BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KIEL MCMAHON,	FILED	
Claimant,	AUG 21 2015	File Nos. 5046149; 5046150
vs.	WORKERS COMPENSATION	ARBITRATION
DIAMOND CRYSTAL BRANDS,		DECISION
Employer, Self-Insured, Defendant.		Head Note Nos.: 1402.40, 1803

STATEMENT OF THE CASE

Claimant, Kiel McMahon, filed petitions in arbitration seeking workers' compensation benefits from Diamond Crystal Brands, self-insured employer, as defendant, as a result of a stipulated injury sustained on October 16, 2012 and an alleged injury sustained on July 28, 2013. This matter came on for hearing before Deputy Workers' Compensation Commissioner, Erica J. Fitch, on October 14, 2014, in Des Moines, Iowa. The record in this case consists of claimant's exhibits 1 through 11 and 13 through 15, defendant's exhibits A through N, and the testimony of the claimant and Doug Enabit. The parties declined to submit post-hearing briefs.

ISSUES

In File No. 5046149 (October 16, 2012 date of injury):

The parties submitted the following issues for determination:

1. Whether the stipulated injury is a cause of permanent disability;
2. The extent of permanent disability;
3. Whether claimant is entitled to reimbursement for the purchase of assistive devices;
4. Whether claimant is entitled to payment of medical mileage; and
5. Whether claimant is entitled to reimbursement of an independent medical examination (IME) pursuant to Iowa Code section 85.39.

While claimant initially claimed the work injury occurred on October 1, 2012, the parties stipulated by the hearing report that the proper date of injury is October 16, 2012. Therefore, this date is accepted by the agency as the correct injury date. The remaining stipulations of the parties in the hearing report are incorporated by reference in this decision.

In File No. 5046150 (July 28, 2013 date of injury):

The parties submitted the following issues for determination:

1. Whether claimant sustained a cumulative injury on July 28, 2013 which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of permanent disability; and

3. The extent of permanent disability.

The stipulations of the parties in the hearing report are incorporated by reference in this decision.

FINDINGS OF FACT

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

Claimant was 31 years of age at the time of hearing. He is right-hand dominant. (Claimant's testimony) Claimant began work at defendant in June 2006. (Exhibit N, page 3) His initial position involved packing small packets of cocoa by hand. In May 2009, claimant transitioned to inventory control/material coordinator. In this role, he was tasked with physically counting inventory in the warehouse, which involved removal of product from shelves with a forklift, counting, and then replacing product. He would then keyboard enter the information gathered into a computer. Claimant testified as time allowed, claimant would also work packing cocoa or mixing in the savory department. He indicated on some days he spent an entire 8-hour shift performing one task, on other days he would rotate between positions. (Claimant's testimony)

On October 16, 2012, claimant slipped off a forktruck and rolled his right ankle. Later that same day, claimant felt pain in his foot when lifting a heavy object. Claimant testified the next day, his right foot was swollen. He then reported the injury to defendant and was referred for medical treatment at Concentra. (Claimant's testimony)

On October 18, 2012, claimant presented to Concentra and was evaluated by Judith Nayeri, D.O. X-rays of right foot and ankle negative for fracture. (Ex. 2, p. 33; Ex. H, p. 2) Following examination, Dr. Nayeri assessed a right foot sprain and sprain/strain of the right ankle. She recommended use of over-the-counter ibuprofen, a splint, and ice and elevation every 2 hours for 10 to 15 minutes. Dr. Nayeri also

imposed restrictions of no lifting greater than 10 pounds; no push or pull over 20 pounds; and no ladders, stairs, squatting, or kneeling. (Ex. 2, p. 34; Ex. H, p. 3)

The following day, October 19, 2012, claimant presented to his personal providers at Mercy East Family Practice & Urgent Care (Mercy Family Practice) in Pleasant Hill, Iowa. John Rhodes, M.D. evaluated claimant for complaints of ankle pain and swelling. Following examination, Dr. Rhodes assessed sprains of the right ankle and foot. Dr. Rhodes removed claimant from work on October 22, 2012 and prescribed hydrocodone-acetaminophen and crutches. (Ex. F, pp. 1-2) Claimant testified he purchased the crutches as recommended by Dr. Rhodes. (Claimant's testimony)

On October 23, 2012, claimant returned to Concentra and was evaluated by Terrance Kurtz, M.D. Dr. Kurtz assessed sprain/strain of the right ankle and right foot sprain. He ordered ibuprofen 800 mg and a course of physical therapy. Dr. Kurtz also imposed restrictions of no lifting over 10 pounds; no pushing/pulling with over 0 pounds of force; use of ice every 2 to 3 hours; no kneeling, squatting, stairs, or ladders; and the requirement claimant must wear a brace at all times and use his crutches 95 percent of the time. (Ex. 2, pp. 40-41; Ex. H, pp. 9-10) That same date, claimant began the ordered course of physical therapy. (Ex. 2, p. 35; Ex. H, p. 4)

On October 26, 2012, claimant returned to his personal providers at Mercy Family Practice. On this occasion, claimant requested a second opinion as to whether or not he sustained a fracture of his right foot. Stacy Davis, PA-C, ordered x-rays of the right foot and opined the films were normal. PA Davis assessed a right foot sprain and recommended claimant alternate between use of Tylenol and ibuprofen. (Ex. F, pp. 3-5)

