

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

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JUAN VEGA,

Claimant,

vs.

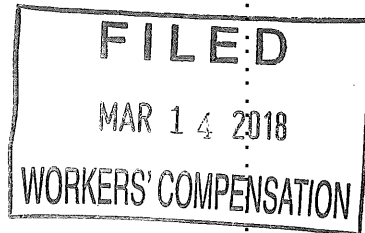
FARMLAND FOODS,

Employer,

and

SAFETY NATIONAL,

Insurance Carrier,  
Defendants.



File No. 5057931

ARBITRATION  
DECISION

Head Note Nos.: 1108.50; 1402.40;  
1803; 1803.1; 2907

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STATEMENT OF THE CASE

Juan Vega, claimant, filed a petition in arbitration seeking workers' compensation benefits from Farmland Foods, employer and Safety National, insurance carrier, as defendants. Hearing was held on December 13, 2017 in Fort Dodge, Iowa.

Claimant, Juan Vega, was the only witness to testify live at trial. The evidentiary record also includes joint exhibits JE1-JE7, claimant's exhibits 1-6, defendant's exhibits A-E. Claimant testified via a translator. The translator was Maria Casso Kotlarz.

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 submitted post-hearing briefs on January 9, 2018.

ISSUES

The parties submitted the following issues for resolution:

1. The nature and extent of permanent disability claimant sustained as a result of the April 5, 2013 work injury.
2. Whether claimant is entitled to past medical benefits?
3. Assessment of costs.

## FINDINGS OF FACT

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

The parties have stipulated that claimant, Juan Vega, sustained a permanent injury to his right foot on April 5, 2013 while working for the defendant-employer, Farmland Foods ("Farmland"). The central dispute in this case is whether claimant's injury is limited to a scheduled member or if the case is industrial in nature due to the injury allegedly resulting in Complex Regional Pain Syndrome (CRPS). I find that Mr. Vega's injury extends beyond the scheduled member and into the body as a whole.

On April 5, 2013, Mr. Vega was working when his right foot was crushed between two forklifts. Mr. Vega fell to the ground yelling in pain. He felt a hot pain sensation in his right foot and up his leg to his knee. (Testimony)

Mr. Vega's co-workers took him to St. Anthony's Hospital. The records indicate that Mr. Vega's right ankle and foot were caught between 2 pallets at work causing a crush injury. Mr. Vega was given crutches and sent home. He was taken off of work. (JE 1, pp. 1-2; testimony)

On April 8, 2013, James R. McQueen, D.O., saw Mr. Vega at the Farmland Clinic. The doctor's assessment was contusion of the right foot and heel with considerable ecchymosis and associated pain. Mr. Vega was instructed to continue to ice and elevate the foot. He was also to continue using his crutches. The doctor recommended physical therapy. He could return to work if the plant had a sit down job where he could use his hands and keep his foot elevated. (JE 2, p. 14) Farmland moved Mr. Vega to light-duty sedentary work. He took copies from a computer and placed them in a machine. He performed this work for three to four months. (Testimony)

An MRI of Mr. Vega's right ankle was performed on April 25, 2013. (JE 1, p. 3) The MRI revealed some bone marrow edema and some fractures of the os calis and the cuboid bone in the posterior foot. In early May, Dr. McQueen noted that Mr. Vega was fitted in a cast boot and referred to physical therapy to work on range of motion and ambulation. Mr. Vega had considerable improvement with his ambulation in the cast boot. He was instructed to continue in the cast boot whenever he was weight bearing. (JE 2, p. 21)

Mr. Vega returned to Dr. McQueen on June 10, 2013. The doctor noted that Mr. Vega had not made much progress since his last visit. The doctor was awaiting approval of the MRI scan. Mr. Vega was eager to have this done so he could return to more significant activity. (JE 2, p. 24)

