BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANA MILOTA MCNEIL, Claimant, vs. GENERAL DYNAMICS INFO TECH., Employer, and NEW HAMPSHIRE INS. CO., Insurance Carrier, Defendants.	FILED MAR 30 2017 WORKERS COMPENSATION	File No. 5052564 ARBITRATION DECISION Head Note Nos.: 1803, 1803.1, 2501, 2206, 2700

STATEMENT OF THE CASE

This is a proceeding in arbitration. The contested case was initiated when claimant, Dana Milota McNeil, filed her original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on May 11, 2015. Claimant alleged she sustained a work-related injury on October 23, 2014. (Original notice and petition.)

For purposes of workers' compensation, General Dynamics Information Technology is insured by New Hampshire Insurance Company. Defendants admitted the injury occurred at work when claimant tripped in the parking lot.

The hearing administrator scheduled the case for hearing on November 14, 2016. The hearing took place in Des Moines, Iowa at the Iowa Workforce Development Building. The undersigned appointed Ms. Chris A. Quinlin as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified on her own behalf. Defendants elected not to call any witnesses at the hearing. The parties offered exhibits. Claimant offered exhibits marked 1 through 12. Defendants offered exhibits marked A through G. All proffered exhibits were admitted as evidence in the case.

Post-hearing briefs were filed on December 5, 2016. The case was deemed fully submitted on that date.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged injury;
2. Claimant sustained an injury on October 23, 2014 followed by a pulmonary embolism on December 3, 2014;
3. The injury is a cause of temporary disability;
4. Temporary benefits are no longer an issue;
5. The parties agree, if a permanent work injury is determined, claimant reached maximum medical improvement on January 20, 2015;
6. The parties agree, the weekly benefit rate is $361.53;
7. Defendants have waived any affirmative defenses they may have had available;
8. Defendant agrees it is only responsible for medical expenses, (including the right foot fracture and the medical costs to treat the pulmonary emboli/deep venous thrombosis), pursuant to Iowa Code section 85.27 from the date of injury on October 23, 2014 through January 20, 2015;
9. Prior to the date of the hearing, defendants paid claimant 4.5 weeks of permanent partial disability benefits at the incorrect rate of $374.80 per week; and
10. The parties agree certain costs that are detailed were paid by claimant.

ISSUES

The issues presented are:

1. Is the alleged work injury a cause of permanent disability?
2. Is claimant entitled to permanent partial disability benefits?
3. If so, to what extent is claimant's permanent partial disability?
4. Is claimant entitled to medical costs in the form of prescription costs and other medical treatment?

5. Are defendants liable for the independent medical examination claimant had with Robin Sassman, M.D.?

6. Are defendants entitled to a credit for the overpayment of weekly benefits due to payment at an incorrect rate?

7. For which costs are defendants liable?

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant at hearing, after judging her credibility, and after reading the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

The party who would suffer loss if an issue were not established has the burden of proving the issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

Claimant is 53 years old and married. She is very pleasant and was an articulate witness during her hearing. Claimant resides in Cedar Rapids, Iowa with her spouse who is retired from the military. She has 4 adult step-children.

In 1981, claimant graduated from Jefferson High School in Cedar Rapids. She then attended the Ozark Bible Institute in Neosho, Missouri. Claimant graduated with a Bachelor of Arts degree in Biblical Literature. She indicated the college focused on providing a Christian based education but it was a non-accredited college. Claimant testified she never worked where she needed her degree as a pre-requisite for employment.

Sometime later, claimant attended Hamilton Business College, n/k/a Kaplan University in Cedar Rapids, Iowa. Claimant studied medical transcription. She completed all of the necessary course work but she did not receive her certificate. The reason she was uncertified was not explained during the hearing.

Claimant has been employed at General Dynamics Information Technology since April of 2004. Claimant is a customer service representative. Her rate of pay is $14.00 per hour and she works 40 hours per week.

