BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ARTHUR L. BARTLESON, Claimant, vs. CITY OF DAVENPORT, Employer, Self-Insured, Defendant.	:	File Nos. 5063585, 5063586, 5063587, 5063588, 5063589, 5063590, 5063591 ARBITRATION DECISION Head Notes: 1100, 1108.50, 1802

FILED
MAY 22 2018
WORKERS' COMPENSATION

STATEMENT OF THE CASE

Claimant, Arthur L. Bartleson, filed petitions in arbitration seeking workers' compensation benefits against City of Davenport, a self-insured employer, for alleged work injury dates of April 3, 2012 (File No. 5063585), October 2, 2012 (File No. 5063586), August 14, 2013 (File No. 5063787), September 18, 2014 (File No. 5063788), July 12, 2015 (File No. 5063589), February 22, 2016 (File No. 5063590), and October 18, 2016 (File No. 5063591).

This case was heard on March 27, 2018, and considered fully submitted on April 18, 2018 upon the simultaneous filing of briefs.

At hearing, claimant voluntarily dismissed file numbers 5063586, 5063588, and 5063591. On or about April 18, 2018, claimant filed a motion to dismiss the following petitions: File numbers 5063587, 5063589, and 5063590.

This motion is granted and the following decision will be based on the injury date of April 3, 2012.

The record consists of Joint Exhibits 1 through 8, Claimant's Exhibits 1 through 5, and Defendants' Exhibits 1 through 3, along with the testimony of the claimant, Kathy Bartleson, and Eric Longlett.

ISSUES

1. Whether claimant sustained an injury to his left lower extremity as sequela from the accepted work injury to the right ankle;

2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;

3. Whether the alleged injury is a cause of permanent disability and, if so,;

4. The appropriate commencement date of permanent disability benefits;

5. The extent of claimant's scheduled member disability;

6. Whether there is a causal connection between claimant's injury and the medical expenses claimed by claimant.

STIPULATIONS

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

The parties agree the claimant sustained an injury to his right ankle on or about April 3, 2012. As a result of this injury, claimant has sustained temporary and permanent disability.

At the time of the alleged injuries, claimant's gross earnings were $1307.65. He was married and entitled to two exemptions. Based on the foregoing, the weekly benefit rate is $825.02.

The parties stipulate claimant was off work from September 10, 2015, through October 21, 2015, and then again between March 21, 2016 and May 23, 2016.

Prior to the hearing the claimant was paid $27,152.73 in permanent partial disability benefits for a 22 percent rating on the right foot by Michael Pyevich, M.D. Defendant seeks a credit of that amount against any PPD awarded. Defendant is also entitled to a credit under Iowa Code section 85.38(2) for payment of sick pay and/or disability income in the amount of $8597.21. This amount should be credited against any temporary total disability awarded.

FINDINGS OF FACT

Claimant was a 56-year-old person at the time of hearing. At all times material hereto, he was married and entitled to two exemptions. Claimant has a GED obtained in 1980. Following high school, he took a few college courses but has not obtained a degree.

His most relevant work history is as a street maintenance supervisor for the defendant employer, a position he has held for the last 12 years. His job duties include scheduling crews, tracking equipment, answering public calls, inspecting worksites, supervising crews, and ordering inventory. Prior to his position as Street Maintenance

Supervisor, claimant worked as a sewer laborer, street laborer, and heavy equipment operator for the defendant employer.

His past medical history is relevant for arthroscopic left knee surgery in 1987 or 1988 as well as a big toe amputation on the left.

On April 3, 2012, claimant slipped and twisted his right ankle while at work. He reported this injury to the on-site nurse, Susan Nelson. His crew carried him to a pickup truck and drove him to Genesis Occupational Health where he was seen by Rick Garrels, M.D. (JE 1:2) He was given an injection, a prescription for medication, a Cam boot, and crutches. (JE1:2) Initially, he appeared to have suffered only a mild ankle sprain. (JE 7:93) He had full range of motion a month later with a normal gait pattern. However, due to discomfort and swelling, he was sent to physical therapy. (JE 1:5) By June 5, 2012, claimant had finished therapy, returned to regular work, and found to be at maximum medical improvement. (JE 1:6) At that time, claimant reported only a little bit of soreness in the lateral ankle. Id.