Claimant returned to Dr. Kurtz on October 29, 2012, who recommended continued use of ibuprofen 800 mg and physical therapy. At that time, Dr. Kurtz upgraded claimant's restrictions to allow for no lifting over 25 pounds, no pushing/pulling over 100 pounds of force, and the ability to apply ice every 2 to 3 hours. (Ex. 2, p. 48; Ex. H, p. 17)

On November 5, 2012, claimant returned to Dr. Kurtz. Following evaluation, Dr. Kurtz assessed foot sprain, sprain/strain ankle, and reflex sympathetic dystrophy (RSD) of the right foot. Due to continued symptoms, Dr. Kurtz referred claimant for an evaluation by a podiatrist as soon as possible. In the interim, Dr. Kurtz ordered ibuprofen 800 mg and Ultram. He also maintained claimant's restrictions of no lifting over 25 pounds, no pushing or pulling over 100 pounds of force, and use of ice every 2 to 3 hours. (Ex. 2, p. 53; Ex. H, p. 22)

On November 12, 2012, claimant presented to the emergency room at Skiff Medical Center in Newton, Iowa. Claimant complained of right knee and foot pain. (Ex. 14, p. 100; Ex. C, p. 1) Following evaluation, Teresa Lee, M.D. prescribed

hydrocodone and removed claimant from work for two days. (Ex. 14, p. 101; Ex. C, p. 2)

On November 21, 2012, at claimant's own volition, he presented to the Newton Clinic. Shari Lagodzinski, PA-C noted Concentra had provided claimant tramadol and ibuprofen, the Pleasant Hill emergency room had provided hydrocodone and the Newton emergency room provided hydrocodone last week. (Ex. 3, p. 57; Ex. E, p. 1) PA Lagodzinski assessed a foot sprain and prescribed hydrocodone-acetaminophen. She explained she would provide claimant sufficient pain medication to get him through the upcoming holiday, but would not refill the prescription. (Ex. 3, p. 59; Ex. E, p. 3)

In accordance with Dr. Kurtz's referral, on November 26, 2012 claimant presented to Iowa Ortho for evaluation by Dennis Kessler, DPM. Dr. Kessler noted claimant complained of pain in the plantar distal forefoot of his right foot. He ordered x-rays of the right foot, which he opined revealed no identifiable bone fracture. Dr. Kessler assessed a stress fracture of right foot and placed claimant in a Bledsoe Equalizer cast boot. He also ordered hydrocodone, referred claimant for a bone scan, and imposed restrictions allowing for office work only, while wearing the Bledsoe boot. (Ex. 1, pp. 3-5; Ex. G, pp. 5-8)

Claimant testified he ceased use of the crutches shortly after Dr. Kessler prescribed the Bledsoe boot, as he no longer needed the crutches to ambulate. (Claimant's testimony)

On November 30, 2012, claimant underwent a bone scan. The radiologist read the results as revealing findings consistent with a stress fracture of the head of the second metatarsal or base of the second proximal phalanx. (Ex. 5, pp. 69, 71; Ex. D, p. 2; Ex. G, p. 9)

Claimant returned to Dr. Kessler on December 17, 2012. Dr. Kessler reviewed the bone scan results and assessed a stress fracture of the second metatarsal of the right foot. Dr. Kessler recommended continued use of the Bledsoe boot and removed claimant from work. (Ex. 1, pp. 9, 12-13; Ex. G, p. 10)

Following evaluation on January 7, 2013, Dr. Kessler ordered a CT to evaluate if claimant's symptoms reflected a stress fracture or avascular necrosis. While initially maintaining claimant's off work status, on January 15, 2013, Dr. Kessler released claimant to office/clerical/sedentary work only, while wearing the Bledsoe boot. (Ex. 1, pp. 16, 18, 22, 25)

Claimant underwent CT of his right foot on January 30, 2013. The radiologist read the results as a normal CT of the right ankle and foot. (Ex. 9, pp. 76-77; Ex D, p. 1) Following the CT, claimant returned to Dr. Kessler on February 7, 2013. Dr. Kessler opined claimant's CT was negative and assessed foot pain of an unknown etiology. He referred claimant for a second opinion. (Ex. 1, p. 28)

On March 21, 2013, claimant presented to The Iowa Clinic Podiatry Department for a second opinion evaluation by Eric Barp, DPM. Dr. Barp reviewed claimant's CT and bone scan results, which he opined were negative. Claimant reported slow improvement, with pain of the metatarsal heads but the ankle was no longer painful. Following examination, Dr. Barp assessed right foot pain and prescribed a Medrol Dosepak. (Ex. 4, p. 62; Ex. 13, p. 85; Ex. A, p. 2) Dr. Barp also imposed a restriction cautioning claimant may need to sit periodically. (Ex. 4, p. 60; Ex. 13, p. 83)

On April 25, 2013, claimant returned to Dr. Barp with continued complaints of right foot pain, despite completing the Medrol Dosepak. Dr. Barp assessed foot pain and recommended claimant be fitted for a pair of orthotics. (Ex. 4, pp. 63-64; Ex. 13, p. 88; Ex. A, p. 3)

