BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MITIKU GETISO,	:	
Claimant,	:	File No. 20004806.01
vs.	:	
TYSON FRESH MEATS,	:	ARBITRATION DECISION
Employer,	:	
Self-Insured,	:	Head Note Nos.: 1803, 2501, 2701, 2907
Defendant.	:	

STATEMENT OF THE CASE

Claimant, Mitiku Getiso, filed a petition in arbitration seeking workers' compensation benefits from defendant, Tyson Fresh Meats, a self-insured employer. This case came before the undersigned for an arbitration hearing on June 9, 2022. Pursuant to an order from the Iowa Workers' Compensation Commissioner, this case was heard via videoconference using Zoom.

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

The evidentiary record consists of Joint Exhibits 1 through 10, Claimant's Exhibits 1 through 6, Defendants' Exhibits A through K, and the testimony of claimant. The evidentiary record closed on the date of hearing and the case was considered fully submitted upon receipt of the parties' briefs on August 1, 2022.

At the beginning of the evidentiary hearing, counsel for defendant objected to various statements made by claimant's attorney as irrelevant. Counsel for defendant then motioned to have the same stricken from the record. While I agree with defense counsel that the statements are irrelevant to the matter at hand, I nevertheless overrule the motion to strike as I did not rely on or assign any weight to the statements in my decision.

ISSUES

1. The extent of claimant's entitlement to permanent partial disability benefits;

2. Payment of medical expenses;
3. Whether claimant is entitled to an independent medical examination under Iowa Code section 85.39;
4. Whether claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27;
5. Whether claimant is entitled to penalty benefits under Iowa Code section 86.13, and, if so, how much; and
6. Costs.

In his post-hearing brief, the claimant withdrew his claim for an independent medical examination under Iowa Code section 85.39. He also withdrew any potential claim for penalty benefits under Iowa Code section 86.13. These issues will not be discussed further, and no findings or conclusions will be entered on these issues.

FINDINGS OF FACT

Mitiku Getiso was born and raised in Ethiopia. His primary language is Amharic. While interpretive services were routinely provided, several physicians noted difficulty in communicating with claimant. (See Joint Exhibit 6, page 146) He attended Hossana Polytechnic College where he received two years of training in machinery and technical management. After attending school for two years, Mitiku was presented with an opportunity to come to the United States through the Diversity Immigrant Visa program. (Hearing Transcript, page 36; see Exhibit A, Deposition Transcript, pages 8-9) Mitiku arrived in the United States on November 23, 2014. (Hr. Tr., p. 33) He currently resides in Sioux Falls, South Dakota. (Hr. Tr., p. 34)

Mitiku began working for the defendant on or about January 26, 2015. (Hr. Tr., p. 37) He worked several different positions for the defendant prior to 2019. (Hr. Tr., p. 38) However, in 2019, Mitiku successfully bid into a janitorial position. (Hr. Tr., p. 39) On April 21, 2020, Mitiku was injured while performing janitorial work. More specifically, Mitiku was attempting to shut off a hose that was left on by a co-worker when the hose moved and poured 180-degree water into his left boot. (Hr. Tr., p. 41) Mitiku sustained third degree burns of the foot and ankle as a result of this incident.

Mitiku was transported by ambulance to Buena Vista Regional Medical Center; however, the medical team at Buena Vista quickly determined that claimant needed more extensive care than they could provide. Therefore, Mitiku was transported to St. Elizabeth's Regional Burn & Wound Center in Lincoln, Nebraska, where he was admitted for two days. (Joint Exhibit 1, pages 7-8; JE3, p. 52)

Roy Mauer, PA-C performed a debridement and placed pigskin grafts on Mr. Getiso's left foot and ankle on April 22, 2020. (JE3, p. 55) One week later, Mitiku reported a steady increase in pain, as well as immobility secondary to the pigskin. (JE3, p. 67) Mr. Maurer documented that the raw surface area showed very little healing. (Id.) He contemplated admitting Mr. Getiso; however, David Voigt, M.D., recommended waiting an additional week before considering any additional surgery. (JE3, p. 68)

By May 13, 2020, approximately 60-65 percent of the foot and ankle area had healed and there were no signs of infection. (JE3, p. 74) Mr. Maurer and Dr. Voigt explained burn progression to Mitiku and recommended grafting of the open, raw areas of the left foot. (Id.) Mitiku was "very resistant" to the idea of additional surgery and opted to continue with conservative treatment, such as dressing changes. (Id.)

