

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHUCK EMRY,

Claimant,

vs.

CRAWFORDSVILLE FEED & GRAIN,

Employer,

and

WESTERN AGRICULTURAL INS. CO.,

Insurance Carrier,
Defendants.File Nos. 22003778.01
22003713.01

ARBITRATION DECISION

Head Note Nos: 1108.50, 1402.20,
1402.40, 2302, 2401**STATEMENT OF THE CASE**

Chuck Emry, claimant, filed 2 petitions in arbitration seeking workers' compensation benefits from Crawfordsville Feed & Grain, employer, and Western Agricultural Insurance Company, insurance carrier, as defendants. Hearing was held via Zoom videoconference on August 25, 2023. It should be noted that claimant also named the Second Injury Fund of Iowa (SIF) as a defendant in agency file number 22003778.01. The claimant alleged a 2019 date of first loss affecting his right lower extremity and the second injury alleged was to his left knee on June 1, 2020. Before the start of the hearing, the undersigned was advised that the claimant and the SIF reached a settlement. Thus, the SIF did not participate in the hearing.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision. The parties are now bound by their stipulations.

Chuck Emry, Jeff Buckner, Carolyn Love, and Sharon Robison all testified live at trial. The evidentiary record also includes Joint Exhibits 1-7, Claimant's Exhibits 1-14 and Defendants' Exhibits A-N. All exhibits were received without objection. Defendants' Exhibits A-N were received at the time of the hearing. Defendants requested that the record be left open so defendants could submit a copy of the approved settlement documents for the settlement between the claimant and the SIF. At the conclusion of the arbitration hearing the evidentiary record was left open for the sole purpose of allowing the defendants to submit a copy of the settlement documents which would be marked as Defendants' Exhibit N. Exhibit N was subsequently received into evidence.

The parties submitted post-hearing briefs on September 29, 2023, at which time the case was fully submitted to the undersigned.

ISSUES

File No. 22003713.01 (DOI: 10/02/19)

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury to the claimant's right lower extremity or to the bilateral lower extremities?
2. The extent of permanent partial disability benefits claimant sustained as the result of the stipulated October 2, 2019 work injury.
3. The appropriate commencement date for the permanent partial disability benefits.
4. Does the Second Injury Fund settlement in file number 22003778.01 affect the claimant's October 2, 2019 date of injury claim against the employer and insurance carrier?

File No. 22003778.01 (DOI: 06/01/20)

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury which arose out of and in the course of his employment on June 1, 2020. If so, the amount of permanency benefits claimant is entitled to receive.
2. Whether the alleged injury is the cause of permanent disability.
3. Whether the alleged injury is the cause of temporary disability. If so, whether claimant is entitled to benefits from June 28, 2021 through August 28, 2021.
4. The appropriate date of maximum medical improvement.
5. The amount of permanent partial disability benefits that claimant is entitled to receive.
6. Whether claimant is entitled to additional medical care.
7. Whether claimant is entitled to medical mileage.
8. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Chuck Emry, was 59 years old at the time of the hearing. He began working for Crawfordsville Feed in 2008¹. He was hired to run a feed truck, assist with farming, and hauling hog manure. He worked as a general laborer, including maintenance work. He mostly drove truck, performed mechanical work, and some farmhand work. He did not take care of hogs at Crawfordsville Feed. (Hearing Transcript, pages 24-25, 30, 55-56) While Chuck was working for Crawfordsville Feed, he also worked for Liberty Transport. He worked for Liberty from 1997 until 2012. While working for Liberty, Chuck drove truck, loaded and unloaded freight, and made deliveries. His work for Liberty ended when Liberty asked him to choose between working for them or Crawfordsville Feed. Chuck chose to work for Crawfordsville Feed. From 2012 through the time of the hearing Chuck has continued to work for Crawfordsville Feed. (Tr. pp. 22-24) From 2012 until 2017 Chuck only worked for Crawfordsville Feed. (Tr. p. 27)