On May 7, 2013, claimant telephoned Dr. Barp's office requesting pain medication. Dr. Barp offered tramadol, which claimant refused citing side effects and ineffectiveness. Claimant indicated he had been taking Percocet he received from his mother and had received hydrocodone from personal physician. Dr. Barp refused to provide narcotics, indicating such medication simply masked pain and would not help claimant improve. Instead, Dr. Barp recommended continued use of ibuprofen. (Ex. 13, p. 90; Ex. A, p. 5)

Following an incident on June 8, 2013, claimant was arrested for assault by the Newton Police Department. (Ex. I, pp. 1-2) The alleged victim indicated he was asleep in the front passenger seat of a car belonging to claimant's ex-girlfriend. The alleged victim explained he had too much to drink and the woman was driving him home. While en route to his home, the woman stopped at her parent's residence. The victim reported while there, claimant stopped at the residence, climbed into the vehicle and assaulted the alleged victim while he slept. (Ex. I, p. 5) Two witness statements confirm claimant assaulted the alleged victim, with one indicating the alleged victim was sleeping in the car at the time of the assault. The witnesses transported the alleged victim to the hospital for medical attention. (Ex. I, pp. 6-7) Following medical treatment, an officer was dispatched to interview the alleged victim. The officer observed the alleged victim with two swollen, puffy black eyes and stitches on the right eye. The alleged victim was also noted to have sustained a fractured skull. Claimant was arrested for a charge of assault causing serious injury and taken to jail on June 9, 2013. (Ex. I, pp. 4, 8)

At evidentiary hearing, claimant admitted he punched the victim twice, but testified the victim was awake at the time of the altercation and claimant was in fact, defending himself. Claimant testified he ultimately pleaded guilty to aggravated assault. (Claimant's testimony)

On July 24, 2013, defendant suspended claimant for five days for attendance-related issues. The disciplinary form also warned of progressive discipline, including termination, for continued issues. (Ex. N, p. 1)

On August 7, 2013, human resource manager for defendant, Doug Enabit, authored a letter to claimant. Mr. Enabit indicated claimant did not present to work from August 5 through August 7, 2013 and did not call to report these absences. Therefore, defendant advised it considered claimant to have abandoned his job and voluntarily resigned his employment. (Ex. N, p. 2)

Claimant's last day of work was Friday, July 26, 2013. Claimant testified he was serving a suspension the following week, Monday through Friday. On the Monday he was scheduled to return to work, claimant testified he called in to report he would be absent. He indicated he did the same thing on Tuesday. Claimant testified he then received a letter in the mail which indicated he no longer was employed by defendant. Claimant subsequently filed for unemployment benefits and following a hearing, received such benefits. (Claimant's testimony)

Mr. Enabit testified at evidentiary hearing. Mr. Enabit explained defendant maintains an automated call-in line for employees to report absences and claimant did not utilize the line on the Monday and Tuesday following claimant's week-long suspension. He further indicated claimant failed to call in on Wednesday until after the start of his scheduled shift. Mr. Enabit testified claimant subsequently indicated he called in and spoke to a female employee about his absences; however, Mr. Enabit spoke to the female employees on duty and each denied receiving a call from claimant. (Mr. Enabit's testimony)

Mr. Enabit's testimony was clear and consistent with the evidentiary record. His demeanor provided the undersigned no reason to doubt his veracity. Mr. Enabit is found credible.

Over time, claimant testified he began to develop difficulties with his bilateral hands, including numbness, dropping items, and interrupted sleep. He alleges he developed complaints as a result of overuse, with a date of injury of July 28, 2013. On this date, he testified he noticed his hand symptoms were becoming severe. Claimant testified he had complained of symptoms in the past to supervisor, Cory Baker, and was told to perform stretches and use a foam pad. He was never referred for medical treatment. (Claimant's testimony)

Mr. Enabit testified he was unaware of claimant's reported bilateral hand complaints until receipt of claimant's original notice and petition of September 6, 2013. Upon receipt of the petition, Mr. Enabit testified he spoke with the three men to whom claimant reported at work, including Mr. Baker. According to Mr. Enabit, each man denied any knowledge of claimant's reported hand complaints. Mr. Enabit further testified he was unaware of any issues with regard to these men failing to document work injuries. (Mr. Enabit's testimony)

Three appointments were scheduled for claimant to follow up with Dr. Barp; claimant failed to attend the appointments. Due to noncompliance with treatment,

Dr. Barp released claimant on August 21, 2013. (Ex. 13, p. 92; Ex. A, p. 7) Claimant testified he missed these appointments because defendant refused to allow him to leave work. (Claimant's testimony) One such appointment appears to have been scheduled for on or about August 1, 2013. (Ex. A, p. 6) Such date followed claimant's last date worked for defendant and if correct, falls during the period claimant was under suspension.