Mr. Maurer increased claimant's Neurontin for nerve pain and referred him to physical therapy on June 12, 2020. (JE3, p. 76) He also allowed Mitiku to return to light duty work, provided the work was in a clean environment, as of June 24, 2020. (JE3, p. 78)

Select physical therapy records were entered into the evidentiary record. (See Joint Exhibit 4) On August 24, 2020, claimant presented to Sports Rehab & Professional Therapy Associates for his 23rd physical therapy appointment. (JE4, p. 112) At the appointment, claimant reported his frustrations with the work Tyson was asking him to do. He was also frustrated with Tyson requiring him to wear his work boots. (Id.) Claimant's physical therapist recommended he wear the work boots every day to get used to them again, and to start tying his shoes so he could become accustomed to something being tight on his foot. (Id.)

The physical therapy records initially note that itchiness, not pain, was the limiting factor with respect to claimant's work boots. (See JE4, pp. 112, 114, 116) It is also consistently noted that claimant was resistant to his physical therapist's attempts to increase his tolerance to wearing work boots. (See JE4, p. 119)

Mitiku returned to the burn clinic on August 25, 2020, and reported hypersensitivity and pain in the dorsal ankle. (JE3, p. 81) In response to claimant's complaints, Mr. Maurer increased the dosage of claimant's Neurontin prescription for a second time. (JE3, p. 82)

Mitiku continued to complain of hypersensitivity and pain in his dorsal ankle through his October 21, 2020, follow-up appointment with Mr. Maurer. (See JE3, pp. 81, 85) In response, Mr. Maurer suggested a laser scar revision procedure to potentially lessen claimant's hypersensitivity. (JE3, p. 86) Mr. Maurer referred claimant to pain management. (Id.) He also wrote claimant a work excuse, providing he did not have to wear his work boot until he was able to be evaluated by a pain management specialist. (JE3, p. 87)

Pain specialist Phillip Essay, M.D., first evaluated Mitiku on November 9, 2020. (JE5, p. 122) Mitiku complained of sharp, shooting, and burning type pain in the dorsal surface of his left foot that had been present since the date of injury. (Id.) He expressed a desire to return to work; however, he reported that he was unable to do so because he could not wear his work boot secondary to pain. (Id.) Dr. Essay assessed Mitiku with neuropathic pain and a history of third-degree burn. (JE5, p. 123) He explained that Mitiku sustained "quite a significant burn to the left foot" and nerve injuries can take a long time to heal. (See JE5, p. 123) Dr. Essay's notes provide,

> I did discuss with him that neuropathic pain is sometimes chronic especially after sustaining a third injury burn with subsequent grafting. I discussed that we will use medications that we know to help neuropathic pain, but to also have realistic expectations that his pain may not ever be 100% gone.

(JE5, p. 126) Dr. Essay prescribed duloxetine and a topical compounded neuropathic pain cream. (JE5, p. 124)

Claimant returned to Dr. Essay's office on December 7, 2020. (JE5, p. 125) He reported that the duloxetine and neuropathic compound cream provided some relief. (Id.) Nevertheless, he continued to report sharp shooting pains, as well as sensitivity in the left foot that bothered him on a daily basis. (JE5, p. 126) After the examination, Dr. Essay encouraged claimant to have realistic expectations and know that his pain may never completely go away. (JE5, p. 126)

The laser scar revision procedure recommended by Mr. Maurer was first attempted on November 20, 2020. Unfortunately, the procedure had to be discontinued secondary to pain. (JE3, p. 89) The procedure was rescheduled for a later date to allow for the use of general anesthesia. (See id.)

The procedure was rescheduled to occur on December 14, 2020. (JE3, p. 97) Mitiku reported improvement in his hypersensitivity and pain following the laser scar revision treatment and an increase to his duloxetine dosage. (JE3, p. 108; JE5, p. 128) Despite said improvement, Mr. Maurer continued claimant's sedentary work restrictions. (JE3, p. 111)

Shortly after a January 4, 2021, appointment, defendant followed up with Mr. Maurer regarding claimant's restrictions. (JE5, p. 127) Mr. Maurer opined that claimant would be able to wear his steel toe boots "as pain allows." (Id.)

In February, 2021, Dr. Essay referred Mitiku back to physical therapy for desensitization of his lower extremity pain to aid in his transition back to work. (JE5, p. 128)

As instructed, Mitiku returned to physical therapy on February 5, 2021. (JE4, p. 120) During his return session, claimant was adamant about tasks he felt he could not perform, such as wearing a boot and going to work. (Id.) The physical therapy records note that claimant was not complaining of itching as much as he had at prior appointments. (JE4, p. 121) In an attempt to improve claimant's tolerance to wearing a boot, the physical therapist recommended a gradual return to work plan. The therapist recommended that claimant first wear his boot for 10 minutes every hour during an 8-hour work shift. The physical therapist further instructed claimant to increase the amount of time by 10 minutes each week until he could wear his boot for a full, 8-hour shift. (Id.) Mitiku told his physical therapist that he would not be able to complete the gradual return to work plan. (Id.)