As claimant continued to work, he began to have ongoing symptoms. He went to see his primary care doctor who referred him to Andrew Bries, M.D. (JE 5:54) Claimant reported continuing pain and discomfort in his right ankle, primarily on the lateral side. (JE 5:54) Dr. Bries suspected a peroneal tendon injury and ordered an MRI. Id.

Claimant then returned to Dr. Garrels on August 20, 2012, after having seen his primary care doctor. (JE 1:8) An MRI showed "Peroneus fungus tenosynovitis and a possible osteochondral defect of the talus." (JE 1:9; 7:96) Claimant was placed back into a Cam boot and sent to Dr. Pyevich. (JE 1:9)

Dr. Pyevich observed claimant to have normal gait and station with no tenderness on the left and full range of motion. (JE 5:56) There was some swelling. Due to the right peroneus longus tear, Dr. Pyevich recommended a cortisone injection along with continued wearing of the Cam boot. (JE 5:57) Claimant's symptoms did not resolve and he underwent his first of three surgeries on his right ankle on October 29, 2012. (JE 6:83)

Following surgery, he developed a blood clot in the right calf and received treatment for the blood clot. Claimant's mid-calf pain appeared to resolve after the administration of blood thinners. (JE 1:14) During the December 13, 2012, visit with Dr. Garrels, claimant's gait was observed to be minimally antalgic. (JE 1:14)

After claimant's right ankle cast was removed, he was ordered to physical therapy. However, claimant continued to experience pain and discomfort. He returned to Dr. Pyevich for examination on June 17, 2013. (JE 5:66) An MRI revealed tendinitis in the Achilles, more tears in the distal peroneal brevis and longus tendons and a complete tear of the anterior talofibular ligament. (JE 7:95) Dr. Pyevich discussed various options with the claimant including injections, an articulated AFO, and surgery. (JE 5:67) Claimant opted for the articulated AFO. This brace was a pullover brace with

metal supports. It kept claimant's foot and ankle in a tight position and made it difficult for claimant to walk. Claimant testified that he began to favor his left side more.

Claimant began having pain in his left knee and reported this to Dr. Garrels on August 14, 2013. (CE 1:1) This knee pain was reported to the risk manager who indicated that treatment for the left knee would be covered.[1] (CE 1:2) Claimant testified that he was working full duties, and because of the pain in the foot and ankle along with the lack of mobility, he began relying on his left side more. He shifted his weight to the outside of his left foot. He described walking up the stairs sideways. A co-worker/supervisor, Eric Longlett, admitted to seeing claimant limp at work.

Eric Christian Longlett is an employee of the City of Davenport. He testified that he saw the claimant every day between talking with the crew, on the way to the cafeteria, and just in general day-to-day activities given that the engineering department where Mr. Longlett is employed and the street department where claimant is employed work hand in hand.

Claimant maintained he told Mr. Longlett of the knee problems while discussing a foot gear issue. Claimant had been wearing tennis shoes, and Mr. Longlett was concerned that he was not following safety procedures. Claimant had a note from Dr. Pyevich allowing claimant to wear the tennis shoes.

Mr. Longlett did not recall the complaint regarding the left knee. It would have been Mr. Longlett's practice to get the injured worker to a doctor as well as inform risk management and human resources, neither of which he did.

Mr. Longlett testified that he is aware the claimant has periodic aches and pains. He has overheard claimant complain about ankle pain and was aware that claimant's left knee had to get drained.

Dr. Pyevich examined claimant's left knee on August 19, 2013. (CE 1:3) There was tenderness to palpation over the left patellofemoral joint and pain with ballottement and compression. X-rays of the left knee were unremarkable and the joint spaces were well-maintained. (CE 2:8) Dr. Pyevich recommended surgery given that the AFO was not helping claimant and may be causing him additional pain on the left. Claimant underwent a subtalar joint fusion on September 16, 2013. (JE 6:85) After a month, claimant was allowed to walk again without crutches. (JE 1:26) By December, physical therapy had been completed and claimant was having mild-to-moderate swelling, with good range of motion, and some pain. (JE 1:27) Claimant testified that he reported ongoing pain to the nurse, Ms. Nelson, but he did not seek any additional treatment until after July 2015 for the left knee.

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[1] The record reads, "It would be included under foot/ankle."