Beginning in 2017 and through the date of the hearing Chuck also worked as a contractor for Eichelberger Farms. He worked as a caretaker of hog barns where he oversaw 8600 head. He performed all the work involved in raising hogs. He had to “chore them” every day. (Defendants’ Exhibit J, depo. p. 44) He walked the buildings daily to be sure the hogs had food and water. If there was a dead hog, he had to drag that hog out; he had help with larger hogs. His hours varied. Before the two injuries in question, he typically worked 6 to 8 hours per day. Chuck worked a couple of hours in the morning walking barns, then went to work for Crawfordsville, and later in the day he would return to perform more hog work at Eichelberger Farms. At some point after the injuries in question, he could not perform all the duties involved in the hog operation and consequently he worked only 3 to 4 hours per day at Eichelberger Farms. (Def. Ex. J, depo. pp. 43-49; Tr. pp. 29-30)

Chuck has filed two petitions in this case. One petition alleged an injury at work to his right ankle and left lower extremity on October 2, 2019. (Petition, agency file number 22003713.01) The second petition alleged he was at work when he “tripped and twisted left knee on rock.” (Petition, agency file number 22003778.01) It is the second petition that also alleged a claim against the Second Injury Fund of Iowa with a date of first loss of 2019 affecting the right lower extremity. (Id.)

There is no dispute that Chuck sustained a work-related injury to his right lower extremity when he tore his Achilles tendon on October 2, 2019. The central disputes in these cases revolve around Chuck’s allegation that he sustained a work-related injury to his left knee. He alleged an acute injury to his left knee on June 1, 2020, when he was getting down out of a truck, his right foot caught on the tread plate of the step, he fell to the ground, and landed on his left knee on some rocks. (Tr. p. 39) In the alternative, he

¹ Chuck testified that Robison Farms is owned by the same people who own Crawfordsville Feed and Grain. (Tr. pp. 24-25) His testimony is unrebutted and the proper name of the employer-defendant is not a dispute in this case. For the sake of clarity, the defendant-employer will be referred to as “Crawfordsville Feed” in this decision.

has alleged that his left knee injury is related to the October 2, 2019 right lower extremity injury as it is a consequence of that injury. Defendants deny that claimant's left knee injury is related to his work and further assert that he failed to provide timely notice of a left lower extremity injury.

The October 2, 2019 injury occurred when his foot caught on a crack in some concrete which caused him to tear his Achilles tendon. He immediately knew he was injured. After he fell, he was able to hop on one foot to get to his pickup truck and drive to the front office. He went into the office where Carolyn Love, the secretary, was working. Carolyn then told Sharon Robison about the injury. (Tr. pp. 32-33; 118, 127) Sharon is the treasurer of Crawfordsville Feed and Grain and oversees the insurance and most of the office work. (Tr. pp. 126-127)

On October 2, 2019, the date of the first injury, Chuck went to the emergency room at Washington County Hospital. He reported that he "jumped down from truck, caught toe on curb and hyperextended ankle, reports 'it felt like two suction cups being torn apart.'" (Joint Exhibit 1, p. 1) The notes also state, "patient was at work, jumped down from semi-truck though foot caught ledge and caused him to hyperextend the toe. He felt a tearing pain in the back of his leg." (JE1, p. 5) The impression was ruptured Achilles tendon right ankle. He was released with crutches and no weight bearing on his right leg. (JE1, pp. 1-7)

On October 7, 2019, Chuck went to Great River Medical Center Orthopaedic Specialists where he saw Amanda L. Proczak, PAC. Chuck reported that 6 days ago he "was climbing out of a semitruck when he hyper plantarflexed his right ankle." (JE3, p. 13) Interestingly the note does not contain the history of tripping on concrete as reported by Chuck. Rather, it contains a history that is more consistent with Chuck's description of the alleged June 1, 2020 injury. The October 7, 2019 note states he was still experiencing mild pain on the posterior aspect of his right ankle. He had weakness in the right ankle and overall felt unstable. He noted swelling and bruising around the lower leg and ankle. Chuck said he had to continue to work wearing the boot. He was using crutches for balance. An MRI of the ankle was recommended due to possible Achilles tear. (JE3, pp. 13-15)