Dr. Essay reviewed the physical therapy notes from February 5, 2021, and signed off on the return-to-work plan. (JE5, p. 130)

According to the medical records in evidence, claimant called Dr. Essay's office on February 10, 2021, and reported that he was forced to wear his safety boots at work. (JE5, p. 131) Claimant worked for two hours, wearing his boot for 10 minutes each hour; however, when it came time to put his boots on for the third set of 10 minutes, claimant refused. (Id.) In response to claimant's voicemail, Emma Edwards, PA-C opined that claimant would likely experience some increased pain as he became accustomed to working again and that it was important for him to keep trying to gradually wear his boots as directed. (Id.) She also offered to prescribe medication to help with any acute inflammation caused by wearing the work boots. (JE5, pp. 131-132)

Claimant left similar messages with Dr. Essay's office on February 17, 2021, and March 5, 2021. (JE5, pp. 133, 135) Claimant reported that he could not work due to his level of pain. (JE5, p. 133) Dr. Essay's office contacted Tyson and advised that the 10-minute increments should not be increased until claimant demonstrated the ability to work a full week at whatever step he was working through in the graduated plan. (Id.)

According to the March 5, 2021, communication, claimant had worked his way up to wearing his boot for 30 minutes per hour between February 17, 2021, and March 5, 2021. (JE5, p. 135) Nevertheless, Mitiku continued to assert that Tyson was not following the restrictions and/or return-to-work plan adopted by Dr. Essay. (Id.) In response, Ms. Edwards told claimant that he would continue to experience increased pain with each graduated level, and that such pain was to be expected. (Id.)

On March 15, 2021, claimant presented to Dr. Essay's office for his six-week follow-up appointment since restarting physical therapy. (JE5, p. 136) Claimant told Dr. Essay that he was still presenting to physical therapy, but he had missed some appointments due to his work schedule and pain levels. (Id.) According to Dr. Essay's notes, claimant had been calling into his office "3-4 times per week complaining that he cannot wear his shoe." (Id.) At the March 15, 2021, appointment, claimant reported that he could not wear his shoes more than twenty minutes per hour. (Id.) Given this limitation, claimant asked what he should do about work. Dr. Essay suggested that claimant find alternative employment where he could wear some other type of footwear. (Id.)

Following the March 15, 2021, appointment, Dr. Essay opined there was nothing further to recommend for Mitiku's condition and placed him at maximum medical improvement. (JE5, p. 137) Dr. Essay did not address impairment or permanent restrictions.

Counsel for claimant reached out to Dr. Essay's office on March 25, 2021. (JE5, p. 138) According to the record, claimant's attorney was, "Insisting we address Getiso going back to work full time as he is not capable due to his rigid safety boots he has to wear and cannot due to the pain." (Id.) The representative from Dr. Essay's office

relayed that Dr. Essay had signed off on a transition plan for claimant to gradually increase the amount of time he had to wear his boot at work. (Id.) The representative then discussed the notes from claimant's most recent medical appointment before recommending claimant's attorney submit a request to review Dr. Essay's medical records. (Id.)

Following Dr. Essay's release, claimant sought to establish care with Nicholas Loughlin, D.O., on April 30, 2021. (See JE6, p. 144) An interpreter was utilized at the appointment; however, it is noted that communication between Dr. Loughlin and claimant was still difficult. (JE6, pp. 146) Claimant requested Dr. Loughlin's assistance in controlling the nerve pain in his left foot. (Id.) Dr. Loughlin assessed claimant with left foot and nerve pain. He prescribed amitriptyline and continued claimant's other medications. (JE6, pp. 146-147)

Unfortunately, claimant saw no improvement after taking amitriptyline for approximately one month. (JE6, p. 152) He continued to report numbness, tingling, and fatigue in his leg at his May 28, 2021, appointment with Dr. Loughlin. (Id.) On examination, Dr. Loughlin documented decreased sensation in claimant's left foot when compared to the right. (JE6, p. 155) Claimant told Dr. Loughlin that despite Dr. Essay's release, he wanted a second opinion as to what, if any, additional treatment was available to him. As such, he requested a referral to Robert Butellotti, M.D., a burn specialist at the University of Iowa Hospitals & Clinics. (JE6, p. 155) Dr. Loughlin complied with claimant's request. (Id.)