Claimant continued to have problems with his right ankle. On September 18, 2014, claimant was seen by Dr. Garrels for pain in the knee and lower extremity. (JE 1:32) Dr. Garrels noted claimant was walking with a mild limp and has tenderness over the anterior shin. (JE 1:32) He then developed numbness and tingling in his foot which has not resolved. (JE 1:33)

On July 12, 2015, claimant presented to the emergency room after stepping off a boat dock and feeling his foot snap when he hit the ground. (CE 4:22) Claimant described a history of left knee pain for approximately six months that had increased in the past week. Id. Claimant was given pain medication and an order to follow-up with Dr. Bries. (CE 4:25)

When he returned to work he spoke with Amanda Benning and Jim Foresight, Amanda's boss and the head of Risk Management, about the injury. They would not take responsibility, as it happened on the weekend.

On July 27, 2015, an MRI of the left knee was conducted which showed medial meniscus tear, no evidence of fracture, and mild changes of diffuse tricompartmental osteoarthritis. (CE 2:9) His marrow signal was also normal. Id.

On August 5, 2015, Dr. Bries, who had seen claimant once before for the right ankle, diagnosed claimant with left medial meniscus tear with mid-horizontal tear. (CE 2:11) Dr. Bries believed that the degenerative meniscal tears were not likely related to the ankle injury. Id. "Inflammation and tendonitis could be related to the altered gait from that, but what has caused the intrinsic degeneration of his meniscus is definitely not." (CE 2:11)

On February 22, 2016, claimant was seen by Suleman M. Hussain, M.D., for knee pain. (CE 2:13) X-rays of the left knee showed grade IV end-stage osteoarthritis. (CE 2:13) Claimant's primary complaint was swelling in the knee with pain posteriorly radiating into the calf. The pain was constant, aching and burning. It disrupted sleep and limited his activities. Id. Pain was made worse with walking, standing, climbing stairs, exercising, twisting, and kneeling. Id.

Dr. Hussain advised claimant that his nonoperative treatment options were aspirations, and injections. Once those nonoperative measures were exhausted, total knee replacement would be the end cure. (CE 2:14) Dr. Hussain also noted that the etiology of claimant's pain was arthritis. (CE 2:14)

On March 8, 2016, Dr. Bries saw claimant for the left knee pain. Dr. Bries reviewed the x-rays and observed that the claimant had "rapid collapse of his medial compartment from his original x-rays/MRI from 2013." (CE 2:15) As a result of the left knee bone on bone medial compartment arthritis and failed treatments, claimant agreed to undergo a total knee replacement. (CE 2:15) The surgery took place on March 28, 2016. (CE 4:30)

He was seen on July 29, 2016, for left ankle pain, which was diagnosed as a pressure ulcer. (JE 1:34)

During the September 28, 2016, follow up visit with Dr. Bries, claimant had full extension and flexion to about 130 degrees, no instability and good patellar mobilizations. (CE 2:16) He was nontender over the lateral knee or distal IT band. Id. His calf was supple and nontender to palpation. Good dorsal flexion and plantar flexion. Id.

In the meantime, claimant continued to have pain in the right ankle. He was concerned his fusion was failing. (JE 1:39) He was correct and Dr. Hussain performed a revision of the subtalar fusion and peroneal tendon repair on October 18, 2016. (JE 6:87)

The subtalar fusion repair appeared to have good results. Claimant described being 100 percent better than before surgery. (JE 5:77) Four months after the revision surgery, claimant was able to move his ankle well without pain. He had full range of motion, and returning strength. (JE 5:80) Dr. Hussain found claimant to be at maximum medical improvement (MMI) as of February 10, 2017. Id.

Claimant has not had any further care or treatment to either the left knee or the right ankle. He is not currently taking any prescription medications.

Currently his knee is still sore. It swells up and claimant treated with ice. The knee replacement surgery has resolved most of claimant's pain. As for his right ankle, he still has numbness in his foot, toes and up to his knee. After the third surgery, his right ankle is stiffer and has less mobility. Claimant walks with a limp. Some days the pain in the right ankle is intense, and other days the left knee is achy and will swell up. He is careful where he walks, but if he steps on something uneven, he often has to catch himself from falling due to weakness and instability in the right ankle.

Catherine Bartleson, claimant's wife testified that prior to the injury the claimant had no complaints with his right ankle or left knee. She recalls that at some point the claimant was prescribed a brace for the right ankle and that she first began to see left knee swelling following the ankle injury.