On October 14, 2019 Chuck returned to the Orthopaedic Specialists to discuss his MRI. The assessment was rupture of the right Achilles tendon. A right Achilles reconstruction was recommended. (JE3, pp. 16-19)

On October 18, 2019, Levi Nathan Gause, M.D. surgically repaired the ruptured Achilles tendon. (JE3, pp. 20-21) Following surgery Chuck underwent physical therapy to increase his strength and mobility. (JE 5, p. 57)

Chuck followed up with Orthopaedic Specialists after surgery. He reported he was doing well and had minimal pain. By November 13, 2019 he reported that he had occasionally been bearing weight and was not having any difficulty. He had made good progress with physical therapy. In January 2020 he reported some increase in his pain which he attributed to physical therapy. By February 2020, he transitioned back to regular shoes. Chuck reported mild to moderate pain, depending on the amount of time

he spent on his feet. The doctor recommended continued use of the CAM boot to protect the Achilles tendon repair. (JE3, pp. 22-42)

Chuck saw Dr. Gause on February 27, 2020. He presented weightbearing in a CAM boot. He was having less pain but his pain increased if he had been on his feet for an extended period. The doctor released him to return to work in the CAM boot, may remove the boot while sitting and driving. (JE3, p.43)

On March 18, 2020 Chuck called Dr. Gause's office. He reported that his pain was no better and his leg was "pretty much useless." (JE 3, p. 44)

Chuck was off work at Crawfordsville Feed until March 2020. He returned to work wearing his surgical boot. According to Chuck, he was having difficulty walking and his injury caused him to stumble and fall. He believed this was caused from stretching his tendon when it was re-anchored to the bone in his heel, and he no longer had a calf muscle which caused him not to have the foot control of a normal person. He testified that he wore the surgical boot on and off for two years. Chuck testified that he told Dr. Gause about the times this caused him to stumble and fall. When asked why these stumbles and falls were not contained in Dr. Gause's clinical notes, Chuck could not explain why Dr. Gause did not put that information in his notes. (Tr. pp. 36-38, 62-66)

Chuck called Dr. Gause's office on May 5, 2020. He was 7 months post-surgery and still had swelling. He had been wearing his boot and worked 7 days a week with hogs. Tendon was still swollen; he had daily pain and cramps. He was trying to wean from his boot. He was unable to drag hogs, unable to put pressure and had no strength. At times it felt like the tendon had ripped. The plan was for an MRI of the right Achilles to assess for further injury. He still had heel discomfort and was unable to function at work. (JE3, pp. 45-46)

An undated MRI report was compared to an October 10, 2019 MRI. There was no evidence of a recurrent tear. (JE3, p. 50)

On June 18, 2020, Dr. Gause answered a series of questions posed to him by the defendants. In his letter he stated that Chuck was not at MMI for his right Achilles injury. He restricted him to wear his boot while working and to continue current restrictions. (JE4, p. 56)

According to Chuck, he began having problems with his left leg in June 2020. When asked what was causing him to have problems with his left leg, he responded,

I got down out of the truck and because my foot doesn't operate as normal, it got caught on the tread plate of the step. And when I stepped down, I had it turned the wrong way. And I fell to the ground and landed with my left knee on the rocks.

(Tr. p. 39)

Chuck testified that this was one of multiple times that he fell. He testified that he told Dr. Gause about these falls. (Tr. pp. 38-39)

Dr. Gause saw Chuck on July 13, 2020. This is the first time Chuck saw Dr. Gause after the alleged June 1, 2020 injury. Chuck's chief complaint was right Achilles pain. He reported a lot of pain and stiffness. He continued to have discomfort with ambulation. He reported difficulty walking. He constantly had a sensation of weakness in his ankle. Chuck developed discomfort in the medial aspect of his left knee. He reported episodes of giving way, popping, and snapping of the left knee. Although this was the first time Chuck saw a medical provider since the alleged June 1, 2020 fall, there was no mention in the clinical note of any type of fall from a pickup truck. The impression included changes from remote distal Achilles tendon tear with repair, diffuse distal Achilles tendinosis. No evidence of a recurrent tear. Left knee pain, likely medial meniscus tear. The doctor noted that Chuck was looking at a year or greater of recovery time for his Achilles injury. (JE 3, pp. 47-49) Dr. Gause stated,

The patient continues to work in a hog refinery lifting significant amount of weight on a daily basis and standing on his feet for multiple hours a day. In light of his injury I believe he has begun to develop dysfunction in his left knee, likely a medial meniscus tear.

