BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DIANA DAVIS, Claimant, vs. DOLLAR TREE, Employer, and ARCH INSURANCE COMPANY, Insurance Carrier, Defendants.	File Nos. 5067704, 5067705 ARBITRATION DECISION Head Note Nos.: 1803, 1100, 1108.50, 2500

STATEMENT OF THE CASE

Diana Davis, claimant, filed a petition in arbitration seeking workers' compensation benefits against Dollar Tree, employer, Arch Insurance Company, insurer, as defendants for the accepted work injury date of October 26, 2016, and disputed work injury date of July 8, 2017.

Prior to the hearing, the dispute with the Second Injury Fund of Iowa was resolved.

The case was heard on March 9, 2020, in Des Moines, Iowa. The case was considered fully submitted on March 30, 2020, upon the simultaneous filing of briefs. The record consists of joint exhibits 1 through 19 and defendants exhibits A through D along with the testimony of the claimant.

ISSUES

File number 5067704:

1. The nature and extent of claimant's disability;
2. Whether claimant is entitled to alternate medical care.

File number 5067705:

1. Whether claimant sustained an injury arising out of and in the course of her employment.
2. Whether claimant provided timely notice under Iowa Code section 85.23.

3. Whether claimant is entitled to disability benefits, and if so,
4. The extent of those benefits.
5. Whether claimant is entitled to reimbursement of medical expenses in Exhibit 15.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

File number 5067704

The parties stipulate the claimant sustained a work injury arising out of and in the course of her employment on October 26, 2016. The parties further agree that the claimant sustained temporary and permanent disabilities. Claimant is not seeking entitlement to temporary or healing period benefits.

As for the stipulated injury, the parties agree the claimant sustained a scheduled member disability to the right leg. The commencement date for permanent partial disability benefits, if any are awarded, is September 19, 2017. At the time of the injury, claimant's gross earnings were $789.55 per week. Claimant was married and entitled to two exemptions. Based on the foregoing, the weekly benefit rate is $514.56.

Defendants waive all affirmative defenses.

File number 5067705:

While the parties dispute that the claimant sustained a work-related injury on July 8, 2017, they do agree that if an injury is found to be work-related, and permanent benefits are awarded, the commencement date would be December 3, 2019. At the time of the alleged injury of July 8, 2017, the claimant's gross earnings were $803.84 per week. The claimant was married and entitled to two exemptions. Based on the foregoing, the weekly benefit rate is $522.30.

FINDINGS OF FACT

At the time of the hearing, claimant was a 59-year-old person.

Her past education includes graduation from high school and a few General Ed classes at a community college in Keokuk Iowa. Claimant also took an insurance course and was certified to sell insurance. She is also currently a member of a volunteer firefighting department in the Jackson Township and has been for the last 20 years.

Her work history includes a bank teller, secretary for an insurance company, assistant manager at a Kmart, and coach of softball, basketball, volleyball and track for the Keokuk Community School District. She began working for the defendant employer as a manager in 2013. Shortly after she began working for the defendant employer, she also took a position as a SDC which is a person who opens new stores across the country.

Her work consisted of stocking, hiring, firing, managing inventory, working the register, and every other aspect of running a small store.

Claimant's past medical history is significant for an injury to her right shoulder sustained while working at the fire department. She had surgical repair for the shoulder injury but it has not impacted her ability to work or undertake hobbies.

On or about October 26, 2016 claimant was loading freight when she turned and heard her knee pop. She did not immediately seek medical attention, believing the pain would resolve. However, when it did not, she presented to Fort Madison Physicians and Surgeons where she was seen by Paul F. Ostby, P.A., for her complaints of pain swelling and instability in her right knee. (Joint Exhibit 1:1) Stooping, squatting, walking up or down the stairs, prolonged sitting and/or writing, getting out of a low seat, and prolonged standing aggravated claimant's pain. Id. The X-rays revealed a possible intra-articular free fragment at the lateral compartment. (Joint Exhibit 2:4) PA Ostby was concerned that claimant had suffered a meniscus tear and referred her for an MRI. (Joint Exhibit 1:3)