On August 27, 2013, claimant returned to the Iowa Clinic Podiatry Department and was evaluated by Timothy Holcomb, DPM. Claimant reported continued right foot pain. X-rays were ordered of claimant's right foot, which Dr. Holcomb opined were normal with no evidence of soft tissue swelling, degenerative changes, fractures, or dislocations. Dr. Holcomb assessed capsulitis and performed a plantar fasciitis injection. He provided claimant a splint to wear with weight bearing activities. Dr. Holcomb opined claimant's condition was inflammatory in nature and thus, Dr. Holcomb would not treat with pain medications. Instead, Dr. Holcomb ordered a course of physical therapy and recommended claimant use ibuprofen. (Ex. 4, pp. 65-66; Ex. 13, pp. 93-94; Ex. A, pp. 8-9)

On September 20, 2013, claimant returned to Dr. Barp. Dr. Barp noted claimant reported good pain relief following the injection performed by Dr. Holcomb. While pain persisted, the symptom was noted as not as intense. Dr. Barp assessed capsulitis and foot pain. He prescribed Mobic and imposed no activity restrictions. (Ex. 4, pp. 67-68; Ex. 13, p. 95; Ex. A, p. 10)

Also on September 20, 2013, claimant presented to personal providers at NewCare Health Services in Newton, Iowa. Jodi Holloway, ARNP, noted claimant presented for a referral to a surgeon to treat an umbilical hernia; claimant also complained of bilateral hand numbness and tingling. Claimant described past work for defendant packing cocoa and then performing significant typing. (Ex. C, p. 12) Ms. Holloway assessed paresthesias of the bilateral hands and ordered a bilateral EMG. (Ex. C, p. 14)

Claimant returned to Dr. Barp on November 1, 2013 with reports of continued soreness in his right second toe. Dr. Barp noted claimant was taking Meloxicam and wearing a splint as prescribed. Dr. Barp assessed pain consistent with capsulitis and performed a repeat injection. Claimant was advised to follow up in one month. (Ex. 13, pp. 97-98; Ex. A, pp. 12-13)

At Ms. Holloway's referral, claimant presented to Marvin Hurd, M.D. on November 5, 2013 for nerve conduction studies and EMG. Dr. Hurd opined claimant's nerve conduction studies fell within standardized limits of normal, though the distal right median sensory latencies were prolonged compared to the distal right ulnar sensory latencies. Dr. Hurd opined claimant's EMG results revealed no abnormalities. He ultimately assessed normal left upper extremity studies and distal right median sensory neuropathy, consistent with mild or early right carpal tunnel syndrome. (Ex. B, p. 2)

Claimant testified Dr. Hurd informed him claimant demonstrated bilateral carpal tunnel syndrome and surgery on his bilateral hands was the only option for treatment. Claimant testified his personal provider, Ms. Holloway, also indicated surgery was his only treatment option, as bracing did not provide relief. Claimant testified he was provided a referral to a hand specialist, but he did not pursue the option due to financial constraints. (Claimant's testimony)

On January 24, 2014, at the arranging of claimant's attorney, claimant presented for IME with board certified occupational medicine physician, Sunil Bansal, M.D. Claimant described the circumstances of his stipulated right foot and ankle injury of October 2013. Claimant also reported on July 28, 2013, he began frequently dropping objects, experiencing a loss of strength in his bilateral hands, and frequently waking at night with pain and numbness of his hands. (Ex. 15, p. 162) Dr. Bansal noted he reviewed various medical records, including relevant records from Concentra dated October 18, 2012 to November 5, 2012; Skiff Medical Center dated November 12, 2012; Newton Clinic on November 21, 2012; Iowa Ortho dated November 26, 2012 to February 7, 2013; and The Iowa Clinic from March 21, 2013 to November 1, 2013, as well as claimant's bone scan and CT of the right ankle and foot. (Ex. 15, pp. 160-162)

Claimant reported currently seeing a podiatrist for his right foot complaints, for which he had been treated with injections, nonnarcotic medications, and a topical pain relieving cream. (Ex. 15, p. 163) Claimant described right foot pain located in the ball of his foot and between the toes, radiating up his foot and down the back of his ankle. He also reported additional symptoms of constant numbness and tingling of the right foot from the first joints of the toes radiating into the big toe and three next toes; numbness and tingling of the bottom of his foot up into the ankle; severe swelling of the right foot and ankle; and a reddish hue to the right foot and toes, like a permanent bruise. Claimant reported average right foot pain of a level 5 on a 10-point scale, with pain able to reach a level 8 or level 9. (Ex. 15, p. 163)

Claimant informed Dr. Bansal he had reported his hand complaints to defendant but was not referred for care, leading claimant to seek care from his personal provider. (Ex. 15, p. 162) Of claimant's hand complaints, Dr. Bansal noted claimant was "waiting to have surgery," but the defendant had denied liability for treatment. (Ex. 15, p. 163) Dr. Bansal described claimant's bilateral hand complaints as about even in both hands, with the right slightly worse than the left at times. Claimant reported symptoms of numbness and tingling of both entire hands and all fingers; difficulty gripping; frequent swelling of both hands; and radiating pain, numbness, and tingling from both hands up the arms to the elbows. Claimant reported an average wrist pain level of 3 to 4. (Ex. 15, p. 163)

Claimant described his former job duties at defendant. (Ex. 15, p. 164) Dr. Bansal noted claimant's former duties as a cocoa packet packer and in inventory control. (Ex. 15, p. 164) Dr. Bansal wrote:

> [Claimant] was employed by [defendant], and had worked there for approximately eight years. When he first began working there, his job consisted of packaging single serve cocoa packets. He repetitively used his hands to fill and close the packets, close the boxes, and stack them. He then placed the individual boxes into a larger box, then sent it through a taping machine that sealed the large box. He also worked in the mixing department which consisted of repetitively lifting 50-pound bags, cutting the bags open, and emptying the contents into a mixer. He also drove a forklift.
>
> The most recent position he held at [defendant] was working in inventory control. This position consisted of counting inventory, moving 50-pound boxes and bags around, as well as data entry. He also spent much of his time walking in the warehouse to ensure inventory was in its proper location.
>
> He reports constantly lifting 50-pound bags and 40-pound boxes, and pouring the contents into the sifter. When the bags were emptied, he went downstairs to get a forklift to empty the mixer when the mixing cycle was finished. He then returned upstairs to begin opening the 50-pounds [*sic*] bag to pour into the mixer. The majority of his day was spent lifting and opening bags, with less time spent driving the forklift. While performing the inventory job duties, he spent the majority of his day lifting and moving inventory around. While working inventory, he also continued to perform his mixing job as needed. He generally worked 40 hours per week, but at times worked overtime.