(JE3, p. 49)

A hinged knee brace was recommended for the meniscus to provide more stability while working. (JE3, p. 49)

Chuck had a telehealth appointment with Dr. Gause on August 17, 2020. Chuck continued to experience pain with ambulation and increased work effort. He began to develop pain and burning in his heel. He also reported discomfort in his contralateral knee for which he wore a brace. Dr. Gause stated, "I believe with a reasonable degree of medical certainty that he is no longer suited for his current job as his persistent weakness and discomfort following reconstruction puts him at risk for further injury and [sic] his line of work." (JE3, p. 51) He recommended a work hardening assessment to determine his full capacity. Chuck was instructed to make future appointment with either Dr. Gipple or Dr. Kadel for his right lower extremity. He was to follow-up with Dr. Gleason for his left knee discomfort. (JE3, p. 51)

The last treatment Chuck sought at Orthopaedic Specialists was on September 9, 2020, with John R. Gipple, M.D. He reported that he had returned to most of his job activities. He was still not climbing ladders or bands and was not loading hogs onto trucks. He was discharged from physical therapy. Most of the time he wore a leather lace-up work boot at work. Sometimes he wore the postsurgical boot if the ground was very uneven. The doctor noted he walked with a mild right limp. The doctor noted he was 11 months status post repair with mild residual weakness. He recommended a dynamic assist AFO. He was permanently restricted to no climbing ladders or bands and no loading of hogs onto trucks. Chuck was placed at MMI and told to follow up as needed. (JE3, pp. 53-55)

The evidentiary record contains conflicting information surrounding the alleged June 1, 2020 left knee injury. According to Chuck, the incident where he fell from the truck occurred at the elevator in Crawfordsville. Chuck claims that he told Carolyn about the incident. He says he told her that he got caught and fell. Chuck testified that

he had to take the next couple days off work because his knee swelled up. After those couple of days off work, Chuck says that he returned to work and reported the incident to Sharon Robison. (Tr. pp. 43-44; Def. Ex. J, depo pp. 85-87)

Carolyn Love testified at the hearing. She worked as a part-time bookkeeper for Crawfordville Feed during the injury dates at issue in this case. She retired from Crawfordville Feed in February 2023. She was not Chuck's supervisor, nor did she handle any aspects of workers' compensation for Crawfordville Feed. She recalls Chuck's right ankle injury in October 2019. She was working when Chuck came into the office in excruciating pain. He told her that he had hurt his ankle and that his wife was coming to get him. Carolyn does not remember telling Sharon about the injury. However, if Sharon's records indicate that Carolyn told her about Chuck's 2019 injury, then she believes that she did tell Sharon because Sharon is a meticulous note keeper. Carolyn has no recollection of Chuck telling her of any left knee pain or of any falls in the spring or summer of 2020. Carolyn testified that Chuck has walked with a limp for the 10 years that she has worked with him. (Tr. pp. 116-120,124)

Chuck testified that he also reported the left knee injury to Jeff Buckner at Farm Bureau Financial Services (FBFS) during the summer of 2020. He testified at hearing that they talked and e-mailed back and forth a few times that summer. (Tr. pp. 45-46; Def. Ex. J, depo. p. 104) On March 8, 2023, claimant had his deposition taken in this case. Chuck testified that during the summer of 2020 he kept calling Jeff and leaving messages, but Jeff would never call him back. He testified that he specifically told Jeff that he had fallen again and had a new injury. (Def. Ex. J, depo. pp. 86-87, 112-113)