She testified that as a result of his right ankle, he has difficulty doing many of his past hobbies and other activities. For instance, he used to work on old cars, do household repairs, and cut the grass. However, since his ankle injury, he is unable to do those tasks. She described him as very cautious of where he walks. After a day of work, he is often hurrying and must sit down and put his foot up to get relief.

Ms. Bartleson's testimony primarily focused on the right ankle, but with prompting, she did identify the left knee as the source of some pain, discomfort and limitation.

As a result of the surgery to the torn left meniscus, claimant missed work from September 10, 2015 to October 21, 2015. (Prehearing Report) As a result of the left total knee replacement surgery, claimant was off work from March 21, 2016 through May 23, 2016. (Prehearing Report) Claimant's out-of-pocket medical expenses for the first surgery to his left knee were $565.00, and his out-of-pocket medical expenses for the left knee replacement were $3518.81. Id.

Dr. Pyevich authored a letter on November 11, 2014, in which he rated claimant's impairment at 22 percent of the foot. (JE 4:53) He did not draw a causal connection between the left knee replacement and the work injury.

Claimant underwent an independent medical examination on October 21, 2017, with Theron Q. Jameson, D.O. (Ex. 5:39) Dr. Jameson opined that claimant's work injury to his right ankle lead to the progressive and rapid arthritic condition of his left knee.

> ANSWER: I believe Mr. Martleson's work related injury to his right ankle led to the progressive rapid arthritic condition to his left knee. His multiple surgeries on his right ankle and compensating for his right ankle with his left lower extremity (specifically his left knee) ultimately led to the need for left total knee arthroplasty. When reviewing his 08/19/2013 x-rays (this was actually done for his right lower extremity but we can see his left lower extremity in a standing view) the medial and lateral compartments of both knees are symmetrical. There is no arthritic condition present. After his left knee injury while on the boat dock, his 07/27/2015 MRI showed his meniscus tear. This meniscus tear was caused by the boat dock injury. The MRI however shows significant arthritic change in the medial compartment of the left knee with extrusion of the medial meniscus as well as squaring and flattening of the medial femoral condyle with essentially bone on bone arthritis in the medial compartment of the left knee. There were osteophyte formations of the medial femoral condition. This is seen in second 6, imagine [sic] 12. This rapid change in his arthritic condition is secondary to compensating for his right ankle condition with his left lower extremity. The x-rays of 02/22/2016 of the left knee show bone on bone arthritis of the medial compartment. In my opinion, the only cause for his rapid progression of his arthritic condition of the left knee, specifically when looking at 08/19/2013 x-rays of his left knee and the MRI dated 07/27/2015, is compensating for his right ankle condition with his left lower extremity. Note that on 02/22/2016 x-rays show bone on bone arthritis medial compartment of the left knee but does not show any arthritic conditions in his right knee.

(CE 5:38)

Dr. Jameson found claimant to be at MMI on June 28, 2016. Id. As for restrictions, Dr. Jameson recommended no pushing, pulling, lifting or carrying greater

than 30 pounds as well as no squatting or kneeling with the left lower extremity. (CE 5:39) Dr. Jameson would also advise heel lift for the right lower extremity and no working on uneven ground. Id.

Dr. Jameson assessed a 37 percent left lower extremity impairment and a 35 percent right lower extremity impairment. Id.

Claimant underwent an independent medical examination (IME) with William Jacobson, M.D. on March 2, 2018. (Defense Exhibit A:1) Dr. Jacobson agreed with the 22 percent impairment rating from Dr. Pyevich and took issue with Dr. Jameson's ratings.