The MRI results showed a high-grade ACL tear with a single thin intact fiber, a complex medial meniscal tear with a displaced fragment located at the anterior aspect of the medial femoral condyle, anterior superior to the anterior horn, high-grade chondral injury at the weight-bearing surface of the medial femoral condyle, suspected lateral meniscal tear, edema which may signify ligament injury, and mild tricompartmental degenerative changes. (Joint Exhibit 1:4 – 5; 2:5 – 6)

She returned to PA Ostby on February 16, 2017, for review of the MRI. Surgical repair was recommended. (Joint Exhibit 1:8)

On or about July 8, 2017, claimant was unloading freight and sustained injury to her left knee and low back. Claimant testified that she filled out a report on July 10, 2017, and that two or three of her employees also filled out a report describing that claimant was unloading a truck when she dropped freight and twisted her knee. Claimant called and reported the injury. Claimant was told that the injury was added to the October 26, 2016, date of injury. Claimant sought care on her own at the Blessing Hospital in Quincy at the emergency room on July 10, 2017. (Joint Exhibit 5) The medical records note that claimant denied any injury but rather she felt a twinge when driving home and that the twinge worsened. (Joint Exhibit 5:1) Claimant testified that she discussed both her left leg and low back but the emergency room notes were

focused on the back issue. (Joint Exhibit 5) X-rays were taken of her low back but not the left knee. (Joint Exhibit 5:2)

On July 11, 2017, she was seen at Great River Health Systems for the chronic back pain. (Joint Exhibit 6:1) There was no mention of her left knee pain. The claimant's husband was present as well. (Joint Exhibit 6:1 – 2) An orthopedic referral was made at the request of the claimant. (Joint Exhibit 6:2) Claimant established new care with Tarik Qasim, M.D., on July 17, 2017, and reported throbbing low back pain. (Joint Exhibit 6:4) It was noted the claimant had tried to use a chiropractor to help relieve the back pain but no relief was obtained. (Joint Exhibit 6:4) She did bring up mild pain in her right anterior thigh, the history of the MCL and ACL tear in her right knee for which she would be undergoing surgery. (Joint Exhibit 6:5) Examination reflected full flexion and extension range of motion and full strength bilaterally of the knees. (Joint Exhibit 6:5) Claimant was diagnosed with grade 1 – 2 spondylolisthesis. (Joint Exhibit 6:6) She was referred to physical therapy, given a prescription for a nonsteroidal anti-inflammatory and a refill of her hydrocodone. (Joint Exhibit 6:6) It was recommended that she return and seek an MRI if she had ongoing radicular pain. (Joint Exhibit 6:6)

Claimant testified that they also recommended she undergo physical therapy, but she did not pursue this as she was starting physical therapy for her prior right knee injury.

Claimant was seen at Great River Health Systems on July 19, 2017, due to complaints of coughing and congestion. (Joint Exhibit 6:8) In the history, claimant's right knee pain and her upcoming surgery was noted. (Joint Exhibit 6:8) She also mentioned she was getting therapy for her back through a Dr. Tekell. (JE 6:8) There was no mention of her left knee pain. (Joint Exhibit 6:8) During the examination she exhibited pain with external and internal rotation of the right knee. There is no record of whether claimant's left knee was examined, but in the assessment portion, left knee pain was noted. (Joint Exhibit 6:9)

Surgery took place on August 4, 2017, under the direction of Brent Woodbury, M.D. (Joint Exhibit 1:13 – 14; Joint Exhibit 2:7 – 8)

On August 17, 2017, claimant returned for follow-up with PA Ostby. (Joint Exhibit 1:15) She reported improvement, but stated that her knee was locking frequently. She had lateral knee soreness and a mild limp with walking. (Joint Exhibit 1:15) It was recommended that she do light duty work only and start physical therapy. (Joint Exhibit 1:18) PA Ostby believed that her locking may be related to her patellar VMO atrophy. (Joint Exhibit 1:18)

Claimant began physical therapy at the Fort Madison Community Hospital on August 3, 2017. (Joint Exhibit 2:9) Her biggest concern at the time was the locking in her right knee along with the throbbing pain. (Joint Exhibit 2:10) She also brought up that she had left knee and back pain but identified no specific trauma giving rise to that pain. (Joint Exhibit 2:9) She brought up the fact that she had gone to the emergency

room in July for the left knee and back pain. (Joint Exhibit 2:10) Treatment during physical therapy focused on the right knee. (Joint Exhibit 2:9-23)