Jeff Buckner, a claims service supervisor for FBFS, testified at the hearing. He took the supervisor position in February 2023; before that he was a senior work comp claims specialist. He was assigned to Chuck's October 2, 2019 right leg injury. He testified the 2019 claim was timely reported; it was turned in by the insurance agent the day after the event. Jeff was eventually also assigned the task of investigating the alleged June 1, 2020 left knee injury. (Tr. pp. 93-95) The first indication Jeff had that there may be something going on with Chuck's left knee was on December 17, 2020 when he received a phone call from a medical provider in Liberty, Missouri asking if he had scheduled an appointment for Chuck to be seen for his left knee. At that time, Chuck was claiming his left meniscus injury was the result of overuse due to his right Achilles injury. (Def. Ex. B, p. 7) Jeff then had a discussion with Chuck and conducted an investigation. According to Jeff, Chuck was claiming he had an overuse injury due to his prior injury. Jeff arranged an IME for Chuck's left knee with Kyle R. Duchman, M.D. (Tr. pp. 101-106, 113)

Chuck underwent the IME with Dr. Duchman at the University of Iowa Hospitals and Clinics on October 7, 2021. In addition to examining Chuck, Dr. Duchman also reviewed the records that were provided to him. Dr. Duchman noted that Chuck had a work-related right Achilles tendon rupture on October 2, 2019. Nearly 10 months after the Achilles surgery Dr. Gause saw Chuck who mentioned left knee pain which Dr. Gause speculated may be related to medial meniscus pathology. He also speculated that the left medial knee pain may be due to overuse from his right-sided, work-related

injury. The purpose of Dr. Duchman's IME was to address causation on the left knee for a potential overuse injury. (Def. Ex. A, pp. 1-7)

However, Chuck advised Dr. Duchman that his left knee injury occurred due to a specific event. Chuck noted a specific event while getting out of a truck and climbing down a ladder when he felt his left knee pop. He experienced immediate pain and swelling in his knee. Chuck told Dr. Duchman this occurred in June 2020, before his July 2020 visit with Dr. Gause which was the first mention of his left knee pain in the medical notes. Dr. Duchman's assessment was chronic pain of left knee and Achilles tendon injury, right, sequela. (Def. Ex. A, pp. 1-7) Dr. Duchman stated,

Upon returning to work and within his restrictions, he describes an event in June 2020 while at work when his left knee twisted getting in or out of a truck with resultant pain, clicking, and effusion. This is poorly documented in previous notes, first mentioned in the July 2020 note by Dr. Gause, and there is some suggestion that this was related to overuse while rehabilitating his right Achilles. However, his history would suggest a more acute onset. On exam, he does have concern for possible meniscus injury versus irritation of pre-existing chondral disease. While the exact pathology is difficult to ascertain without imaging, his history, as presented, is consistent with a work-related event that may have resulted in a meniscus injury or exacerbation of a pre-existing cartilage issue. To the nearest degree of medical certainty, his current left knee issues are due to a work-related event.

(Def. Ex. A, p. 6)

Dr. Duchman recommended consideration of imaging of the left knee and follow-up with an orthopedic provider. (Def. Ex. A, p. 6)

According to Jeff, Dr. Duchman's report was the first notice FBFS received that Chuck was alleging he sustained a second fall at work in June 2020. Jeff disputed Chuck's testimony that Chuck called Jeff and reported that he injured his left knee in a fall at work on June 1, 2020. Because there was a dispute surrounding whether these phone calls took place, FBFS requested Chuck's cell phone records. Jeff reviewed Chuck's phone records from May through August 2020 and confirmed that Chuck did not make any calls to him or anyone else at Farm Bureau. He also did not have any record of receiving any emails from Chuck during May through August 2020. He did receive a voicemail from Chuck on September 11, 2020 regarding an ankle brace. There was no mention of a fall in June 2020 nor any mention of left knee problems. (Tr. pp. 93-101; Def. Ex. J, depo. pp. 104-111) I find the preponderance of the evidence does not support Chuck's claims that he told Jeff about the alleged June 1, 2020 date of injury.

