also indicates difficulty with standing and/or walking for lengthy periods. While I found Dr. Vincent’s opinions as they relate to the alleged hip injury to be more persuasive, I find Dr. Bansal’s opinions regarding Ms. Agoik’s knee injury to be more persuasive with one caveat. I note that Dr. Vincent opined that Ms. Agoik did not have any ligamentous abnormalities, while Dr. Bansal provided an impairment rating based upon mild ligamentous laxity. On this, I find Dr. Vincent’s opinions more convincing due to his experience and time as a treating physician. However, I find Dr. Bansal’s opinion regarding the tibial plateau fracture to be more convincing. As noted above, Ms. Agoik continues to report pain in her right knee. She had an objective injury to her right knee, namely, a tibial plateau fracture. Objective measurements can show that Ms. Agoik has no issues with range of motion, or ligamentous laxity. Based upon the evidence in the record, I find that Ms. Agoik sustained permanent impairment to her right knee due to the October 1, 2019, work incident.

Considering I found Dr. Vincent more convincing as it relates to the alleged right hip injury, this matter involves permanent disability to a scheduled member. The claimant’s knee condition is a scheduled member injury to the right lower extremity. Permanent impairment is assessed pursuant to Iowa Code section 85.34(2)(p), and is based upon 220 weeks. Industrial disability does not apply to this matter.

Iowa Code section 85.34(2)(x) states:

In all cases of permanent partial disability described in paragraphs “a” through “u”, or paragraph “v” when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers’ compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs “a” through “u”, or paragraph “v” when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34(2)(x).

In order to determine the extent of loss, or percentage of impairment for permanent partial disabilities, the agency has adopted the Guides to the Evaluation of Permanent Impairment, Fifth Edition, as published by the American Medical Association. 876 Iowa Administrative Code 2.4.

Dr. Bansal broke down his impairment rating for the right knee into a rating related to the tibial plateau fracture, and a rating due to mild ligamentous laxity. Therefore, a decision can be rendered utilizing an impairment rating pursuant to the Guides to the Evaluation of Permanent Impairment, Fifth Edition. This allows the undersigned to award the claimant benefits for strictly one body part considering the undersigned did not find that the claimant suffered a permanent disability due to injury to her right posterior cruciate ligament. In providing his rating, Dr. Bansal utilized Table 17-33 from the Guides to the Evaluation of Permanent Impairment, Fifth Edition in order to provide an impairment rating for the plateau fracture. Table 17-33 provides for a 5 percent lower extremity impairment for an undisplaced plateau fracture. Therefore, the claimant is entitled to 11 weeks of permanent partial disability benefits at the stipulated rate. (5 percent x 220 weeks = 11 weeks).

ORDER

THEREFORE, IT IS ORDERED:

That the defendants are to pay unto claimant eleven (11) weeks of permanent partial disability benefits at the rate of three hundred seventy-four and 62/100 dollars (\$374.62) per week from the commencement date of January 20, 2020.

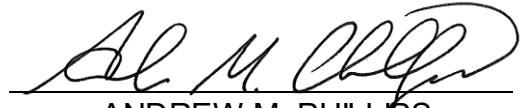
That the defendants shall be given credit for benefits previously paid, as stipulated.

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

injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

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

Signed and filed this 12th day of October, 2021.


ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Randall Schueller (via WCES)

James Ballard (via WCES)

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