Dr. Woodbury saw the claimant on September 14, 2017 after 45 visits of physical therapy. (Joint Exhibit 1:19) Dr. Woodbury is an orthopedic surgeon who is a Fellow of the American Academy of Orthopedic Surgeons and currently employed at Four Madison Community Hospital. (Joint Exhibit 18:1) At that time, claimant reported improvement due to therapy, but continued her complaint about a locking knee. She also fell going down the stairs. (Joint Exhibit 1:19) Two weeks later claimant returned to Dr. Woodbury noting that while there was improvement, she continued to have catching in an area anteriorly where one of her incisions was located. (Joint Exhibit 1:22) At this visit, claimant made a specific request that Dr. Woodbury document that claimant had left knee pain on July 10, 2017 and went to the emergency room on July 10, 2017 for back pain. (Joint Exhibit 1:22) Claimant testified that while her back improved, her left knee did not.

As it related to her right knee, Dr. Woodbury recommended an injection of Kenalog which the claimant agreed to. (Joint Exhibit 1:23) Medication was administered and claimant was instructed to return in one month. (Joint Exhibit 1:25)

One month later, on October 26, 2017, claimant returned and reported relief with the injection. (Joint Exhibit 1:26). She still noticed weakness and an increase of pain as she had returned to a 40-hour work week. (Joint Exhibit 1:626) Dr. Woodbury recommended the claimant continue conditioning, continuous physical therapy, and maintain her work hours at 40 per week. (Joint Exhibit 1:28)

On November 28, 2017, she presented to Dr. Woodbury's office with a continued limp while walking. (Joint Exhibit 1:29) While continuing with physical therapy, claimant had shown good improvement but had a constant ache around the lateral knee. (Joint Exhibit 1:29) Dr. Woodbury performed range of motion tests which revealed active range of motion to 120° and no pain. (Joint Exhibit 1:31) Despite the limp noted in the subjective portion of the medical records, Dr. Woodbury noted the claimant's gait was normal during the physical examination. (Joint Exhibit 1:31) Claimant was instructed to finish with physical therapy and the plan was to return her work with no restrictions in a month. (Joint Exhibit 1:31)

Claimant returned to Dr. Woodbury on January 9, 2018. (Joint Exhibit 1:33) She reported getting along well although she did have some instability while using ladders. Her physical examination was normal, with no tenderness or fusion. (Joint Exhibit 1:35) Dr. Woodbury placed claimant at maximum medical improvement and returned her to work without restrictions. (Joint Exhibit 1:36) Dr. Woodbury assessed a 10 percent lower extremity rating for the partial medial and lateral meniscectomy. (Joint Exhibit 3:1)

On May 19, 2018, claimant underwent an independent medical evaluation with Theron Jameson, D.O., which included an in person examination, as well as a review of the medical records. (Joint Exhibit 7:1) Dr. Jameson is an orthopedic surgeon currently

practicing at Great River Orthopedic Specialists. (Joint Exhibit 17:2) Subjectively claimant reported her right knee locking, as well as pain with use. (Joint Exhibit 7:4 – 5) On examination her range of motion was 0 to 120° on the right, pain with drawer testing and firing of the hamstring. (Joint Exhibit 7:5) Dr. Jameson concluded the claimant sustained a right knee medial and lateral meniscus tears, as well as an anterior cruciate ligament tear as a result of the work incident on October 26, 2016. (Joint Exhibit 7:6) He assessed a total of 24 percent lower extremity impairment rating and recommended she limit ladder climbing, no pushing pulling or lifting greater than 20 pounds, no carrying greater than 20 pounds, and limit squatting and kneeling. (Joint Exhibit 7:6) He thought it was possible that she could require additional care regarding her right knee as arthritic changes progressed. (Joint Exhibit 7:6)