Sharon Robison testified at the hearing. She learned of Chuck's October 2, 2019 work injury shortly after the injury occurred. Carolyn called her after Chuck was in the office to advise her of Chuck's injury. Sharon spoke with Chuck the next day and she also turned the claim into their local insurance agent. Sharon testified that Chuck never reported a June 2020 fall to her. She testified that if Chuck would have told her about a

fall in June 2020, she would have turned it into insurance. The first time she received notice that Chuck had a second fall was in December 2021 when Jeff Buckner contacted her after he had received Dr. Duchman's report. Sharon testified that Chuck has walked with a limp since a motor vehicle accident he was involved in in 2010. However, after his injury in 2019 he walked very differently. (Tr. pp. 127-129, 135-136)

Sharon heard Chuck's testimony that he told Sharon he needed to take a few days off at the beginning of June 2020 because of swelling in his left knee. However, Sharon said that what actually occurred was at the end of May 2020, Chuck requested to leave early to go to the races on June 4 and June 5. (Tr. p. 129) During cross-examination Chuck admitted that he was working on a pit crew during the summer of 2020. (Tr. pp. 88-89)

At the request of his attorney, Chuck underwent an IME with Sunil Bansal, M.D. on February 3, 2022. As the result of that examination Dr. Bansal issued a report on March 20, 2022. Chuck reported that he did not have any pain in his right ankle or foot but did feel weak and he was left with a foot drop. He did not have enough strength to brake hard in a semi-truck. He felt he was now more dependent on his left leg. Dr. Bansal opined that Chuck sustained an insertional avulsion of his right Achilles tendon as a result of the October 2, 2019 work incident. Dr. Bansal also assigned 17 percent right lower extremity impairment. He cited the AMA Guides, Fifth Edition, Table 17-8 and 17-9. The only additional care he recommended as a result of the October 2, 2019 injury was a dynamic assist ankle foot orthosis for his foot drop. He restricted him to no prolonged walking greater than 30 minutes at a time and no prolonged standing greater than 10 minutes at a time. Chuck was instructed to avoid walking on uneven ground and to avoid stairs or climbing. (Claimant's Exhibit 1, pp. 9-10)

In his March 20, 2022 report Dr. Bansal was also asked by claimant's counsel to address the June 1, 2020 left lower extremity injury. It was Dr. Bansal's understanding that Chuck sustained a second injury in June 2020 when he tripped while getting out of a truck, slipped, and fell. Dr. Bansal opined that as the result of the June 1, 2020 work injury Chuck sustained a left knee strain with symptoms characteristic of a medial meniscus tear. He recommended an MRI. In the absence of additional treatment Dr. Bansal assigned 10 percent left lower extremity impairment based on Table 17-10 of the AMA Guides, Fifth Edition. He restricted Chuck to no frequent kneeling or squatting and to avoid multiple stairs or climbing. (Cl. Ex. 1, pp. 7-11) Chuck testified at the hearing that he told Dr. Bansal that he fell due to the issues he was having with his right Achilles. Chuck suggested that Dr. Bansal must have simply forgot to include this information in his report. (Tr. pp. 71-72)

At the request of Dr. Bansal an MRI of the left knee was performed on June 12, 2023. The impression included a complex tear of the medial meniscus with undersurface flap. (JE7, pp. 61-62)

On August 1, 2023, Dr. Bansal issued a report based on a review of the June 12, 2023 MRI of the left knee. He noted that the MRI showed a complex extensive tear of the medial meniscus. Dr. Bansal opined that as the result of the injury of June 1, 2020, Chuck had sustained a left knee strain with symptoms characteristic of a medial

meniscus tear. Dr. Bansal recommended surgical repair. He noted that with the delay in treatment, Chuck had also developed moderate medial compartment arthritis. Dr. Bansal felt that ultimately Chuck would require a knee replacement. (CL. Ex. 1, pp. 12-13)