(Ex. 15, p. 164)

Dr. Bansal examined claimant's right wrist and hand, left wrist and hand, and right foot and ankle. Examination of the right wrist and hand revealed tenderness over the volar wrist; positive Tinel's sign; mild thenar atrophy; loss of sensation over the thumb, index, long, and ring fingers; and weakness with index metacarpophalangeal joint flexion. Examination of the left wrist and hand revealed tenderness over the volar wrist; positive Tinel's sign; loss of sensation over the thumb, index, long, and ring fingers; and weakness with index metacarpophalangeal joint flexion. Examination of the right foot and ankle revealed forefoot tenderness; swelling; and a reddish hue to the skin of the toes. (Ex. 15, pp. 164-165)

Following records review, interview, and examination, Dr. Bansal assessed a stress fracture of the head of the right second metatarsal, right foot capsulitis, and bilateral carpal tunnel syndrome. (Ex. 15, p. 165) Dr. Bansal related the right foot diagnoses to claimant's stipulated work injury of October 2012. Dr. Bansal opined claimant sustained permanent impairment as a result of decreased range of motion the great toe joint, second toe joint, and third toe joint. He opined a two percent lower

extremity impairment for each deficit by Table 17-14 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, for a total combined impairment of six percent lower extremity. (Ex. 15, p. 166)

The undersigned reviewed Table 17-14 and found the two percent lower extremity impairments could have been expressed by Dr. Bansal as impairments to the foot. If done, each of the two percent lower extremity ratings equate to three percent of the foot. Therefore, claimant would have sustained three percent foot ratings for decrements in big toe, second toe, and third toe range of motion. By this method, claimant's combined impairment would be nine percent of the right foot.

With regard to the diagnosis of bilateral carpal tunnel syndrome, Dr. Bansal opined claimant developed the diagnosis on a cumulative basis as a result of heavy, repetitive material handling during employment with defendant. Dr. Bansal explained claimant's job duties would have placed significant pressure on the wrists due to force, repetition, and the angle at which the wrists were positioned. Dr. Bansal opined claimant's duties posed a strong potential to cause carpal tunnel syndrome. Dr. Bansal indicated claimant had "unfortunately" not undergone "the surgical intervention recommended for his bilateral carpal tunnel syndrome." Dr. Bansal indicated he "also" recommended surgical treatment. (Ex. 15, p. 166) However, in the absence of further treatment, Dr. Bansal opined claimant sustained permanent impairments of five percent right upper extremity and five percent left upper extremity as a result of sensory deficits. (Ex. 15, p. 167)

Mr. Enabit testified claimant's daily duties at the time of both the alleged work injuries fell within the role of inventory control. He explained claimant was required to reconcile computer data with actual numbers of products in the warehouse and investigate discrepancies. While some multi-tasking was required of claimant, Mr. Enabit testified claimant did not perform the same duty throughout an entire shift. Although claimant was required to perform the same tasks throughout the day, he did not perform any task on a constant basis. (Mr. Enabit's testimony)

At Dr. Barp's referral, claimant underwent a functional capacity evaluation (FCE) with John Kruzich, OTR/L, on April 25, 2014. Mr. Kruzich opined the results of the FCE were valid and by the results, claimant met the material handling demands required for a medium physical demand vocation. Specifically, Mr. Kruzich indicated claimant is able to lift 40 to 50 pounds from waist to floor; lift 50 pounds waist to crown; carry 30 pounds bilaterally; frequently stand, walk, and climb stairs with positional changes as needed to maintain a reasonable level of comfort; ladder climb and kneel occasionally; and squat frequently. Mr. Kruzich noted no inexplicable hand grip weakness. (Ex. AA, pp. 1, 4, 6)

Following FCE, claimant returned to Dr. Barp on May 1, 2014. Based upon the FCE results, Dr. Barp opined claimant was "able to perform most activities at work." Dr. Barp also opined claimant clinically demonstrated minimal pain with range of motion.

At that time, Dr. Barp released claimant from care to follow up as needed. (Ex. A, p. 15) Subsequently, on May 27, 2014, Dr. Barp authored an opinion stating as of his last visit, claimant demonstrated some stiffness but was doing "quite well" overall. Dr. Barp opined claimant sustained no ratable permanent impairment by the AMA Guides. (Ex. A, p. 16)

At the time of evidentiary hearing, claimant continued to report right foot symptoms at the same level as when released by Dr. Barp. He complained of constant pain of the foot which also stretches into the ankle, albeit to a lesser degree than immediately following the stipulated October 2012 work injury. Claimant reported difficultly with climbing and descending stairs, as well as an inability to distribute weight evenly throughout the foot. Claimant testified during the course of his right foot treatment, there was some discussion with Dr. Holcomb of a possible capsulitis surgery; however, he was not extended that option for treatment. He indicated if offered, he would undergo the procedure. (Claimant's testimony)

At hearing, claimant removed his shoe, allowing the undersigned the ability to observe the physical condition of claimant's right foot. I observed slight swelling of the joint region where the big toe and second toes meet the foot. Claimant also displayed limited ability to curl his toes.