On July 2, 2018, claimant underwent an independent medical examination with Robert L. Broghammer. (JE 8:10) Dr. Broghammer is an occupational medicine doctor currently a staff physician for Centura Centers for Occupational Medicine. (JE 19) During the subjective portion of the examination, claimant reported troubles bending with her right knee, right knee instability, and weakness in the right leg. (Joint Exhibit 8:7) She also reported left knee and lower back pain. (Joint Exhibit 8:7) She exhibited lateral and medial joint line pain with palpation on both the right and the left. (Joint Exhibit 8:8) McMurray test was positive with external rotation with reproduction of the medial knee pain of the right and left knees. (Joint Exhibit 8:8) Based on the medical review and the examination, Dr. Broghammer concluded the claimant was suffering from ongoing right knee pain related to degenerative changes but that her current complaints were not related to the work injury of October 26, 2016. (Joint Exhibit 8:8) While he agreed that the claimant's right knee condition was lit up or aggravated by the October 2016 or July 2017 incident, he felt that the medial meniscal tears were pre-existing and thus any ongoing problems were related to that pre-existing condition. (Joint Exhibit 8:11)

After Dr. Broghammer's report, the defendants issued a letter denying claimant's worker's compensation claim for the lumbar spine and left knee. (Joint Exhibit A:1)

On October 16, 2018, claimant returned to Dr. Woodbury for an evaluation of her right knee. (Joint Exhibit 2:24) Claimant had a renewed sensation of pain in the lateral knee and sharper pain more anteriorly. (Joint Exhibit 2:24) along with the pain, she reported instability particularly when using ladders. (Joint Exhibit 2:25) After the examination, Dr. Woodbury concluded the claimant was at increased risk of progressive arthrosis, as well as a recurrent or additional meniscal tears. (Joint Exhibit 2:26) He felt that she should limit her climbing due to an increased risk of falling with her knee instability and pain and recommended a repeat MRI to evaluate whether there was a new meniscal tear versus a progression of her arthrosis. (Joint Exhibit 2:26)

The MRI showed a new meniscal pathology and it was recommended that she undergo arthroscopic surgery and debridement of her new meniscal pathology. (Joint Exhibit 2:31)

On January 11, 2019, Dr. Broghammer issued an addendum to his July 2, 2018, report. (DE B) Dr. Broghammer disagreed with Dr. Woodbury's findings and reaffirmed his earlier opinion that the ongoing knee issues suffered by claimant were related to her pre-existing degenerative condition. (DE B:3) Dr. Broghammer refers to the "Mayo Clinic" as his reference source for finding that turning one's knee would not cause an ACL deficiency or ACL injury. (DE B:4) He further opined that he detected no laxity in claimant's right knee and that if she did have pathology consistent with an ACL deficiency it was related to her progressive arthrosis. (DE B:4)

Based on the January report of Dr. Broghammer, defendants denied claimant's request for arthroscopic debridement of the meniscus in the claimant's right knee. (DE C:2)

On October 29, 2019, claimant presented for evaluation of her left knee injury.. She reported in July 2018 she was unloading a truck, twisted her left knee and felt a sharp pain, similar to the right knee injury. (Joint Exhibit 2:32) Claimant reported breakaway weakness in pain located in the anterior, medial, and lateral left knee. (Joint Exhibit 2:32) An MRI was ordered which revealed a medial meniscal tear. (Joint Exhibit 2:30) She underwent surgical repair on her left knee.

She returned for follow-up on December 3, 2019 (Joint Exhibit 2:44) She reported that she was doing very well and back to work full time. Her pain was 1/10 on a 10 scale.. (Joint Exhibit 2:44) On December 17, 2019, Dr. Woodbury provided a statement reaffirming his belief that the claimant's right knee injury and that the subsequent treatment including the surgery on August 4, 2017 was related to her work-related injury. (Joint Exhibit 4:1) He also opined that it was a substantial contributing factor to her need for a subsequent surgery. (Joint Exhibit 4:1)

On February 14, 2020, Dr. Woodbury signed a letter agreeing that surgery on the left knee revealed a traumatic type of injury rather than a significant arthritic involvement. (Joint Exhibit 12:1) He agreed that if the claimant's pain and discomfort began after a work-related knee injury of July 8, 2017, that it was his opinion that the work injury was a substantial contributing factor to the left knee condition and subsequent need for surgery. (Joint Exhibit 12:1)

Claimant has incurred $14,158.43 of medical expenses for the left knee and ($1940.54 + $1,101.00) medical expenses related to her back. (Joint Exhibit 15:1) For right knee she has incurred $24,276.69 in medical bills. (Joint Exhibit 16:1)

Claimant has no formal restrictions at work although she does self-limit. Because she is the manager, she has the discretion to assign other people to do tasks which are outside of her physical abilities. Further, her employees have been very helpful in doing the essential tasks which she can no longer undertake.