The evidentiary record contains various accounts of how the alleged June 1, 2020 left knee injury occurred. At hearing Chuck testified that he injured his left knee on June 1, 2020 while exiting a truck. He described his right foot getting caught, causing him to fall to the ground and land with his left knee on the rocks. (Tr. p. 39) The first time Chuck saw Dr. Gause after the alleged fall, there is absolutely no mention of a fall. (JE3, pp. 47-49) While there is mention of an acute event to Dr. Duchman, that description of an acute event differs from what Chuck described at hearing. Chuck reported to Dr. Duchman that there was a specific event while getting out of a truck and climbing down a ladder when he felt his left knee pop; there was no mention of a fall. (Def. Ex. A, pp. 1-7) Chuck provided a different history to Dr. Bansal than he gave to Dr. Duchman. Chuck advised Dr. Bansal that he injured his left knee when he tripped while getting out of a truck, slipped and fell. He did not indicate that the fall was caused or related to his right Achilles injury. (CL. Ex. 1, p. 7) Chuck testified that he told Carolyn, Sharon, and Jeff each about the fall he sustained on June 1, 2020. However, the testimony of all three witnesses dispute Chuck's testimony. Additionally, Chuck testified that he called and emailed Jeff during the summer of 2020. However, the phone records reveal that no such calls were made. Likewise, there is no evidence of any email correspondence. I find the testimony of Carolyn, Sharon, and Jeff combined with the inconsistent medical histories, phone records, and lack of emails carry greater weight than Chuck's testimony. Unfortunately, I do not find Chuck's testimony to be terribly credible. I find that Chuck has failed to establish that an acute work-related left knee injury occurred on June 1, 2020.

Because claimant failed to demonstrate by a preponderance of the evidence that he sustained an acute work-related injury on June 1, 2020, all other issues, including the issue of whether he gave timely notice of an acute injury, are moot.

Chuck has put forth an alternative theory of how his left knee injury is work-related. He has alleged that his left knee injury is related to the October 2, 2019 injury. In support of his position, he points to the opinion of Dr. Gause. Specifically, in July 2020 Dr. Gause stated,

The patient continues to work in a hog refinery lifting significant amount of weight on a daily basis and standing on his feet for multiple hours a day. In light of his injury I believe he has begun to develop dysfunction in his left knee, likely a medial meniscus tear.

(JE3, p. 49)

However, Dr. Gause's record is void of any mention of the acute fall onto his left knee that Chuck testified he sustained on June 1, 2020. Dr. Gause also does not have the history that is contained in Dr. Duchman's records of getting out of a truck and climbing down a ladder when he felt his knee pop in June 2020. Chuck cannot credibly

assert alternative facts based on alternative legal theories. Thus, I find Dr. Gause's opinion is based on an incomplete or inaccurate history.

Furthermore, the opinions of Dr. Duchman and Dr. Bansal do not support claimant's theory. In October 2021, Chuck told Dr. Duchman of an acute twisting event which occurred in June 2020; Chuck's description of the event at that time did not include a fall. Nonetheless, Dr. Duchman opined that his left knee issues were related to an acute work-related event in June 2020, not an overuse type injury. (Def. Ex. A, p. 6) At the request of his attorney Chuck saw Dr. Bansal in February 2022. Dr. Bansal noted that Chuck injured his left knee when he tripped while getting out of a truck, slipped, and fell. Dr. Bansal assigned permanent impairment and restrictions as the result of that acute event. Dr. Bansal did not relate that acute event to the 2019 right Achilles injury. Based on Dr. Bansal's report it is clear that Dr. Bansal felt that Chuck sustained two separate injuries, one to his right Achilles on October 2, 2019 and one to his left knee on June 1, 2020. (Cl. Ex. A, pp. 1-11) I find the opinions of Dr. Duchman and Dr. Bansal carry greater weight than that of Dr. Gause. I find that the preponderance of the evidence does not support Chuck's theory that his left knee injury was caused by or due to the right Achilles injury. Thus, Chuck has failed to demonstrate by a preponderance of the evidence that his left knee injury is the result of the October 2, 2019 work injury.

I find that the only injury Chuck sustained as the result of the October 2, 2019 injury is to his right Achilles. There are two opinions in this case regarding the amount of permanent impairment Chuck sustained as the result of his Achilles injury. On December 23, 2020, Dr. Gipple from Orthopedic Specialists assigned 17 percent right lower extremity impairment. He cited table 17-8 on page 532 of the Fifth Edition of the AMA Guides. (JE6, pp. 59-60) Dr. Bansal also assigned 17 percent right lower extremity impairment pursuant to The Guides. I find Chuck sustained 17 percent impairment of his right lower extremity as the result of the October 2, 2019 work injury.