> I have had a chance to review Dr. Theron Jameson's IME for Mr. Bartleson dated October 21, 2017. I am not in agreement with Dr. Jameson's impairment rating regarding the right ankle. First, Dr. Jameson provides a 25 percent lower extremity impairment referencing Table 17-31 on Page 544 showing subtalar area with no cartilage. It is my opinion that this is not an appropriate application of Table 17-31. Table 17-31 on Page 544 states, "Arthritis impairment based on radiographic determining cartilage intervals." This would be based on a joint finding prior to any fusion or arthroplasty procedure. Mr. Bartleson's subtalar joint was fused, so by definition, he would have no interval in the subtalar joint as a result of that surgery. It is not due to degenerative arthritis that would be an ongoing problem to use that table. It is my opinion that Dr. Pyevich's rating in regards to loss of hindfoot motion is the appropriate impairment rating. Dr. Pyevich gave a second (7) percent impairment of the foot for numbness, on which I am in agreement with him. Secondly, Dr. Jameson indicates a nine (9) percent right lower extremity impairment as a result of a leg length discrepancy using Table 17-4 on Page 528. It is my opinion that it is not appropriate to utilize a leg length discrepancy in this particular situation. The subtalar joint at its maximum is only three millimeters. By definition then, by fusing it, his maximal leg length discrepancy would be three millimeters. I also do not think it is appropriate to use this, because Mr. Bartleson has had a left total knee arthroplasty and is not able to fully extend his left knee. This would affect the leg length measurement if doing it clinically. It appears Dr. Jameson measured this clinically. On Page 528, it specifically says that a less than two-centimeter leg length discrepancy is a zero (0) percent rating. This is based on Table 17-4. It also specifically states, "Clinical measurements have at least a 0.5 to one-centimeter variance." Therefore, based on the subtalar joint only being three millimeters at its maximum and the left total knee arthroplasty confounding the measurement, I do not think it is accurate or appropriate to provide a rating for a leg length discrepancy for Mr. Bartleson.

(DE A:4-5) As for the left knee, Dr. Jacobson did not agree that the end-stage arthritis was due to the right ankle injury or subsequent treatment. (DE A:5) He noted that while

claimant initially complained of pain in the left knee in August 2013, it was mild and did not require further treatment until after claimant sustained a significant medial meniscus tear during the non-work incident. (Ex A:5) It was at this point in July 2015 that claimant became symptomatic on the left side. Id. Dr. Jacobson wrote that it was not unusual to develop end-stage arthritis of the left knee quickly considering the significant meniscus tear that occurred at the time of the injury. This would have resulted in a significant portion of his meniscus being removed, and it is not uncommon to see a knee like this go on to end-stage arthritis. (Ex. A:5) He did agree with Dr. Jameson's impairment rating for the left.[2] (DE A:5)

Claimant testified that he felt Dr. Jameson's evaluation was more thorough. Dr. Jameson asked more questions. Dr. Jameson had claimant remove his shoes and socks. The time spent with Dr. Jameson was 35 to 40 minutes. Conversely, claimant testified that he spent only 10 minutes with Dr. Jacobson and that Dr. Jacobson had claimant only remove his right shoe. The claimant did not believe that Dr. Jacobson even touched his left knee.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa

[2] Dr. Jacobson actually wrote table 17 – 33 would correlate with 37% whole person impairment. This is a transcription error. Table 17 – 33 correlates to 37% lower extremity rating.

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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment.

Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

The parties agree the claimant sustained a right ankle injury arising out of and in the course of his employment. The primary dispute is whether the claimant's left knee problems and ultimate total arthroplasty should be considered sequela of the right ankle injury.

Claimant did not have left knee pain in the relevant past. His knee pain developed after he began using the AFO brace. He reported this pain to Dr. Garrels and was examined by Dr. Pyevich who found nothing wrong with the left knee. However, claimant's knee pain did not go away. While he did not seek out treatment, he testified credibly that he treated with home remedies such as ice, elevation and Tylenol.

It was not until the boat incident of July 12, 2015, when claimant tore his left meniscus that claimant's symptoms intensified to the point he needed treatment. Defendants argue that claimant was asymptomatic from his rapidly degenerating arthritic condition until the boat incident. Most of the medical reports during the 2013-2015 time period documented claimant as having a normal gait although there were a few instances of claimant suffering an antalgic gait.

Claimant's independent medical examiner argues differently. Dr. Jameson pointed out that the x-rays taken of claimant's knee in July 2013 were relatively normal. However, by 2015, claimant had end-stage osteoarthritis. Dr. Jameson opined that the rapid degeneration is the result of overuse.

Claimant's treating doctor, Dr. Bries, and the defendant's independent medical examiner both felt that the rapid degeneration is not as a result of any overuse or compensation. Dr. Jacobson wrote in his opinion that the removal of a significant portion of his meniscus was likely because of the end-stage arthritis. However, according to Dr. Jameson, the MRI of July 27, 2015 showed bone on bone arthritis. In other words, claimant's arthritis was significantly advanced in July 2015 even before the meniscus had been removed.