She is earning more today than at the time of her 2016 injury or 2017 injury. Her job responsibilities have not changed since her 2017 injury. She is no longer actively going on fire calls nor is she playing volleyball or softball. She complains of daily pain in her right and left knee. She believes that both surgeries helped reduce her pain and increase her function. She still has instability in her right knee and is hopeful for surgical repair. She also believes that some of her pain in her left knee is the result of overcompensation for the right knee pain.

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. 6.14(6).

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 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred 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 (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 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. 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 143.

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 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).

Claimant has two dates of injury. The defendants have accepted the injury dated October 26, 2016, (File No. 5067704), but have denied the alleged injury date of July 8, 2017, (File No. 5067705).

For the first date of injury (File No. 5067704) only the extent of claimant's disability is in dispute along with whether claimant is entitled to more surgery to the right knee which is recommended by Dr. Woodbury. Defendants argue that Dr. Woodbury's opinions should not be relied upon because Dr. Woodbury termed the right knee meniscal pathology that claimant sought care for in October 2018 as new and therefore not related to the original October 26, 2016, injury. (Defendant's Brief, p. 5-6) The medical evidence does not support a pain-free or symptom-free period between January 2018 when Dr. Woodbury placed claimant at MMI for the right knee injury. Instead, claimant underwent an IME with Dr. Jameson on May 19, 2018, wherein she complained of right knee pain and instability and had objective signs of the same upon testing. Dr. Jameson, an orthopedic surgeon, opined that it was possible claimant would need additional care for her right knee as arthritic changes progressed. On July 2, 2018, claimant underwent an independent medical examination with Dr. Broghammer. During that examination, she reported right knee pain, right knee instability, weakness in the right leg, left knee pain. Pain was reproducible on both knees. Dr. Broghammer concluded that the claimant's pain was related to pre-existing arthritis and not any work injury. He did not affirm that the claimant was pain free. The medical evidence supports a finding that claimant had consistent right knee pain and instability from the date of her injury on October 26, 2016, continuing through her surgery on August 4, 2017, up into the present time. There was no new pathology, but rather exacerbating pain associated with a lighting up or aggravation of a pre-existing arthritic condition.

Both orthopedic surgeons found that claimant could benefit from surgical intervention on her right knee. The pain and symptomatology existing in the claimant's right knee was brought about by her October 26, 2016 injury at work. Having found thusly, claimant is entitled to surgical repair along with any other reasonable medical care related to right knee symptomatology for which Dr. Woodbury provided care.

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

The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a-t), 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 the following language in the 66-year-old case of Soukup v. Shores Co., 222 Iowa 272, 277; 268 N.W. 598, 601 (1936):

> 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 Code section 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 section 85.34(2)(u) 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).

Evidence considered in assessing the loss of use of a particular scheduled member may entail more than a medical rating pursuant to standardized guides for evaluating permanent impairment. A claimant's testimony and demonstration of difficulties incurred in using the injured member and medical evidence regarding general loss of use may be considered in determining the actual loss of use compensable. Soukup, 222 Iowa 272, 268 N.W. 598. Consideration is not given to what effect the scheduled loss has on claimant's earning capacity. The scheduled loss system created by the legislature is presumed to include compensation for reduced capacity to labor and to earn. Schell v. Central Engineering Co., 232 Iowa 421, 4 N.W.2d 339 (1942).

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.

Because the injury is to a scheduled member, claimant is not entitled to an evaluation of disability based upon loss of earning capacity. Only the functional loss can be awarded. Claimant was returned to work without restrictions by Dr. Woodbury on January 9, 2018. He also assessed a 10 percent impairment rating for the lower left extremity. Dr. Jameson assessed a 24 percent impairment rating and recommended restrictions of no ladder climbing, no pushing pulling or lifting greater than 20 pounds, no carrying greater than 20 pounds, and limit squatting and kneeling. Claimant is

currently working the same job she did prior to the injury although, as manager, she has the flexibility to assign others to do tasks which she finds difficult or painful due to her right knee injury. Her post-surgical activities are more aligned with Dr. Woodbury's assessment than that of Dr. Jameson although she does self-limit. Based on the foregoing, claimant has sustained a 15 percent lower extremity impairment rating based on her right knee injury of October 26, 2016.