Tyson sent a letter regarding its attendance policy to Mitiku via certified mail on June 9, 2021. (Exhibit G, page 38) In the letter, Tyson highlighted Mitiku's lack of attendance and offered to grant him a personal leave of absence. (Id.) Mitiku was instructed that if he wanted to pursue a personal leave of absence, he had 72 hours to present to Tyson and speak with a human resources manager regarding the same. (Id.) The letter further provided that if Mitiku did not present to Tyson within 72 hours, Tyson would assume that he was not interested in maintaining his employment with Tyson. (Id.) Mitiku did not present to Tyson within 72 hours and Tyson terminated his employment on or about June 12, 2021. (See Ex. G, p. 38)

At hearing, Mitiku denied receiving the June 9, 2021, letter; however, defendant produced the certified mail receipt allegedly signed by Mitiku. (Id.) Mitiku denied that the signature on the certified mail receipt was his. (Hr. Tr., p. 87)

Claimant presented to Gabriel Rodriguez, DPM of Sioux Falls Foot Specialist on July 15, 2021. (JE7, p. 156) Dr. Rodriguez wrote claimant a prescription for gabapentin and a compound neuropathy formula that included ketamine and gabapentin. (JE7, p. 157) Following his examination, Dr. Rodriguez discussed a number of treatment options potentially available to claimant, including physical therapy, nerve blocks, and a nerve resection procedure. (Id.)

There is a break in claimant's medical treatment between July and December 2021. One possible explanation is discussed in claimant's post-hearing brief. In his brief, Mitiku asserts he lost his personal health insurance when his employment ended with Tyson. He subsequently relocated to Sioux Falls, South Dakota and applied for Medicaid through South Dakota Department of Social Services. (Hr. Tr., pp. 55-58) He resumed medical treatment for his injury once his application for Medicaid was approved.

Claimant began a course of physical therapy through the Avera Therapy Health Center on December 1, 2021. (JE8, p. 158) Claimant reported pain, paresthesia, and weakness in the left lower leg and foot. (Id.) He also reported low back pain and difficulty wearing closed shoes, prolonged sitting, and prolonged standing. (JE8, pp. 158-159) Claimant disclosed that he had previously presented for physical therapy, but "work comp 'pressured him' to discontinue this[.]" (Id.)

Throughout his first few physical therapy sessions, it is noted that claimant had a difficult time tolerating all activities due to pain. (See JE8, pp. 164, 166) Claimant attempted all exercises; however, he fatigued quickly and was only able to tolerate small amounts of active movement before needing to rest. (See JE8, p. 164) Fortunately, by his fourth session, claimant was starting to show improvement with respect to his tolerance for activity, lower extremity strength/endurance, and normalizing movement patterns. (JE8, pp. 168, 170) He was able to progress through his exercises, and his physical therapist noted significant improvement with activity tolerance on January 7, 2022. (JE8, pp. 169-171, 174) Despite these noted improvements, claimant did not feel as though he was improving as he was still experiencing pain. (JE8, p. 168)

After nine physical therapy sessions, claimant received a physical therapy progress report. (JE8, p. 177) The report provides,

> Patient reports that he can tell that his left lower extremity is getting stronger. He is still having intense pain and paresthesia, but frequency of pain is a little bit improved. […] Patient states that he has found therapy to be beneficial, and wishes to continue with Physical Therapy for a little while longer.

(Id.)

Neurologist Justin Persson, M.D., first evaluated Mitiku on December 20, 2021. (JE9, p. 184) Dr. Persson assessed claimant with third-degree burns of the left foot with subsequent peripheral neuropathy. He prescribed gabapentin and ordered an EMG of claimant's lower extremities and an MRI of the lumbar spine. (Id.) The MRI of the lumbar spine was ordered in response to claimant noting a five-month history of low back pain with left leg radiculopathy. (See JE9, p. 190)

The December 29, 2021, EMG was normal; however, Dr. Persson opined that the results of the imaging could indicate a small fiber neuropathy from claimant's burn

injury. (See JE9, p. 190) Dr. Persson would later definitively opine that claimant's left foot pain is a result of small fiber neuropathy from his burn injury. (JE9, pp. 190-191) Dr. Persson was hopeful claimant's pain could be addressed with medication. (JE9, p. 191) The lumbar MRI obtained on March 8, 2022, was also negative, with no significant degenerative changes or nerve impingement. (See JE9, p. 190) When the MRI failed to explain claimant's shooting left leg pain, Dr. Persson offered to refer claimant for an orthopedic evaluation of the left hip. (JE9, p. 189) Claimant declined Dr. Persson's offer. (Id.)