Claimant incurred medical mileage expenses in connection with treatment of his right foot condition. Claimant claimed 130 miles in connection with treatment by his personal physician in October 2012; 255.2 miles for treatment with Dr. Kessler from November 2012 to February 2013; 795.6 miles for treatment with Dr. Barp from March 2013 to May 2014; 166 miles for treatment at Concentra; 144 miles for the bone scan; and 164.4 miles for the CT scan. Claimant also incurred the expense of purchasing crutches as recommended by Dr. Rhodes in the amount of $45.00. (See attachments to hearing report in File No. 5046149)

At evidentiary hearing, claimant also complained of continued bilateral hand and arm symptoms. He reported constant pain, dropping, hands falling asleep, and the need to take breaks with driving. Claimant testified he also wears braces at nighttime per his family physician. (Claimant's testimony)

As of the time of hearing, claimant was unemployed. Claimant testified he has sought work, but been unsuccessful in procuring employment since his separation from defendant. (Claimant's testimony)

Claimant's demeanor at the time of evidentiary hearing gave the undersigned no reason to doubt claimant's veracity. However, the evidentiary record demonstrates numerous inconsistencies between claimant's testimony and the written records and testimony of human resources manager, Doug Enabit. Claimant's testimony on the circumstances of the alleged assault, to which claimant pleaded guilty, is contrary to the testimony of the victim and two witnesses. Claimant's testimony regarding the details of

his no-call/no-shows and ultimate termination at defendant is inconsistent with evidence in the record, including testimony of Mr. Enabit. Claimant's testimony regarding reporting his carpal tunnel claim prior to the severing of his employment is also contrary to the testimony of Mr. Enabit and lacks supportive medical evidence. Claimant's testimony regarding the details of his job duties is inconsistent with the testimony of Mr. Enabit. Claimant's testimony he missed medical appointments with Dr. Barp because defendant would not allow him to leave work is contrary to the written record which seemingly indicates at least one missed appointment fell within a period claimant was on suspension by defendant and therefore, defendant could not have prevented claimant from attending. Claimant's testimony on Dr. Hurd's purported diagnosis of bilateral carpal tunnel, as well as the surgical recommendations of providers, are not supported by the medical evidence submitted. Additionally, claimant demonstrated at least some level of narcotic-seeking behavior during the pendency of his claims. For these reasons, it is determined claimant is not a credible witness.

CONCLUSIONS OF LAW

In File No. 5046149 (October 16, 2012 date of injury):

The first issue for determination is whether the stipulated injury is a cause of permanent disability. The next issue for determination is the extent of permanent disability. These issues will be considered together.

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 Rule of Appellate Procedure 6.14(6).

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).

Under the Iowa Workers' Compensation Act permanent partial disability is categorized as either to a scheduled member or to the body as a whole. See section 85.34(2). Section 85.34(2)(a)-(t) sets forth specific scheduled injuries and compensation payable for those injuries. 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). Compensation for scheduled injuries is not related to earning capacity. The fact-finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Claimant suffered a stipulated work related injury to his right foot and ankle on October 16, 2012. Defendant provided medical care, leading to diagnoses of a stress fracture of the second metatarsal of the right foot, right foot capsulitis, and a sprain/strain of the right ankle. Claimant received conservative care of these conditions. Claimant testified to continued right foot and ankle pain despite an extensive course of treatment.

Two physicians have opined regarding the existence and extent of permanent impairment claimant sustained as a result of the stipulated work injury, Drs. Barp and Bansal. Dr. Barp, claimant's treating podiatrist, opined claimant sustained no ratable permanent impairment. He did, however, seemingly acknowledge claimant demonstrated some after-effects of the work injury. Namely, Dr. Barp indicated claimant demonstrated some stiffness. Dr. Bansal opined claimant sustained permanent impairment based upon slight deficits in range of motion of three toes.

As Dr. Barp acknowledged ongoing stiffness and Dr. Bansal opined claimant sustained permanent impairment as a result of the stipulated work injury, it is determined claimant has proven by a preponderance of the evidence that the work injury is a cause of permanent impairment.

While Dr. Barp opined claimant sustained no ratable impairment, the undersigned provides greater weight to the opinion of Dr. Bansal on this issue. Although Dr. Barp served as claimant's treating physician and a specialist in foot conditions, there is no evidence in the record that he performed the type of range of motion testing performed by Dr. Bansal. Dr. Bansal specifically measured the range of motion of claimant's toes and opined claimant sustained permanent impairment based upon these measurements. The record is void of any rebuttal to or critique of these

measurements. Furthermore, Dr. Bansal's measured deficits in range of motion of the toes may reflect the residual stiffness acknowledged by Dr. Barp. Therefore, it is determined the opinion of Dr. Bansal is entitled to greater weight.