Mr. Vega continued to treat with Dr. McQueen. By July of 2013, the doctor noted that Mr. Vega continued to make slow progress. He was unable to walk or stand without his cast boot in place. An appointment was made for Mr. Vega to see Dr. Jensen, a podiatric surgeon. (JE 2, p. 28)

On July 8, 2013, Mr. Vega saw Eric Jensen, D.P.M., at McFarland Clinic. The doctor noted that Mr. Vega had continued pain and discomfort along the lateral aspect with some noted discoloration along the lateral aspect at the level of the cuboid. He also reported a throbbing pain near the talus. The MRI continued to indicate fluid and edema in the bone. Dr. Jensen's assessment included contusion of the right heel bone, chronic pain syndrome, and complex regional pain syndrome (CRPS) type I of lower limb. Dr. Jensen recommended at least a neurological consultation with an EEG, perhaps consideration for a peroneal and/or popliteal nerve block. He also recommended more aggressive physical therapy and returning to his regular shoe. (JE 2, pp. 30-31)

On July 31, 2013, Mr. Vega saw Suman Nalluri, M.D., for a neurology consult. Mr. Vega had severe pain over the dorsal aspect of the right foot radiating up all the way into the knee sometimes, he also noted weakness and was not able to bear weight on the foot. Mr. Vega reported color changes, temperature changes, and sometimes swelling and bruising. At times he also feels a lack of sensation of his right foot. Dr. Nalluri noted decreased pinprick sensation over the anterolateral aspect of the leg and over the dorsal aspect of the foot. Dr. Nalluri's assessment included reflex sympathetic dystrophy. He gave Mr. Vega several prescriptions and asked him to follow-up in one month. The doctor noted that if he still had persisting pain with the multiple pain medications then it would be appropriate to refer him to the pain clinic. (JE 2, p. 33)

Dr. McQueen saw Mr. Vega again on August 2, 2013. He noted that Dr. Nalluri felt Mr. Vega was most likely suffering from a reflex sympathetic dystrophy or complex regional pain syndrome following his traumatic injury to his heel. Dr. McQueen reviewed the nature of complex regional pain syndrome with the patient and his wife. He advised them that it was a rather difficult situation to treat, typically was very slow to respond and that he could have some permanent abnormal signs and symptoms, even after treatment. Dr. McQueen's analysis was complex regional pain syndrome following a crush injury to the ankle and foot. He recommended that Mr. Vega not return to work at that time. (JE 2, pp. 34-35) Mr. Vega testified that he remained off work for 4 to 5 months.

Mr. Vega returned to Dr. McQueen on August 16, 2013. It was noted that he was very slow to show any significant improvement. The doctor recommended that he transition to a good supportive tennis shoe with a heel cup or insert. He recommended that Mr. Vega see a pain specialist who was familiar with treating CRPS. Again, the diagnosis was crush injury to the right foot and heel with fracture of the right calcaneus and secondary CRPS. (JE 2, pp.38-39)

Defendants sent Mr. Vega to a pain specialist, Thomas Klein, D.O., on August 28, 2013. His notes state right ankle and foot pain when his foot was crushed between forklifts. The doctor noted that Mr. Vega was taking medications that helped at the beginning but were not as helpful now. Mr. Vega reported positive temperature changes, color changes, allodynia, swelling, burning and toe cramping which he noted was new in the last three weeks. The doctor noted there was also skin texture changes including peeling on the bottom of the foot and right big toe. On exam the doctor noted positive mild edema, red/purple color, and cooler right foot compared to the left. He also noted the right foot/ankle had decreased range of motion (ROM) compared to the left. The exam also revealed positive allodynia right foot/ankle/lower leg. Dr. Klein's diagnosis included limb pain and reflex sympathetic dystrophy (RSD) of the lower limb. He recommended continued physical therapy and starting Lyrica. Dr. Klein also discussed the lumbar sympathetic nerve block on the right. Mr. Vega indicated he wanted to proceed with the block. (JE 3, pp. 104-05)