She described her duties in her deposition. It was taken on September 13, 2016. (Exhibit G) Claimant explained:

> Q. (By Brian D. Moore) Okay. Can you describe your work station for me?
>
> A. It's basically two computers, one that the call comes in on, and the other one I look up information. I have access to the National Student Loan Data System where we find out where all their loans are at, or I also take credit card payments.

Q. So you're kind of a desk cubicle area?

A. Yeah, I'm in a cubicle, yeah.

Q. Okay. Are you able to, if you need to, put your leg up or anything like that?

A. Yeah, they've - - I don't think they like it too well, but yeah, I can.

(Ex. G, page 4)

In May of 2009, claimant suffered from plantar fasciitis of the right foot. Plantar fasciitis is one of the most common causes of heel pain. The plantar fascia is a flat ligament that connects the heel bone to the toes. The ligament supports the arch of the foot. Claimant treated with Roger P. Edkin, D.C., on several occasions. Claimant testified in her deposition, she experienced "a big cramp in the bottom of [her] foot." (Ex. G, p. 8) According to claimant, the condition resolved after several months. (Ex. G, p. 8)

On October 23, 2014, claimant was walking to one of the two company controlled parking lots. There was a grassy area between the two lots. Claimant slipped on uneven terrain, her right foot turned, and she fell to the ground. Claimant had a difficult time getting up from the ground. She limped to her car, and pulled off her shoe. Then she proceeded home in her own vehicle. The injury was not witnessed.

Claimant presented to the emergency room at St. Luke's Hospital on October 23, 2014. (Ex. 4b, p. 28) Claimant had tenderness and swelling in her right foot. (Ex. 4b, p. 29) X-rays of the right foot demonstrated a "Minimally displaced oblique fracture of the distal fifth metatarsal." (Ex. 4b, p. 30)

Eugene L. Nassif, Jr., DPM, examined claimant on October 24, 2014. (Ex. 4c, p. 44) Dr. Nassif recommended surgical intervention. (Ex. 4c, p. 44) On October 29, 2014, Dr. Nassif performed an "Open reduction and internal fixation 5th metatarsal, right foot." (Ex. 4d, p. 51) Claimant engaged in follow-up care with her surgeon. (Ex. 4c, p. 44)

Effective December 1, 2014, Dr. Nassif indicated the following relative to claimant's right foot condition:

> Patient presents today one month postop. She states that she is doing fine without complaints. Physical Exam: Minimal edema, no erythema. Patient's incision is closed, dry and in place. The incision is dyshidrotic with no other remarkable findings present at this time. No pain or palpation. (Please see x-ray report in chart). Impression: Healing fracture status post ORIF fifth metatarsal shaft right. Plan: To continue with non-weightbearing [*sic*] at all times. Will reevaluate again in a month. To call if any problems or questions arise.

(Ex. 4c, p. 44)

Two days later, claimant telephoned an ambulance to transport her to St. Luke's Hospital. She was experiencing rapid breathing. CT testing occurred. (Ex. 4b, p. 34) The results showed:

> 1. Findings consistent with bilateral pulmonary emboli within the bilateral main pulmonary arteries extending into all lobes and most prominently and markedly in the bilateral lower lobes.
>
> 2. Very minimal peripheral and dependent airspace disease.

(Ex. 4b, p. 34)

Claimant was admitted to critical care. J. David Cowden, M.D., MPH, a pulmonologist, commenced treatment of claimant. There was a CT scan of the chest. The scan was significant for bilateral pulmonary emboli with bilateral main pulmonary artery involvement extending into all lobes and predominant in the bilateral lower lobes. (Ex. 4b, p. 38) Claimant remained in the hospital for 7 days.

After proper testing, it was discovered, claimant has Factor V Leiden mutation on ONE allele, (heterozygous carrier). (Ex. 4b, p. 43) The factor V Leiden mutation is a risk factor for venous thromboembolism. (Ex. 4b, p. 43) Claimant is pre-disposed to having blood clots. Her mother has the same genetic mutation. Other relatives on her paternal family side suffer from blood clots.