Although claimant asserts his injury extends into his right lower extremity, as opposed to remaining contained in the foot, the undersigned finds claimant has failed to meet his burden of proof on this issue. Claimant complains his pain extends into the ankle from the foot, but the undersigned found claimant was not a credible witness, and therefore, will not provide any weight to claimant's testimony on this matter. Additionally, the presence of pain radiating to the ankle would not change the situs of claimant's injury from the foot to the ankle itself. Furthermore, Dr. Bansal's opinion serves as the only physician opinion in evidence which opines on the extent and basis of claimant's permanent impairment. Although Dr. Bansal expressed his rating in terms of a lower extremity impairment, the basis of his rating was deficits in range of motion of three toe joints. Review of the table relied upon by Dr. Bansal in issuing his ratings, Table 17-14, reveals the same ratings could have been expressed just as easily as ratings to the foot. Based upon the forgoing, it is determined claimant failed to meet his burden of proving the injury extended into his right lower extremity.

Claimant has, however, proven he sustained a permanent disability to his right foot as a result of the work injury. Utilizing Dr. Bansal's measured deficits in range of motion and consulting Table 17-14 of the AMA Guides, as expressed by Dr. Bansal, supports a combined impairment rating of 9 percent of the right foot. It therefore determined claimant sustained a 9 percent permanent impairment to his right foot as a result of the stipulated work-related injury of October 16, 2012. Such an award entitles claimant to 13.5 weeks of permanent partial disability benefits (9 percent x 150 weeks = 13.5 weeks), commencing on the stipulated date of January 22, 2013. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were $597.87, and claimant was single and entitled to 1 exemption. The proper rate of compensation is therefore, $381.01.

The next issue is whether claimant is entitled to reimbursement for the purchase of crutches prescribed by his family physician.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 16, 1975).

Iowa Code section 85.27(1) provides that the employer shall furnish reasonable and necessary crutches on a compensable claim. While claimant initially purchased

crutches at the order of his personal provider, on October 23, 2012, defendant's authorized provider, Dr. Kurtz, ordered claimant to use crutches 95 percent of his workday. In the event claimant had not already purchased crutches, he would have been required to do so in order to comply with Dr. Kurtz's work restrictions. Therefore, claimant is entitled to reimbursement for the purchased crutches in the amount of $45.00.

The next issue is whether claimant is entitled to payment of medical mileage.

Iowa Code section 85.27(1) provides that the employer shall furnish reasonable medical care on a compensable claim and shall allow reasonably necessary transportation expenses incurred for such services.

Claimant incurred medical mileage incidental to treatment of his stipulated right foot injury. As a portion of his claim for payment of medical mileage, claimant requests 130 miles of expense incurred in October 2012 in connection with his treatment at Mercy Family Practice. Such care was not authorized, nor was defendant found responsible for such care by this decision. Therefore, defendant is not responsible for medical mileage incurred in connection with this unauthorized care.

With the exception of the 130 miles incurred en route to claimant's personal provider in October 2012, all of the remaining claimed mileage was incurred in connection with defendant-authorized care. Therefore, defendant is responsible for payment of such mileage expense to claimant. In accordance with rule 876 IAC 8.1, claimant incurred 906.4 miles between July 1, 2012 and June 30, 2013, entitling him to $503.05 in mileage expenses (906.4 miles x $0.555 per mile = $503.05), and 618.8 miles between July 1, 2013 and June 30, 2014, entitling claimant to $349.62 in mileage expenses (618.8 miles x $0.565 per mile = $349.62).

The final issue for determination is whether claimant is entitled to reimbursement of an independent medical examination pursuant to Iowa Code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify

for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Claimant seeks reimbursement for Dr. Bansal's IME in the amount of $1,975.00. (Ex. 15, p. 168) At the time of Dr. Bansal's IME, no employer-retained physician had offered an opinion regarding the extent of claimant's permanent impairment, nor offered an opinion which would otherwise trigger claimant's right to a section 85.39 IME. At the time of Dr. Bansal's evaluation in January 2014, Dr. Barp continued to provide claimant care. It was not until April 2014 that Dr. Barp ordered an FCE and May 2014 that he released claimant from care and opined as to permanent impairment. Therefore, claimant has not met the prerequisite steps for reimbursement of an IME pursuant to section 85.39 and accordingly, is not entitled to reimbursement for Dr. Bansal's IME.

It is also noted claimant did not seek to tax the cost of Dr. Bansal's report as a practitioner's report pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. In the event claimant had so argued, claimant would have been unsuccessful as only the portion of the IME expense incurred in preparation of the written report can be taxed to defendant. Des Moines Regional Transit Authority v. Young, No. 14-0231 (Iowa June 5, 2015); See also, Reinsbach v. Great Lakes Cooperative, No. 14-0467 (Ct. of App. July 9, 2015). Dr. Bansal's invoice fails to indicate which portion of the cost of IME was attributable to report preparation and therefore, claimant would not be entitled to taxation of any portion of Dr. Bansal's IME expense as a cost.

In File No. 5046150 (July 28, 2013 date of injury):

The first issue for determination is whether claimant sustained a cumulative injury on July 28, 2013, which arose out of and in the course of employment.