On September 17, 2013, Mr. Vega saw Dr. Nalluri for follow-up. He was still experiencing severe pain over the dorsal aspect of the right foot radiating up all the way into the knee sometimes. He also noted some weakness as well as an inability to bear weight on his foot. The doctor noted some associated color changes, temperature changes, and at times some swelling and bruising. An MRI of the foot showed progressive healing of the nondisplaced lateral calcaneal body fracture and contusion about the cuboid. Mr. Vega also reported that sometimes he lacks sensation in his right foot. The doctor's assessment was RSD. He recommended continuing the Nortriptyline. (JE 2, p. 45)

On October 8, 2013, Dr. Klein performed a right lumbar sympathetic nerve block with fluoroscopic guidance for needle placement, dye flow interpretation. (JE4) Mr. Vega testified that he had an allergic reaction to the nerve block injection dye. He went to the hospital for treatment and was given an injection to treat his reaction. (Testimony)

The last time Mr. Vega saw Dr. Nalluri was on December 17, 2013. The doctor noted that Mr. Vega continued to have burning pain as well as needles all over his right foot and sometimes a sharp sensation going from the right foot and ankle up into the leg. He also noticed that his toes kind of twist and crunch. Mr. Vega reported he is not able to bear weight due to this problem. He also noticed swelling and color changes if he kept his foot down. The doctor noted he was videotaped by insurance at home and was able to push the stroller, run on the sidewalks, and hold the children. The doctor's assessment included presumed diagnosis of reflex sympathetic dystrophy. He noted that he did not see any improvement with the sympathetic block. Dr. Nalluri agreed with Dr. McQueen's suggested referral to the University of Iowa for further treatment. (JE 2, pp. 59-60)

On January 6, 2014, Mr. Vega returned to see Dr. McQueen. The notes state that the patient had been treated long-term for RSD of his right foot following a crush type injury at work. He was released to go back to work about two weeks ago,

however, at that time he still required some Percocet for pain control. The employer would not allow him back to work with the narcotic. Dr. McQueen felt his evaluation was unchanged. He recommended Mr. Vega take Relafen prior to going to work to help with pain and inflammation during the work day. He was to gradually increase his work time over the next two weeks to try to get him back to 4 hours starting with sedentary activity. (JE 2, p. 64)

Mr. Vega testified that he returned to light duty work in January of 2014. Initially, he returned to a sitting position and gradually worked more hours. Mr. Vega never returned to regular duty work at Farmland. (Testimony)

Mr. Vega continued to follow-up with Dr. McQueen. By early February the doctor noted that Mr. Vega was back at work and had gradually increased his work time up to 8 hours, but spent most of his time sitting and getting up every 15 minutes to perform a rather minor task and then returned to sitting. In March, Dr. McQueen noted that Mr. Vega appeared to be doing a little better for only the 1<sup>st</sup> or 2<sup>nd</sup> time since seeing him almost one year ago. Mr. Vega seemed more positive about his outcome and had less pain since his last visit 2 weeks ago. The doctor outlined a potential course of activity that would lead Mr. Vega to try to get back into the work boot and into his regular plant work activity over the next 30 days. The diagnosis was listed as complex regional pain disorder (CRPS) secondary to crush injury and fracture of the right calcaneus. (JE 2, pp. 69-70)

On April 19, 2013, Dr. McQueen noted that Mr. Vega still had pain but seemed to be handling the gradual advancement fairly well. The doctor noted that when he compared the two feet, there were definitely some subtle changes in temperature and sensation on the right, but overall it seemed to be improving. (JE 2, p. 71) Mr. Vega continued to follow-up with Dr. McQueen. By July, Mr. Vega had advanced to working up to 10 hours, but was having some difficulties with the last 2 hours of the day with swelling that carried over to nighttime. The doctor noted the foot was mildly swollen and cooler to the touch compared to the left foot and also pulsations were slightly diminished when compared to the left foot. The analysis was reflex sympathetic disorder. The notes state that the doctor has tried to impress on Farmland that the injury was going to be slow to progress and that Mr. Vega needed a very gradual increase in activity and should not exceed his tolerance levels. The doctor noted that his foot was going to be sensitive to temperature extremes and he should not be working in areas that cause exposure to excessive heat or cold because the temperatures could trigger adverse responses. (JE 2, p. 75)

In August of 2014, Mr. Vega was removed from the plant due to an arrest for old drug charges. He has not applied for a job with Farmland since that time. (Testimony).