As it pertains to the July 8, 2017 injury, claimant seeks compensation for a left knee injury.[1] Claimant had substantial medical care in 2017 related to her right knee. During these medical visits and the physical therapy visits, claimant rarely brought up the issue of left knee pain. In 2019, the claimant began seeking regular care for her left knee. She did identify that the source of the left knee pain was the July 2018 work incident which was similar to the mechanism of injury that caused an aggravation of right knee arthritis in October 2016. Her left knee symptomology was also similar in that she experienced pain and breakaway weakness. The MRI revealed a medial meniscus tear. Dr. Woodbury opined that claimant's left knee injury was more likely the result of a traumatic injury rather than significant arthritic involvement and that if she experienced pain and discomfort immediately following the July 2018 injury, that work injury was a substantial contributing factor in bringing about claimant's need for left knee surgery.

Claimant testified that she was seen at the emergency room on July 10, 2017, for both her back pain and her left knee pain. There is no notation of any left leg pain. X-rays were taken of claimant's low back but not of her left knee. The following day she was at the great River Health Systems Clinic for her back pain. Her husband was present at this visit and an orthopedic referral was made at the request of the claimant. However, again, the medical records make no mention of knee pain. During the subsequent orthopedic consultation, there is no record of left knee pain. Claimant testified at hearing that she was consistently braying of the left knee pain to different medical providers, but in three different medical provider records, no mention of left knee pain is recorded.

The first record of left knee pain is in the assessment section of the July 19, 2017, medical visit to Great River Health Systems for complaints of coughing and congestion. There was mention of claimant's right knee pain, her upcoming surgery for the right knee, therapy for her back, but no reference to any left knee pain. During the examination portion, she exhibited pain with external and internal rotation of the right knee. In the assessment section, left knee pain was mentioned for the first time but there was no treatment recommended or any objective testing results of the left knee as there was with the right knee. In the August 27, 2017, therapy records there is mention of back and left knee pain due to overuse and then a subsequent request at the

[1] Claimant initially reported injuring her low back at the same time as her left knee. The low back injury has fully resolved and there appears to be no claim related to a low back injury.

September 14, 2017, visit for Dr. Woodbury to make note of the left knee pain and emergency room visit of July 10, 2017.

The medical records are then silent on the left knee until July 2, 2018, when it is brought up during Dr. Broghammer's IME visit.

Dr. Woodbury's opinion was that if claimant experienced pain and discomfort immediately following the July 8, 2017, injury then it was more likely that the left knee injury was the result of the work injury. However, there is scant evidence that claimant did have pain and discomfort immediately following the July 8, 2017, injury. Claimant was a credible witness but the contemporaneous medical records reveal a different story than the one presented at hearing. A witness can be credible but still have a faulty memory. Additionally, even if claimant did complain of the pain and discomfort, it was not severe enough that she needed treatment until the fall of 2018, over a year after the initial injury.

Based on the foregoing, it is found that claimant did not carry her burden in proving that the left knee symptomatology and disability, if any, was related to any of the duties she executed on behalf of the defendant employer. Therefore, claimant is not entitled to disability benefits for the left knee or reimbursement of medical expenses.

ORDER

THEREFORE, it is ordered:

File number 5067704:

That defendants are to pay unto claimant thirty-three (33) weeks of permanent partial disability benefits at the rate of five hundred fourteen and 56/100 dollars ($514.56) per week from September 19, 2017.

That defendants shall pay accrued weekly benefits in a lump sum.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. April 24, 2018).

That defendants are to be given credit for benefits previously paid.

That claimant is entitled to additional care including, but not limited to, the recommended surgery on her right knee.

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

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

File number 5067705:

Claimant shall take nothing.

Signed and filed this 28th day of April, 2020.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Pothitakis (via WCES)

Lyndsey Canning (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.