On January 19, 2015, Dr. Cowden released claimant to return to work without restrictions from the perspective of a pulmonologist. (Ex. D) Dr. Cowden determined claimant should remain on life-long anticoagulation drugs such as Xarelto. (Ex. 4g, p. 61)

On February 2, 2015, claimant had a follow-up appointment with Dr. Nassif. The podiatrist suspicioned claimant had "cast disease." Dr. Nassif noted there was a healed fracture of the fifth metatarsal shaft of the right foot. (Ex. 4c, p. 46)

By May 4, 2015, claimant was complaining of pain in the right foot with direct palpation and she reported shoe irritation. Dr. Nassif opined the metal plate was causing the pain. He recommended removal of the plate from claimant's foot. (Ex. 4g, p. 46) Claimant declined to have the plate surgically removed because she feared there would be another pulmonary embolism. (Ex. 4c, p. 48) Dr. Nassif issued a work release on September 17, 2015. (Ex. 4c, p. 48)

On May 14, 2015, defendants sent claimant for an examination and an evaluation by Patrick G. Hartley, M.B., MPH. Dr. Hartley is the Professor (Clinical) of Internal Medicine, Division of Pulmonary Diseases, Critical Care and Occupational Medicine, The University of Iowa Carver College of Medicine. He is also the Medical Director of the University of Iowa HealthWorks.

Dr. Hartley and his Occupational Medicine Resident, Steven Rippentrop, M.D., MPH, issued a four page report regarding claimant's foot, venous thrombosis, and pulmonary emboli conditions. The physicians wrote in relevant portion:

> MSK: Right foot with 2.5 cm incision scar on dorsum of distal fifth metatarsal. Full active range of motion in right foot. Foot warm and dry to touch. No areas that are tender to palpation. Capillary refill normal in toes. Sensation distal to fracture is intact.
>
> . . . .
>
> Assessment:
>
> 1. Fracture of the fifth metatarsal of right foot, resolving
> 2. History of deep venous thrombosis, resolving
> 3. History of pulmonary emboli, resolving,
> 4. History of pulmonary hypertension, resolved
> 5. Factor V Leiden disease with possible need for anticoagulation.
>
> The fracture of the fifth metatarsal of the right foot is an accepted work related injury. This fracture resulted in recommendations that were circumstantial risk factors to predispose her to develop a venous thrombosis. These factors include decreased use, similar to travel, and orthopedic surgery. In addition, she was Factor V Leiden "positive". The combination of these factors resulted in a deep venous thrombosis.
>
> It is our opinion, to a reasonable degree of medical certainty, that the recommended immobilization and recent orthopedic surgery were each substantial contributing factors to the subsequent development of the deep venous thrombosis and subsequent pulmonary embolism.
>
> It is estimated that Factor V Leiden carries a 0.58% risk of developing a venous thrombosis. Based on a 2003 Annals of Internal Medicine article, more than half of the occurrences of thromboembolism were associated with additional risk factors beyond Factor V Leiden. (Middeldorp, 2003) In a separate article, the increased risk of recurrent thrombosis among Factor V Leiden patients after treatment with anticoagulants involved persistent risk factors, an unprovoked episode, and less than 2 years after initial event. (Middeldorp, 2007)
>
> Ms. Milota has a genetic medical condition that predisposed her to develop a thromboembolism. However, her annual risk is only 0.58% without the presence of other predisposing factors. Several of these predisposing factors (trauma, surgery, immobilization) were substantial

> contributors to developing her blood clot. She is taking anticoagulant medication at this time because it is part of the usual therapy following a pulmonary embolism.
>
> A risk to benefit calculation of oral anticoagulation with warfarin in one study did not support the use of long-term therapy in all patients with the Factor V Leiden mutation following a first thrombotic event (Baglin, 1998). It is less clear whether anticoagulation with some of the newer anticoagulants, that are associated with lower risk of bleeding, such as rivaroxaban, should significantly alter that assessment.