During the fall of 2014 and early part of the winter of 2015, Mr. Vega continued to treat with Dr. McQueen. The doctor continued to assess him with CRPS and prescribe medications. (JE 2, pp. 77-79)

In March of 2015, Mr. Vega began working at Pella Corporation in Carroll. In February, Mr. Vega had requested that Dr. McQueen lift his restrictions so he could obtain the job at Pella. Mr. Vega testified that his job at Pella is easier than the one he performed at Farmland; it was very simple and did not require any type of force. Mr. Vega's job at Pella involves placing bars on windows. He is able to stand on a rubber mat and is able to move around to take pressure off of his leg and foot. He was working 8 hours per day with some overtime. Mr. Vega testified that he did undergo a pre-employment physical for Pella and did not have any restrictions placed on him for the job he was performing. (Def. Ex. B, p. 29) Mr. Vega testified that his pre-employment physical was brief and focused on his upper extremities.

On April 8, 2015, Mr. Vega returned to Dr. McQueen to discuss his medications. Dr. McQueen again assessed CRPS with consultation regarding chronic pain medications. (JE2, p. 81)

At the request of the defendants, Mr. Vega underwent an IME with Christian Ledet, M.D., on June 17, 2015. The impression was persistent right ankle pain associated with the traumatic events of April 5, 2013. Based upon the criteria established in table 16-16 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, the doctor did not believe that the patient met the criteria necessary for a diagnosis of CRPS. He felt his diagnosis was right ankle and foot pain NOS with a mixed nociceptive and neuropathic quality. Dr. Ledet stated that his ongoing use of medication and his current treatment was associated with the injury. The doctor felt that Mr. Vega should be weaned off the opioid analgesics. He felt Mr. Vega could be placed at maximum medical improvement (MMI); however, he deferred to the occupational medicine physician or primary care provider regarding the actual MMI date, permanency, and the need for any restrictions. (JE 7)

Mr. Vega returned to Dr. McQueen on July 17, 2015. He noted that he had been seen by a pain specialist in Des Moines who felt that he did not meet all the criteria for CRPS. Dr. McQueen felt that Mr. Vega had reached MMI. He noted he was now working for Pella and appeared to be doing well in his new job. The doctor also noted he was wearing sandals at the appointment and that he had previously been advised that he should wear a good supportive tennis shoe and not slip on sandals. Mr. Vega was out of OxyContin, but seemed to be tolerating the pain well so the doctor recommended discontinuing the OxyContin. His assessment remained unchanged. (JE 2, p. 85)

On November 10, 2015, Mr. Vega returned to Dr. McQueen he reported that he was doing well, working full-time, and tolerating the job. He was not having any apparent significant difficulty other than some chronic pain in his right foot and heel area. He was taking tramadol 50 mg up to 4 times daily for chronic pain and 1 Percocet at bedtime for sleep because he tended to have increased pain after working 8 to 12 hour shifts. Dr. McQueen explained to the workers' compensation carrier who was concerned that he was still on pain medications. The doctor explained that Mr. Vega may have reached MMI and may require pain medication chronically over the next few

years or even a lifetime in order to compensate for the pain in his right foot and heel. He needed to continue some type of pain treatment so he can continue with gainful employment. (JE 2, pp. 88)