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 Elec. 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 testified he believes he developed bilateral carpal tunnel syndrome as a result of his work duties at defendant. As set forth supra, the undersigned found claimant was not a credible witness and therefore, his testimony on this issue is entitled to little weight. The evidentiary record is surprisingly sparse with respect to the claimant's carpal tunnel diagnosis and the potential causal relationship to claimant's work duties.

The first medical record referencing carpal tunnel complaints is the note of Ms. Holloway on September 20, 2013, after claimant's termination. At that time, Ms. Holloway assessed paresthesias of the bilateral hands and ordered a bilateral EMG. She offered no opinion claimant demonstrated bilateral carpal tunnel syndrome nor opined as to the cause of claimant's symptoms.

Claimant then presented to Dr. Hurd, who performed nerve conduction studies and EMG of the bilateral upper extremities. Dr. Hurd opined the results yielded a normal study of the left upper extremity and mild or early right carpal tunnel syndrome. He provided no written opinion claimant suffered with bilateral carpal tunnel syndrome nor opined as to the cause of claimant's symptoms.

Claimant ultimately underwent IME with Dr. Bansal. Following examination, Dr. Bansal opined claimant demonstrated bilateral carpal tunnel syndrome. He further opined claimant developed bilateral carpal tunnel syndrome on a cumulative basis as a result of heavy, repetitive material handling during his employment with defendant.

There are deficiencies in Dr. Bansal's opinion. His report makes no reference to whether or not he reviewed Dr. Hurd's EMG report. Dr. Bansal recites the medical history recited by claimant, which states his EMG found bilateral carpal tunnel syndrome for which two providers recommended surgery. This history is inaccurate and the undersigned found claimant was not a credible witness. While Dr. Bansal's opinion is flawed in these aspects, the fact remains that Dr. Bansal performed a physical examination of claimant and thereafter, opined claimant demonstrated bilateral carpal tunnel syndrome. As a physician, Dr. Bansal is entitled to rely upon his own medical judgment in issuing diagnoses. Additionally, defendant offered no evidence by which a physician specifically opined claimant did not suffer with bilateral carpal tunnel syndrome, thus leaving Dr. Bansal's diagnosis unrebutted.

Establishing a diagnosis of carpal tunnel syndrome, however, is insufficient for claimant to meet his burden of proving the condition arose out of and in the course of claimant's employment. Claimant must also show the condition was causally related to his work duties at defendant. To do so, claimant relies upon the opinion of Dr. Bansal. Dr. Bansal opined claimant developed bilateral carpal tunnel syndrome on a cumulative basis as a result of heavy, repetitive material handling during his employment with defendant. He explained claimant's job duties would have placed significant pressure on the wrists due to force, repetition, and the angle at which the wrists were positioned. Dr. Bansal opined claimant's former job duties posed a strong potential to cause carpal tunnel syndrome.

Dr. Bansal's opinions on causal relationship between claimant's bilateral hand symptoms and his former work duties at defendant are unrebutted. However, the undersigned finds Dr. Bansal's opinion on this issue entitled to no weight. In his written report, Dr. Bansal does not reference review of any job descriptions, visual depictions, written evidence, or personal knowledge pertaining to the specifics of claimant's former job duties at defendant. Rather, Dr. Bansal appears to have relied solely upon the description of job duties relayed by claimant.

While this practice is not flawed in and of itself, using this method for a causation determination is inappropriate under the facts of the instant case. By this decision, the undersigned found claimant was not a credible witness and cited many examples of inconsistencies between claimant's testimony and the remainder of the evidentiary record. Dr. Bansal's opinion is premised, therefore, upon the accuracy of statements made by a person whose veracity cannot be relied upon. In order for a medical opinion to be probative on the issue of causation, particularly in cumulative injury cases, the opinion must be based upon accurate facts. The undersigned is simply unconvinced Dr. Bansal's opinion is based upon an accurate portrayal of claimant's job duties. A medical opinion, even an unrebutted one, based on inaccurate information is entitled to no weight.

It is therefore determined claimant failed to meet his burden of establishing he sustained an injury on July 28, 2013 which arose out of and in the course of his

employment. Having so determined, the other issues presented for consideration are moot.

ORDER

THEREFORE, IT IS ORDERED:

In File No. 5046149 (October 16, 2012 date of injury):

Defendant shall pay unto claimant thirteen point five (13.5) weeks of permanent partial disability benefits commencing January 22, 2013 at the weekly rate of three hundred eighty-one and 01/100 dollars ($381.01).

Defendant shall reimburse claimant for purchase of crutches in the amount of forty-five and 00/100 dollars ($45.00) as set forth in the decision.

Defendant shall pay eight hundred fifty-two and 67/100 dollars ($852.67) in medical mileage as set forth in the decision.

Defendant shall pay accrued weekly benefits in a lump sum.

Defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

Defendant shall receive credit for benefits paid.

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

Costs are taxed to defendant pursuant to rule 876 IAC 4.33.

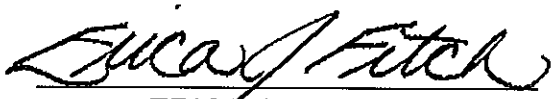
In File No. 5046150 (July 28, 2013 date of injury):

Claimant shall take nothing from this proceeding.

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

Costs are taxed to claimant pursuant to rule 876 IAC 4.33.

Signed and filed this 21st day of August, 2015.



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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 in writing and received by the commissioner's office 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 a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.