CONCLUSIONS OF LAW

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

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

Iowa Code section 85.34(x) permanent disabilities states:

x. 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 (x) (emphasis added).

This agency has adopted The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association for determining the extent of loss or percentage of impairment for permanent partial disabilities. See 876 IAC 2.4.

Based on the above findings of fact, I conclude that claimant failed to carry his burden of proof to demonstrate by a preponderance of the evidence that the October 2, 2019 work injury extended beyond his right lower extremity. Claimant failed to prove a causal relationship between his 2019 right Achilles injury and his left knee. Injuries contained to the lower extremity are to be compensated under section 85.34(2)(p) which provides that compensation for permanent impairment to the lower extremity is based upon 220 weeks. Pursuant to section 85.34(2)(w), the workers' compensation commissioner may equitably prorate compensation payable in those cases wherein the

loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969). Therefore, I conclude claimant has demonstrated entitlement to 37.4 weeks of permanent partial disability benefits as the result of the October 2, 2019 work injury.

All parties agree that if the October 2, 2019 work injury was contained to the right lower extremity then the appropriate commencement date for permanent partial disability benefits is September 9, 2020. (Claimant's Post-hearing brief p. 6; Defendants' Post-hearing brief, p. 1) I found that the October 2, 2019 work injury was contained to the right lower extremity; therefore, the appropriate commencement date is September 9, 2020.

Prior to the hearing defendants paid claimant 37.4 weeks of permanent partial disability benefits at the stipulated weekly workers' compensation rate of \$409.85. (Hearing Report numbered paragraphs 6 & 9; Def. Ex. K) Thus, I conclude claimant has failed to demonstrate entitlement to any additional weekly benefits for the October 2, 2019 date of injury.

We now turn to the alleged June 1, 2020 work injury. 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" refer to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

Based on the above findings of fact, I conclude that claimant failed to carry his burden of proof to demonstrate by a preponderance of the evidence that he sustained an injury to his left lower extremity on June 1, 2020.

We now turn to the final issue of jurisdiction. Defendants contend that this agency does not have jurisdiction to consider either date of injury in these cases because claimant entered into a compromise settlement with the SIF. Defendants argue that under Iowa Code section 85.35(9), an approved compromise settlement shall constitute a final bar to any further rights arising under this chapter and chapters 85A,

85B, 86², and 87 regarding the subject matter of the compromise settlement. The Commissioner has held that a compromise settlement between claimant and the Fund does not deprive the agency of jurisdiction over claimant's claim against defendants. See *Milbrandt v. R.R. Donnelly*, 2023 WL 2229576, File No. 20009756.01 (Iowa Workers' Comp. Comm'n Feb. 17, 2023). Furthermore, the Iowa Supreme Court recently addressed this issue. The Court stated, "the subject matter of the dispute concerns whether a preexisting injury triggers the Second Injury Compensation Act, a compromise settlement of that dispute does not bar the separate and distinct claim against the employer for the current injury." *Tweeten v. Tweeten*, No. 22-2081, 2023 WL 8853036, at *5 (Iowa Dec. 22, 2023)

Therefore, defendants' argument fails. I conclude that this agency does have jurisdiction to consider these claims.

ORDER

THEREFORE, IT IS ORDERED:

File No. 22003713.01 (DOI: 10/02/19)

Claimant shall take nothing further from these proceedings.

Each party shall bear their own costs.

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

File No. 22003778.01 (DOI: 06/01/20)

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

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

² The Iowa General Assembly enacted legislation that took effect July 1, 2023, transferring chapter 86 to sections 10A.303 through 10A.333 in the Iowa Code. See 2023 Iowa Acts ch. 19, § 1477. For clarity, this decision will rely on and cite to prior Iowa Code chapter 86.

Signed and filed this 28th day of December, 2023.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Pothitakis (via WCES)

James Russell (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.