(Ex. B, p. 2)

Dr. Hartley and Dr. Rippentrop recommended a referral to a hematologist in order to address the need for life-long anticoagulation medication. (Ex. B, p. 2) Dr. Hartley consulted with Donald Macfarlane M.D., a hematologist at the University of Iowa Hospitals and Clinics. Claimant had one appointment with Dr. Macfarlane. After lab tests had been conducted, Dr. Macfarlane opined claimant had a very low incidence of a recurrent clot and she did not need to continue taking Xarelto. (Ex. C) Despite the recommendations of Dr. Macfarlane, Dr. Hartley and Dr. Rippentrop, claimant continues on the Xarelto per the advice of Dr. Cowden, her treating pulmonologist.

Dr. Hartley examined claimant for the purpose of performing a permanent impairment rating. The examination occurred on November 5, 2015. (Ex. B, p. 6) During the examination, claimant reported the following:

> Currently, Ms. Millita [*sic*] reports no dyspnea, chest pain, or syncope. She does not have exercise [i]ntolerance. No lower extremity venous insufficiency symptoms. With regard to her right foot fracture, she reports minor discomfort at the site of the plate and screws. Dr. Nassif has offered to remove the orthopedic hardware, but at this time, she has declined. She reports that she occasionally has a slight limp with walking but overall is not significantly limited by foot discomfort.

(Ex. B, pp. 6-7)

X-rays of the right foot were taken on the same day. A radiologist interpreted the results as:

> Findings/Impression: There is a treated nondisplaced fracture in the distal shaft of the fifth metatarsal. It is transfixed with a lateral side plate and 3 cortical screws. No hardware complications are seen. There are small calcaneal spurs. No acute fractures or dislocations are seen.

(Ex. B, p. 7)

With respect to the right foot, Dr. Hartley rated claimant as follows:

> Impairment is determined according to The AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, hereinafter referred to as the "Guides."
>
> It is my opinion, to a reasonable medical certainty, that she has no permanent impairment attributable to her metatarsal fracture. Table 17-33 on page 547 of the Guides provide [*sic*] a mechanism for assigning an impairment rating for metatarsal fractures which are associated with "loss of weight transfer" or are associated with "plantar angulation and metatarsalgia". In my opinion, she does have a mild difficulty with weight transfer (rather than loss of weight transfer) resulting in intermittent limp, but does not have significant metatarsalgia or plantar angulation. Reviewing table 17-33, it is my opinion, to a reasonable medical certainty, that she has a <u>3% impairment of the foot (2% impairment of the lower extremity)</u> as a consequence of her mild difficulty with weight transfer as described above.

(Ex. B, p. 7)

Dr. Hartley also provided an opinion concerning any impairment for the deep vein thrombosis or the pulmonary embolism. Dr. Hartley opined to a degree of reasonable medical certainty, there was no permanent impairment. (Ex. B, p. 7) Additionally, Dr. Hartley offered the following opinions:

> She remains on long-term anticoagulation with Xarelto, as prescribed by her treating providers in Cedar Rapids. She was evaluated by a hematologist, Dr. McFarlane, at UIHC who opined that she did not need to be placed on long-term anticoagulation for her factor 5 Leiden deficiency. The precipitating event (immobilization following surgery for metatarsal fracture), has resolved. It is my opinion, to a reasonable medical certainty, that her factor 5 Leiden deficiency is a pre-existing medical condition and the decision by her treating providers to continue her on a long-term anticoagulation for this, is unrelated to her work-related injury which has resolved.
>
> Ms. Milota has resumed her regular duties at GDIT Vangent, without restriction. No work restrictions are necessary following resolution of her work-related injury.