Mitiku testified his symptoms have improved since the time of his termination from Tyson. Nevertheless, he continues to experience shooting pain, numbness, and burning in his left foot, especially in colder weather. (Hr. Tr., pp. 60, 85) He still struggles with hypersensitivity and pain when wearing shoes; however, he admits he can now wear soft or open-toe shoes. (Hr. Tr., p. 85) He has the ability to travel up and down a flight of stairs. (Hr. Tr., pp. 85-86)

In the weeks leading up to trial, Mitiku sought out vocational training. (Hr. Tr., p. 56) He plans to receive training in electrical management. (Hr. Tr., p. 57) At the time of trial, Mitiku was employed as a driver for Lyft, a ridesharing service. (Hr. Tr., p. 55) He asserts the hours he is able to drive are limited by his condition. He testified that he works between 12 and 20 hours per week. (Hr. Tr., p. 56) He has also worked two, six-week stints with Goodwill through a vocational rehabilitation program. (See Hr. Tr., pp. 55-57)

Claimant sought an independent medical evaluation with Sunil Bansal, M.D. The evaluation occurred on April 28, 2021, and Dr. Bansal signed his report on May 3, 2021. (Ex. 1, pp. 1, 9) During the interview portion of the evaluation, claimant reported that he was able to stand for 10 minutes before his pain became intolerable. (Ex. 1, p. 7) On examination, Mitiku exhibited full range of motion and strength in his left ankle. (Ex. 1, p. 8) Dr. Bansal agreed with Dr. Essay's date of maximum medical improvement. (Id.) Dr. Bansal noted that claimant may require additional laser/surgical modalities for his scarring and hypopigmentation. He also recommended antineuritic medication management for claimant's foot neuropathy. (Ex. 1, p. 9)

Utilizing the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Bansal assessed claimant with 13 percent lower extremity impairment. (Id.) With respect to restrictions, Dr. Bansal recommended claimant avoid loose or tight-fitting work boots. He further recommended no prolonged standing or walking greater than 30 minutes at a time. (Id.)

Shortly after receiving the May 3, 2021, report, claimant's counsel produced updated medical records to Dr. Bansal for review. (See Ex. 1, pp. 10-13) Following his review of the updated medical records, Dr. Bansal was asked to address whether the type of burn claimant experienced could result in hypersensitivity, such that a hard and stiff work boot would increase his pain. (Ex. 1, p. 13) Dr. Bansal opined that claimant's condition is characterized by extreme hypersensitivity. (Id.) He further opined that the

abrasive nature of a work boot, combined with the additional heat and moisture environment created by the work boot, would lend to potential infection and aggravated neuropathy. (Id.) Therefore, Dr. Bansal recommended claimant avoid a stiff and hard work boot. (Id.)

Defendants similarly scheduled claimant for an independent medical evaluation with Douglas Martin, M.D. (Ex. B) The evaluation occurred on May 12, 2021. (Ex. B, p. 25) At the time of the examination, Dr. Martin did not have access to medical records from Dr. Essay. (See Ex. B, p. 26) Like Dr. Bansal, Dr. Martin noted full active range of motion in the left ankle and hindfoot. (Ex. B, p. 27) Unlike Dr. Bansal, Dr. Martin noted that his strength testing was met with consistently poor effort. (Id.) Overall, Dr. Martin felt that claimant presented with a high degree of inappropriate illness behavior and symptom magnification. (Ex. B, p. 28)

Utilizing the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Martin assessed claimant with 5 percent lower extremity impairment. (Id.) He recommended no permanent restrictions and opined, "I frankly find his report to me today that he cannot wear a boot whatsoever to be quite incredulous." (Ex. B, p. 29) Dr. Martin explained that burn injuries like claimants should not lead to a long-term need for disability or long-term treatments. (Ex. B, p. 28) He further opined, "There should be no reason why this gentleman has any significant impact on his activities of daily living." (Id.)

The main issue for the undersigned to address is the extent of claimant's entitlement to permanent partial disability benefits. The parties stipulate that the April 21, 2020, work injury is a cause of permanent disability. The parties further stipulate that the disability is a scheduled member disability to the left lower extremity.

In total, two physicians have addressed claimant's permanent impairment. Both Dr. Bansal and Dr. Martin utilized Table 8-2 on page 178 of the AMA Guides, Fifth Edition to assess claimant's permanent impairment. Both physicians placed claimant in Class 1. The criteria for Class 1 includes, "Skin disorder signs and symptoms present or intermittently present" and "no or few limitations in performance of activities of daily living[.]"

Dr. Bansal assessed 13 percent lower extremity impairment, or 5 percent whole person impairment. Dr. Martin assessed claimant with 5 percent lower extremity impairment, or 2 percent whole person impairment.