At the request of the defendants, Mr. Vega saw Charles D. Mooney, M.D., on January 29, 2016 for an impairment rating. He reported he was currently doing fairly well. He was able to work full time and continued to be on pain medications. He described a significant amount of pain in his right lower extremity. He did not report any significant swelling. He also did not report any difficulty with wearing normal foot gear. He did report intermittent burning pain in the right foot, greater than the left foot. He also reported intermittent swelling. The assessment was crush injury to the right foot with fracture of the calcaneus found on MRI, successfully treated conservatively with ongoing symptoms of nociceptive and neuropathic pain, not meeting criteria for CRPS. The doctor felt that his impairment was most consistent with a specific fracture. Using Table 17-33 he assigned 7 percent impairment of the lower extremity. (JE 2, pp. 90-92)

Dr. McQueen saw Mr. Vega again for a medication refill on April 7, 2016. He reported he was currently taking Percocet after work, Tramadol, and baclofen for muscle relaxant. He was able to work at Pella with minimal work time loss due to heel pain. (JE 2, p. 94)

At the request of his own attorney, Mr. Vega underwent an IME with Sunil Bansal, M.D., on June 17, 2016. Dr. Bansal's diagnosis included right foot crush injury with fracture of the right os calcis, cuboid bone, and calcaneus, and sequela of complex regional pain syndrome. Dr. Bansal utilized the Budapest clinical diagnostic criteria for CRPS. Dr. Bansal causally connected these diagnoses to the work injury. He agreed with Dr. McQueen's MMI date of July 8, 2015. Dr. Bansal stated that CRPS of the lower extremity is rated per Table 13-15 and assigned 5 percent whole person impairment. Dr. Bansal felt that Mr. Vega would benefit from and should have restrictions. However, Mr. Vega felt that if he had permanent restrictions they could jeopardize his employment. The doctor noted that Mr. Vega is motivated to work and tries to accommodate his prolonged standing requirement by shifting weight to his unaffected leg. Therefore, Dr. Bansal did not feel permanent restrictions were necessary. But if Mr. Vega changed employers then he would suggest the following restrictions: no prolonged standing or walking greater than one hour at a time; avoid multiple steps, stairs, or ladders, and avoid uneven terrain. Dr. Bansal noted that Mr. Vega would need continued pain management care for his right foot CRPS with a pain specialist, including ongoing pain medication. (Cl. Ex. 1)

Mr. Vega saw Dr. McQueen again on June 2, 2016. Dr. McQueen noted that he had chronic pain syndrome and was on chronic pain medication. His pain would tend to increase as he was on his feet during the day. The doctor noted that Mr. Vega would undoubtedly have chronic pain for his lifetime as a result of the injury. (JE 2, p. 95)

On May 5, 2017, Mr. Vega saw Dr. McQueen for follow-up. The analysis was chronic right foot pain secondary to crush injury with probable reflex sympathetic dystrophy. Mr. Vega noted he had less pain when he was on Meloxicam so this was reordered. His other routine pain medications were also reordered. The doctor felt his overall condition seemed to be stable, but he did continue to have moderate pain, especially after working his normal shift. (JE 2, p. 97)

On August 31, 2017, Dr. McQueen again assessed Mr. Vega as having chronic pain syndrome secondary to crush injury right calcaneus, complex regional pain syndrome, and narcotic addiction. (JE 2, p. 99)

Mr. Vega saw Dr. McQueen on December 5, 2017. Mr. Vega reported that he had been having more pain recently. He left work early on Friday and missed work on Saturday. He did work on Monday and Tuesday, but was having more pain in his foot. The doctor refilled his routine medications and added gabapentin. (JE 2, p. 103)

At hearing, Mr. Vega testified that he continues to have pain in his leg that does not go away. (Tr. p. 42-43) Mr. Vega also testified that Dr. McQueen was still prescribing him five different medications in an effort to address his CRPS. These medications include Oxycodone, Tramadol, Baclofen, Meloxicam, and Gabapentin. Mr. Vega testified that these medications help control his pain to a level that allows him to work. He is currently working in a lighter job at Pella than he was working at the time of his injury at Farmland. Mr. Vega does not believe he would be able to continue to work without these medications. (Testimony)