(Ex. B, pp. 7-8)

Claimant exercised her right to an independent medical examination pursuant to Iowa Code section 85.39. On May 24, 2016, claimant presented to Robin Sassman, M.D., MPH. Claimant provided a medical history to Dr. Sassman. Unfortunately, claimant neglected to inform the evaluating physician about the plantar fasciitis claimant had experienced during the summer of 2009. As a result,

Dr. Sassman was under the mistaken impression claimant had never had any previous problems with her right foot prior to the work injury on October 23, 2014. (Ex. 1, p. 2)

At the time of the independent medical examination, claimant reported the following symptoms:

> ***Current Symptoms*** – She notes foot stiffness and intermittent pain. She states that if she hasn't been moving for a while, it gets stiff and she limps. She gets stabbing pains where the hardware is located. She does not wear inserts. She is pain free when she is not weight bearing. She denies any previous injury to that foot. She denies any symptoms with regard to the pulmonary embolism. No shortness of breath or pain.
>
> ***Current Work Activities*** – She is currently doing the same job.
>
> ***Current Physician Assigned Restrictions*** – She is limited to working 8 hours per day.

(Ex. 1, p. 6)

Dr. Sassman related both the right foot 5th metatarsal fracture and the post-surgery bilateral pulmonary emboli to the work injury on October 23, 2014. With respect to causation, Dr. Sassman opined:

> It is my opinion that the incident that occurred on or about October 23, 2014, is directly and causally related to the right foot fracture, the need for the surgery, and her ongoing symptoms. It was on this date, Ms. McNeil tripped and fell fracturing her foot. She denies having any right foot symptoms prior to this injury occurring and there is no evidence in the currently available record that she sought care for such symptoms prior to this injury. Additionally, the mechanism is consistent with the injury.
>
> With regard to the pulmonary embolism (PE). Ms. McNeil has a genetic condition that causes her to be prone to clotting. This condition is known as Factor V Leiden. This condition was undiagnosed prior to this injury and was not directly caused by the injury. The fall, however, was a substantial factor in bringing about the clot at the time that it occurred. Because of the fall and the surgery that necessitated her being sedentary, she developed the DVT and subsequent PE. Therefore, the fall was a substantial factor in the development of the PE as well as her ongoing treatment and care related to the PE.
>
> Specifically regarding the medication for the PE, her current use of this medication is recommended by her expert treating physician in Pulmonology, Dr. Cowden. Dr. Cowden stated that the need for the ongoing use of Xarelto was due to the "significant clot burden initially as well as multiple risk factors." Therefore, it is my opinion that the need for

> this medication at this time is due to the significant PE (with a significant clot burden) that she developed as a result of the injury. Prior to this injury, she was not on any anticoagulant medication. Although the Factor V Leiden abnormality existed, she had gotten into her fifth decade of life without medication. Then this injury occurred and she was placed on the medication. Therefore, the injury was a significant contributing factor to the need of the Xarelto medication.

(Ex. 1, pp. 8-9)

Dr. Sassman found permanent impairment ratings for both the right foot fracture and for the clotting. The rating for the right foot fracture was confusing because Dr. Sassman talked about the right foot and the left lower extremity. She ultimately rated the lower extremity at 6 percent or 2 percent to the body as a whole. (Ex. 1, p. 9) With respect to the blood clotting, Dr. Sassman assessed 5 percent to the body as a whole as a result of the work injury. (Ex. 1, p. 10)

With respect to work restrictions, Dr. Sassman imposed the following for claimant's right foot:

> **Restrictions**
>
> Ms. McNeil should limit standing and walking to an occasional basis and will need to change positions frequently due to her right foot symptoms. She should not use ladders. She should no walk on uneven surfaces. She will need to take care in her choice of footwear due to her right foot symptoms.

(Ex. 1, p. 10)

During the arbitration hearing, claimant testified credibly about her symptoms. The undersigned finds claimant to be a credible witness. She stated she is able to walk approximately 20 minutes before her foot aches. She is capable of standing for 15 minutes. When she sits for a long period of time, her right foot "falls asleep." At times, her right foot is stiff. She indicated she will limp occasionally if she has to walk on uneven ground. Claimant testified when she is at work, she tries to move around once every hour. She is able to perform the duties of her current job. She testified she only takes over-the-counter ibuprofen for pain. She is not actively treating for her foot or for any blood clots.