As I weigh the competing medical reports from the two occupational medicine physicians, I am troubled by the fact Dr. Martin was not privy to a complete medical record at the time of his evaluation. Dr. Martin's report provides that he only reviewed the April 21, 2020, emergency department note from Buena Vista Medical Center, which provided little to no treatment for claimant, three medical records from St. Elizabeth Burn Clinic, handwritten return to work forms from Mr. Maurer, and Dr. Bansal's IME report. (Ex. B, p. 25) According to the report, Dr. Martin did not possess or review all

medical records from the St. Elizabeth Burn Unit, any physical therapy records from Sports Rehab and Professional Therapy Associates, or any medical records from Dr. Essay. (Id.) I find Dr. Martin's opinions are based on an incomplete medical history.

Dr. Martin's report contains several generalizations and other statements reflective of an incomplete understanding of claimant's medical history. Dr. Essay, whose medical records Dr. Martin was not privy to, opined that neuropathic pain is sometimes chronic, especially after sustaining a third degree burn with subsequent grafting. He further opined that claimant's pain may never be 100 percent gone. In comparison, Dr. Martin opined that burn injuries like claimant's should not lead to any long-term need for disability or long-term treatments. In doing so, Dr. Martin addresses burn injuries in general; he does not address claimant and his specific injury. Such an opinion is unhelpful in determining claimant's permanent impairment.

Additionally, Dr. Martin opined, "I frankly find his report to me today that he cannot wear a boot whatsoever to be quite incredulous." (Ex. B, p. 29) Such a report from claimant would likely seem less incredulous if Dr. Martin was privy to Dr. Essay's medical records which consistently document claimant's reports of hypersensitivity over the course of several months. (See JE5, pp. 122-138)

Dr. Martin's conclusions are at odds with the credible opinions of Dr. Essay and Dr. Bansal. Dr. Essay offers his opinion as claimant's treating physician who examined claimant and assessed his condition on numerous occasions. Dr. Bansal offers his opinion as an expert with a complete understanding of the medical record. The opinions of Dr. Essay and Dr. Bansal are consistent with the evidentiary record as a whole. I find their opinions convincing.

While both physicians placed claimant in Class 1 and assigned similar impairment ratings, I ultimately accept the 13 percent lower extremity impairment rating assigned by Dr. Bansal to be most convincing and credible. Dr. Bansal had access to all relevant medical records and his impairment rating more accurately reflects claimant's current complaints and condition. I accept Dr. Bansal's impairment rating as accurate and find that claimant has proven he sustained a 13 percent permanent impairment of the left leg.

Claimant seeks ongoing treatment for his left foot and ankle, as well as an order transferring care for purposes of ongoing treatment to Sioux Falls Foot Specialist, Avera Therapy Health Center, and AMG Neurology Sioux Falls.

After examining claimant and reviewing the medical records, Dr. Bansal opined that claimant will likely require laser/surgical modalities for his scarring/hypopigmentation and antineuritic medication management for his neuropathy. (Ex. 1, p. 9) Claimant has demonstrated a need for additional medical treatment. I find the recommended treatment reasonable and necessary for his left foot and ankle condition.

Having found claimant requires ongoing medical treatment related to the April 21, 2020, work injury, I find defendant is obligated to provide reasonable and prompt medical care for claimant's ongoing left foot and ankle complaints. Defendant shall authorize and pay for all reasonable and causally related expenses with respect to claimant's ongoing treatment.

Lastly, claimant seeks reimbursement of medical expenses totaling $1,493.92. (Ex. 6, pp. 36-38) The medical expenses stem from treatment claimant received between September 7, 2021, and March 8, 2022, at Avera Therapy Health Center, AMG Neurology, and Avera McKennan Hospital. (See Ex. 6, pp. 37-38)

From my review of the medical records in evidence, the majority of the medical expenses outlined in Exhibit 6 appear to stem from treatment causally related to claimant's work injury. However, defendant asserts that the care associated with the medical expenses listed in Exhibit 6 was unauthorized.

Claimant asserts defendant offered no additional medical treatment after receiving Dr. Martin's IME report providing no additional care was necessary. While defendant may not have proactively offered any additional medical treatment, there is no evidence defendant denied requests for additional medical treatment. There is also no evidence defendant denied compensability of the left foot and ankle subsequent to Dr. Martin's May 12, 2021, report. While there is evidence that claimant was dissatisfied with the care he was receiving, there is no indication that claimant requested alternative or additional medical treatment following his release from Dr. Essay on March 15, 2021. The evidence demonstrates defendant first became aware that claimant was receiving additional medical treatment for his left foot and ankle condition on March 24, 2022, during his deposition. (Ex. A, Depo. pp. 19-21) As such, I find the care claimant received between September 7, 2021, and March 8, 2022, was unauthorized.