The first issue to be addressed is whether claimant's injury is contained to the scheduled member or if it extends into the body as a whole. I find that the claimant's injury extends beyond the scheduled member into the body as a whole. The majority of the medical providers in this case have indicated that Mr. Vega does have CRPS or RSD as a result of the work injury. These providers include Dr. Jensen, the podiatrist selected by the defendants. Defendants also authored Mr. Vega to see neurologist, Dr. Nalluri who diagnosed RSD. Defendants also authorized treatment with Dr. McQueen who saw Mr. Vega on numerous occasions. Dr. McQueen diagnosed CRPS following a crush injury and discussed the nature of this condition with Mr. Vega. The defendants also authorized Mr. Vega to see Dr. Klein, a pain specialist. Dr. Klein also assessed Mr. Vega with RSD. Additionally, claimant's IME physician, Dr. Bansal diagnosed sequela CRPS. I find these opinions to be more persuasive than those of Dr. Ledet and Dr. Mooney. Even Dr. Ledet who performed an IME at the request of the defendants noted there was a mixed nociceptive and neuropathic quality to Mr. Vega's pain. I find that when the record is considered as a whole, the claimant has carried his burden of proof to show that his CRPS or RSD is related to the April 5, 2013 work injury. I further find that he sustained an injury to his body as a whole as a result of the work injury. Based on the report of Dr. Bansal, I find that he has sustained 5 percent whole person functional impairment. I further find that he does not have any permanent restrictions placed on his activities.



Because claimant has sustained an injury to his body as a whole, his injury will be compensated on an industrial disability basis. At the time of hearing Mr. Vega was 43 years of age. He was born in Puerto Rico where he attended school for only 9 years. Mr. Vega does understand and speak some English. He can read a little English, but is not able to write in English. Mr. Vega attended a basic English as a Second Language class for a couple months in Carroll, Iowa. He has an American girlfriend who speaks English. He has learned some English by speaking with others. Mr. Vega testified that he is not fluent enough in English to perform a job that requires fluency such as sales. He also testified that his computer skills are limited to using Facebook. (Testimony)

At the time of the injury, Mr. Vega worked in a job that required him to be on his feet all day and required him to walk a lot to take meat from a machine into another area. He testified that he was required to walk a portion of every hour. He does not believe he would be physically capable of returning to the job he was performing at the time of the injury. He also testified that the floor was slippery and he was concerned about the possibility of another injury. (Testimony)

The details of Mr. Vega's employment history are set forth in an answer to interrogatories. (Cl. Ex. 2, pp. 22-23) Prior to Farmland, Mr. Vega worked on a vegetable farm. He believes he could no longer perform this work because he would struggle to walk all day on uneven terrain. He also worked building homes and office buildings. However, he does not think he is capable of performing this type of work because it requires going up and down ladders. Mr. Vega also milked cows. He does not think he could perform this type of work because of the position he had to place his body to milk the cows. Previously he worked repairing large cement cylinder tubes but he does not feel he could do this type of work either because this all required a lot of ladder work. Mr. Vega has also worked as a cook in a hospital cafeteria. He has mostly worked in unskilled positions. Mr. Vega testified that because of his injury he would not be physically capable of performing the majority of his prior jobs. Mr. Vega also feels that there are numerous jobs at his current employer, Pella, that he would not be able to perform because of the work injury. (Testimony)

While Mr. Vega testified that he does not believe he is physically capable of performing many of his prior jobs, the undersigned recognizes that he does not have any current restrictions placed on his physical activities. It is noted that Mr. Vega did have restrictions placed on his activities until he requested they be removed so he could obtain his current job. Nonetheless, he currently does not have restrictions placed on his activities. While he does not have any restrictions currently placed on his activities, I find that he continues to have pain and has demonstrated that he is determined to remain in the workforce.