RATIONALE AND CONCLUSIONS OF LAW

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to

recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

When an expert's opinion is based upon an incomplete history it is not necessarily binding on the commissioner or the court. It is then to be weighed, together with other facts and circumstances, the ultimate conclusion being for the finder of the fact. Musselman v. Central Telephone Company, 154 N.W.2d 128, 133 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 521, 522, 133 N.W.2d 867 (1965).

The weight to be given an expert opinion may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. St. Luke's Hospital v. Gray, 604 N.W.2d 646 (Iowa 2000).

Expert testimony may be buttressed by supportive lay testimony. Bradshaw v. Iowa Methodist Hospital, 251 Iowa 375, 380; 101 N.W.2d 167, 170 (1960).

The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence. Together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire and Casualty Co., 526 N.W.2d 845 (Iowa 1995).

Under the Iowa Workers' Compensation Act permanent partial disability is categorized as either to a scheduled member or to the body as a whole. See section 85.34(2). Section 85.34(2)(a)-(t) sets forth specific scheduled injuries and compensation payable for those injuries. The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). Compensation for scheduled injuries is not related to earning capacity. The fact-finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in section 85.34(2)(a) - (t) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943). Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Claimant is alleging a scheduled member injury, the right foot, and a non-scheduled member injury, the pulmonary embolism. There is no question claimant

has a pre-existing genetic mutation known as Factor V Leiden. Lab tests confirmed claimant's genetic mutation. Claimant is pre-disposed to blood clots. She did not realize she had this genetic mutation until after her right foot fracture. Her mother has the same genetic mutation. Other family members have blood clots. Claimant developed bilateral pulmonary emboli and she had deep venous thrombosis. (Ex. 4b, p. 43) There is agreement among medical experts, claimant's orthopedic surgery and her immobilization were substantial factors in the development of the deep venous thrombosis and the pulmonary emboli. (Ex. B, p.2) Claimant's condition was serious and she was hospitalized for seven days. Her condition stabilized; she was released from the hospital; the emboli resolved. Claimant testified that as of the date of the arbitration hearing, she had no blood clots. She was not actively treating for any blood clots.

There is disagreement whether claimant needs to take anticoagulation medication for the remainder of claimant's life. If she does need daily medication, is the need for medication causally related to claimant's fall on October 23, 2014? Finally, does the need for anticoagulation medication render claimant permanently disabled under Iowa Code section 85.34(2)(u)?

Claimant's personal pulmonologist, Dr. Cowden, recommended claimant remain on Xarelto, an anticoagulation medicine. Dr. Cowden suggested claimant continue taking the medication for the duration of her life. Dr. Sassman deferred to Dr. Cowden's recommendation with regard to the continuation of Xarelto. (Ex. 1, p. 9) The physician did not relate the continued need for anti-coagulation medication directly to the clot or to the pulmonary embolism. (Ex. 3, p. 17) Dr. Cowden is well aware claimant's clot and pulmonary emboli have fully resolved. He also understands claimant has the Factor V Leiden deficiency. (Ex. 3, p. 17)

Other medical experts disagreed with the protocol Dr. Cowden ordered for claimant. Not one physician imposed restrictions for claimant's pulmonary condition or for her deep venous thrombosis.