Based on claimant's historical testimony and the x-rays and MRIs which show rapid degeneration of claimant's left knee, it is found the claimant's left knee pain leading up to July 2015 was related to the right ankle injury. While the meniscus tear was the result of the boat injury on July 12, 2015, the knee replacement was necessitated by the arthritis according to Dr. Jameson. Dr. Jameson's examination of the x-rays and MRIs is consistent with claimant's history and are more convincing than the medical note of Dr. Bries and the opinion of Dr. Jacobson.

Dr. Jacobson's opinion argues that the rapid degeneration occurred after the removal of the meniscus, but a comparison between the 2013 x-rays and the MRI of

2015 reveal the degeneration occurring prior to the first knee surgery. Thus, Dr. Jameson's opinion is more sound.

Therefore, it is found that the claimant's total knee replacement is related to the right ankle injury.

Based on this finding, claimant is entitled to reimbursement of medical expenses for treatment of the left knee arthritis and subsequent surgery as well as his time off due to the two surgeries on the left knee.

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 1975).

Both of claimant's injuries are scheduled member disabilities. However, defendant argues that there is injury only to claimant's right foot and not his right lower extremity.

The claimant has numbness up to the back of his leg and was given a rating for numbness, albeit limited to his foot. (JE 4:53) The medical records establish complaints of lower right leg numbness as well as consistent complaints of ankle pain. Claimant testified that he still suffers from that. It is found that claimant has sustained an injury to his right lower extremity and not solely to his foot.

Dr. Jameson found claimant to be at MMI on June 28, 2016.

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)-(t) or for loss of earning capacity under section 85.34(2)(u). 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). 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).

Dr. Pyevich authored a letter on November 11, 2014 in which he rated claimant's

impairment at 22 percent of the foot. Dr. Jameson assessed a 37 percent left lower extremity impairment and a 35 percent right lower extremity impairment. Dr. Jacobson agreed with Dr. Pyevich for the right foot and the 37 percent left lower extremity.

Claimant testified that Dr. Jameson's evaluation was more thorough. The thoroughness showed in Dr. Jameson's report, which documented not only range of motion deficits, but limb length discrepancy. Dr. Jacobson takes issue with these measurements, arguing that Dr. Jameson did not take into consideration the knee replacement surgery; however, Dr. Jacobson's report has no limb measurements.

Claimant has no official work restrictions. He is working the same job he performed prior to the original injury in 2012. He has not had further treatment to his right foot or ankle after February 2017. He testified that he is sore when he gets home and that there are many household activities he no longer undertakes. Claimant's wife testified that his lower extremities pain him, although from her testimony it appeared that it is claimant's ankle that is the primary point of pain and discomfort.

While the claimant has reported that he felt 100 percent better after the subtalar fusion revision, he has not returned to a pain free baseline.

Based on claimant's testimony regarding the differences in the examinations as well as the careful report of Dr. Jameson, which reflects the more thorough examination of Dr. Jameson, Dr. Jameson's ratings are adopted.

It is found the claimant has sustained a 37 percent lower extremity impairment and a 35 percent right lower extremity impairment.

ORDER

THEREFORE, it is ordered:

That defendant is to pay unto claimant fifty-two point five (52.5) weeks of permanent partial disability benefits at the rate of one thousand three hundred seven and 65/100 dollars ($1307.65) per week from February 10, 2017, for the right lower extremity injury.

That defendant is to pay unto claimant fifty-five point five (55.5) weeks of permanent partial disability benefits at the rate of one thousand three hundred seven and 65/100 dollars ($1307.65) per week from June 28, 2016, for the left lower extremity injury.

That defendant is to pay unto claimant temporary benefits from September 10, 2015 through October 21, 2015 and March 21, 2016 through May 23, 2016 at the stipulated benefit rate.

That defendant shall pay medical expenses as itemized in the summary attached to the hearing report.

That defendant shall furnish all reasonable medical expenses in the future related to claimant's right and left lower extremity injuries.

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

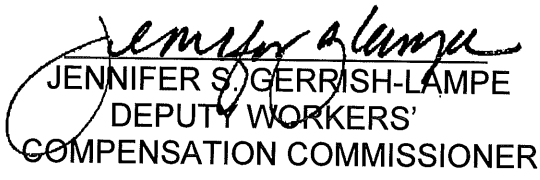
Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten (10) percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two (2) percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

That defendant is to be given credit for benefits previously paid as stipulated to in the hearing report.

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

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

Signed and filed this 22nd day of May, 2018.



JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JGL/sam

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.