To his credit, Mr. Vega has demonstrated that he is extremely motivated to remain in the workforce. He takes numerous medications daily in order to be able to continue working. He testified that without his medications the pain would make him go crazy. Furthermore, his motivation is evident because he requested that Dr. McQueen

remove his restrictions so he could work at Pella. Mr. Vega has been working at Pella since the Spring of 2015. He is performing a less strenuous job than he was at the time of the injury. At the time of the work injury in question Mr. Vega was paid \$12.50 per hour. At the time of hearing he was paid \$17.20 per hour. He is currently earning more than he was on the date of the injury. (Testimony)

Considering Mr. Vega's age, educational background, employment history, ability to retrain, motivation to continue working, length of healing period, permanent impairment, and permanent restrictions, and the other industrial disability factors set forth by the Iowa Supreme Court, I find that he has sustained a 25 percent loss of future earning capacity as a result of his work injury with the defendant employer.

Claimant is seeking payment of past medical expenses as set forth in claimant's exhibit 5. These expenses were not paid because defendants disputed liability for CRPS/RSD. However, at the time of the hearing defendants stated that if it was determined that the CRPS/RSD was compensable, then the defendants would be liable for the medical expenses. Therefore, defendants are responsible for the medical expenses set forth in claimant's exhibit 5.

Finally, claimant is seeking an assessment of costs as set forth in claimant's exhibit 6. I find that claimant was generally successful in his claim; therefore, an assessment of costs is appropriate. At the time of the hearing, defendants agreed to pay for the IME; therefore, this is no longer an issue. Claimant is seeking an assessment of the \$100.00 filing fee. I find that this is an appropriate cost under 876 IAC 4.33(7). He is also seeking reimbursement for service fees. I find that this is an appropriate cost under 876 IAC 4.33(3). Defendants are assessed costs totaling one hundred thirteen and 44/100 dollars (\$113.44).

#### 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. 6.14(6)(e).

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. Cihra, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when

performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

Iowa has adopted the majority view set forth by Professor Arthur Larson in his treatise on workers' compensation law concerning "spill-over" effects of a scheduled injury. Larson states that if the effects of the loss of the member extend to other parts of the body and interfere with their efficiency, the schedule allowance for the lost member is not exclusive. 4-87 Larson's Workers' Compensation Law Section 87.02. Therefore, various spill-over conditions resulting from a scheduled injury are now compensated industrially in this state. This includes RSD or what is now termed chronic regional pain syndrome (CRPS). Collins v. Department of Human Services, 529 N.W.2d 627, 629 (Iowa App. 1995) & Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660-664 (1961); (regional pain syndrome formerly called Sudeck's atrophy, causalgia or reflex sympathetic dystrophy (RSD)). Based on the above findings of fact, I conclude that Mr. Vega has sustained an injury to his body as a whole.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Based on the above findings of fact, I conclude that Mr. Vega sustained a 25 percent loss of future earning capacity as a result of his work injury with the defendant employer. As such, he is entitled to 125 weeks of permanent partial disability benefits commencing on the stipulated date of January 29, 2016.

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).

Based on the above findings of fact, I determined that the defendants are responsible for the past medical expenses as set forth in claimant's exhibit 5.

The final issue for determination is costs. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. I conclude that because claimant was generally successful in his claim an assessment of costs is appropriate. Therefore, costs are assessed as set forth in the above findings of fact.

#### ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the rate of three hundred eighty-nine and 78/100 dollars (\$389.78).

Defendants shall pay one hundred twenty-five (125) weeks of permanent partial disability benefits commencing on January 29, 2016.


All past due weekly benefits shall be paid in lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall be entitled to credit for all weekly benefits paid to date.

Defendants shall reimburse claimant's costs in the amount of one hundred thirteen and 44/100 dollars (\$113.44).

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.

Signed and filed this 14<sup>th</sup> day of March, 2018.

  
ERIN Q. PALS  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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EQP/kjw

**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.