Dr. Hartley, his resident, Dr. Rippentrop and Dr. McFarlane, a hematologist at the University of Iowa Hospitals and Clinics, all agreed, claimant did not need to continue taking Xarelto. Dr. McFarlane is a hematologist. He specializes in blood disorders. He too opined a life-time prescription of Xarelto was unnecessary. (Ex. C) Dr. McFarlane opined claimant had a low incidence of recurrent clot. (Ex. C)

The undersigned gives more weight to the physicians at the University of Iowa than to Dr. Cowden. Dr. Hartley, is an internationally recognized expert in pulmonary diseases and occupational medicine. He is the director of the Healthworks Clinic at the University of Iowa. He is a frequent speaker at seminars involving workers' compensation topics. The opinions he and Dr. Rippentrop wrote were supported by medical studies. Dr. Hartley relied on the opinions of Dr. McFarlane before he rendered his opinion. Dr. Hartley is clear in his opinion that:

> It is my opinion, to a reasonable medical certainty, that her factor 5 Leiden deficiency is a pre-existing medical condition and the decision by her treating providers to continue her on long-term anticoagulation for this, is unrelated to her work-related injury which has resolved.

(Ex. B, p. 8)

It is the determination of this deputy; claimant has failed to prove a permanent disability as a result of her pulmonary emboli or deep venous thrombosis. Claimant has a genetic condition. She sustained a temporary disability as a result of her work injury on October 23, 2014 but the condition resolved. Dr. Cowden returned claimant to work and without any restrictions on January 20, 2015.

Because claimant has failed to establish her bilateral pulmonary emboli and deep venous thrombosis are permanent conditions, defendants are not liable for medical costs after January 20, 2015. This was the date Dr. Cowden returned claimant to work without restrictions.

With respect to the right foot, permanent partial disability is governed by Iowa Code section 85.34(2)(n). The subsection states:

> For the loss of a foot, weekly compensation during one hundred fifty weeks.

Dr. Hartley assigned a three percent impairment rating for the loss of the foot but two percent of the rating was for claimant's difficulty with weight transfer. (Ex. B, p. 7) Dr. Sassman provided a six percent lower impairment rating. However, when Dr. Sassman issued her rating of the foot, she did not have all of claimant's medical records concerning claimant's plantar fasciitis. Therefore, less weight is given to Dr. Sassman's rating because she had an incomplete medical profile of claimant.

It is accepted; claimant has pain when walking or standing for prolonged periods of time. It is difficult for her to walk on uneven surfaces. She needs to move her right foot every hour so it does not become stiff. On occasion she displays a limp. After considering all of the evidence relative to claimant's right foot, it is the determination of the undersigned; claimant has a permanent partial disability to the right foot in the amount of seven percent.

Pursuant to Iowa Code section 85.34(2)(n), claimant is entitled to 10.5 weeks of permanent partial disability benefits at the stipulated weekly benefit rate of $361.53 per week. (150 weeks X .07 = 10.5 weeks of benefits)

Previous to the date of the arbitration hearing, defendants paid unto claimant 4.5 weeks of permanency benefits at the rate of $374.80 per week. Defendants are entitled to a credit for all permanency benefits previously paid to claimant.

In arbitration proceedings, interest accrues on unpaid permanent disability benefits from the onset of permanent disability. Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174 (Iowa 1979); Benson v. Good Samaritan Ctr., File No. 765734 (Ruling on Rehearing, October 18, 1989).

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

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Dr. Sassman submitted the costs of her evaluation and report. The total costs equaled $3,986.40. The charges appear reasonable. Defendants are liable for the same.

The final issue is costs to litigate. Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code

section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

The following costs are assessed to defendants:

Filing fee	$100.00
Service fee	$157.00
Irish Reporting Deposition	$57.00
Dr. Cowden	$175.00
Total	$489.00

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant ten point five (10.5) weeks of permanent partial disability benefits at the stipulated weekly benefit rate of three hundred sixty-one and 53/100 dollars ($361.53) and payable from January 20, 2015.

Defendants shall take credit for all permanency benefits previously paid to claimant.

Accrued benefits shall be paid in a lump sum, together with interest, as provided by law.

Defendants shall reimburse claimant for the cost of the IME by Dr. Sassman and as discussed in the body of the decision.

Costs are assessed to defendants as detailed in the body of this decision.

Defendants shall file all reports as required by law.

Signed and filed this 30th day of March, 2017.

Michelle A. McGovern

MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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MAM/srs

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.