Claimant is not alleging that the care he received between September 7, 2021, and March 8, 2022, was the result of an emergency. Defendant did not consent to alternate care and claimant did not pursue alternate care through an alternate medical care proceeding. It appears defendant's failure to authorize care was based on claimant's own failure to notify defendant of his desire or need for additional treatment. While the care claimant received between September 7, 2021, and March 8, 2022, was more beneficial than no care, claimant failed to give defendant the opportunity to authorize care additional care.

REASONING & CONCLUSIONS OF LAW

The first issue for determination is the extent of permanent disability relating to the left foot and ankle injury.

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 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)

The parties stipulate that the April 21, 2020, work injury is a cause of permanent disability. The parties further stipulate that the disability is a scheduled member disability to the left lower extremity.

In total, two physicians have addressed claimant's permanent impairment. Claimant relies on the expert opinion of Dr. Bansal. Dr. Bansal Utilized Table 8-2 on page 178 of the AMA Guides, Fifth Edition. The table provides the criteria for rating permanent impairment due to skin disorders. Dr. Bansal placed claimant in Class 1 and assessed 13 percent lower extremity impairment, or 5 percent whole person impairment. The criteria for Class 1 includes, "Skin disorder signs and symptoms present or intermittently present" and "no or few limitations in performance of activities of daily living[.]"

Defendant relies on the expert opinion of Dr. Martin. Like Dr. Bansal, Dr. Martin utilized Table 8-2 and placed claimant in Class 1. Dr. Martin assessed claimant with 5 percent lower extremity impairment, or 2 percent whole person impairment.

As discussed in the Findings of Fact, I found Dr. Bansal's impairment rating and justification for the same more convincing than the rating provided by Dr. Martin. Having accepted the medical opinions of Dr. Bansal as most convincing in the evidentiary record, I also found that claimant proved a causal connection between his claim of permanent disability and the April 21, 2020, work injury.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or for loss of earning capacity under section 85.34(2)(v). The parties have stipulated claimant's disability is a scheduled member disability to the left lower extremity. 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).

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)

Having found the 13 percent impairment rating offered by Dr. Bansal to be the most accurate and convincing, I conclude that claimant is entitled to an award of permanent partial disability benefits equivalent to 13 percent of the left lower extremity.

The Iowa legislature has established a 220-week schedule for leg injuries. Iowa Code section 85.34(2)(p). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of his leg. Iowa Code section 85.34(2)(w). Thirteen percent of 220 weeks is 28.6 weeks. Claimant is, therefore, entitled to an award of 28.6 weeks of permanent partial disability benefits against defendant. Iowa Code section 85.34(p), (w).

Mitiku seeks an award of past medical expenses contained in Exhibit 6.

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. Iowa Code section 85.27; Hoibert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

The employer's statutory right to select the authorized medical provider does not apply when emergency care is required. The parties can negotiate and reach an amicable resolution in which the injured worker is permitted to see a medical provider other than the employee's initially selected provider. The injured worker also has a

statutory remedy to seek an order of this agency transferring care to an alternate medical provider. Iowa Code section 85.27(4).

Other than these three scenarios, the employer retains a statutory right to select the authorized medical provider. Brewer-Strong v. HNI Corporation, 913 N.W.2d 235, 248 (Iowa 2018). The employee can elect to forego the statutory process and pay for his or her own medical care. However, if the employee elects to abandon the protections of the statute and pursue care through a provider of his or her own choosing, the employer will only be responsible for payment of the unauthorized medical expenses if the employee can prove "by a preponderance of the evidence that such care was reasonable and beneficial" under a totality of the circumstances. Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010).

To establish that unauthorized care is reasonable and beneficial, claimant must prove by a preponderance of the evidence that the care received provided "a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id. The Iowa Supreme Court acknowledged that this is a significant evidentiary burden but concluded that it is a reasonable balancing of the parties' interests and affirmed this as the applicable burden of proof to obtain an award of unauthorized medical expenses. Brewer-Strong, 913 N.W.2d at 248.

The evidence in this case demonstrates that claimant sought and obtained unauthorized medical care for his left foot and ankle injury. As such, the medical expenses contained in Exhibit 6 stem from unauthorized medical care.

In the matter at hand, there is no evidence defendant was aware of claimant seeking medical treatment between September 7, 2021, and March 8, 2022. There is also no evidence that claimant requested additional medical treatment from defendant prior to seeking alternate medical care on his own. While the care claimant received between September 7, 2021, and March 8, 2022, was more beneficial than no care at all, claimant failed to give defendant the opportunity to authorize care. A strict application of the Bell Brothers test in this scenario would result in a circumvention of defendants' right to control medical treatment under Iowa Code section 85.27. See Jimmerson v. Ultimate Automotive Service Center, Inc., File No. 5052541 (App. Feb. 22, 2018) Claimant cannot satisfy his burden to prove that the care he received between September 7, 2021, and March 8, 2022, was more beneficial than what would likely have been achieved by the care authorized by defendant because claimant failed to provide defendant the opportunity to authorize care.

Therefore, I conclude claimant failed to establish entitlement to reimbursement, payment, or satisfaction of the unauthorized medical expenses contained in Exhibit 6.

The next issue for consideration is claimant's entitlement to alternate medical care. Claimant seeks authorization of ongoing treatment for his left foot and ankle, as well as an order transferring care for purposes of ongoing treatment to Sioux Falls Foot Specialist, Avera Therapy Health Center, and AMG Neurology Sioux Falls.

By challenging the employer's choice of treatment - and seeking alternate care - claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

In his IME report, Dr. Bansal opined that claimant may require laser/surgical modalities for his scarring and hypopigmentation. He also recommended antineuritic medication management for claimant's foot neuropathy. Additionally, claimant's treating physician has recommended physical therapy. Claimant testified he has seen improvement in his condition through physical therapy and medication management. He requests that such care be continued indefinitely.

Having found claimant requires ongoing medical treatment related to the April 21, 2020, work injury, I further find defendant is obligated to provide reasonable and prompt medical care for claimant's ongoing left foot and ankle complaints. Defendant shall authorize and pay for all reasonable and causally related expenses with respect to claimant's ongoing treatment.

The question then becomes whether defendant maintains the right to direct claimant's medical care.

Defendant became aware that claimant was receiving additional medical treatment for his left foot and ankle condition at claimant's March 24, 2022, deposition. There is no evidence that defendant, after learning that claimant was receiving medical treatment for his left foot and ankle, investigated claimant's need for additional medical treatment. There is similarly no evidence that defendant offered or authorized any additional medical treatment between March 24, 2022, and the date of the evidentiary hearing.

The fact that claimant had been selecting his own medical treatment between September 7, 2021, and March 8, 2022, does not eradicate defendant's duty to offer medical care. "[T]he statute contains no language to indicate the basic duty of an employer to furnish reasonable medical care for compensable injuries is discharged once an employee deprives an employer of its right to control medical care by obtaining alternative care not authorized by the statue." Bell Bros., 779 N.W.2d at 205.

Defendant's failure to offer any additional care after the March 24, 2022, deposition, is not reasonable or compliant with Iowa Code section 85.27. Given claimant's relocation to Sioux Falls, his familiarity with the current providers, and the routine nature of the treatment being provided, it is reasonable and logical to continue claimant's care through Sioux Falls Foot Specialist, Avera Therapy Health Center, and AMG Neurology Sioux Falls. Claimant's request for alternate medical care will be granted and defendant will be ordered to provide and pay for causally related future medical care as recommended by Drs. Loughlin, Rodriguez, and Persson.

In his post-hearing brief, claimant withdrew his claims for penalty benefits and for reimbursement of Dr. Bansal's IME pursuant to Iowa Code section 85.39.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Iowa Code section 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. Claimant was generally successful in his claim. An assessment of costs is appropriate.

Claimant seeks an assessment of costs for Dr. Bansal's IME report ($2,521.00).

In this case, Dr. Bansal provided a breakdown of his expenses related to the independent medical evaluation. According to the itemized bill, Dr. Bansal charged $2,521.00, for drafting his report. Defendant provides no argument with respect to the reasonableness of Dr. Bansal's fees, specifically. As such, I find Dr. Bansal's fee is reasonable.

ORDER

THEREFORE, IT IS ORDERED:

Defendant shall pay unto claimant twenty-eight and three-fifths (28.6) weeks of permanent partial disability benefits commencing on March 15, 2021, at the weekly rate of six hundred seventy-seven and 32/100 dollars ($677.82).

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.

Defendant shall receive credit for benefits previously paid.

Defendant shall authorize Drs. Loughlin, Rodriguez, and Persson and provide future medical care deemed necessary to treat the burn injury of April 21, 2020, including any appliances, medications and referrals for further testing, imaging, therapy, and other treatment by other providers.

Defendant shall reimburse claimant's costs as outlined in this decision.

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

Signed and filed this 29th day of November, 2022.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Mary Hamilton (via WCES)

Chris Scheldrup (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.