ELECTRONICALLY FILED 2020-Feb-19 15:51:01 DIVISION OF WORKERS' COMPENSATION

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WILLIAM BROWN, Claimant, vs. MOUNT MERCY UNIVERSITY, Employer, and ACCIDENT FUND, Insurance Carrier, Defendants.	File No. 5064388 A R B I T R A T I O N D E C I S I O N Head Note Nos.: 1108, 1703, 1803, 1803.1, 2502

STATEMENT OF THE CASE

This is a petition is arbitration. The contested case was initiated when claimant, William Brown, filed his original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on July 5, 2018. Claimant alleged he sustained a work-related injury on January 29, 2018. Claimant alleged the wok injury affected his left leg. Later, claimant alleged he also injured his left hip and left tarsal tunnel. (Original notice and petition)

For purposes of workers' compensation, Mount Mercy University, is insured by Accident Fund. The University is affiliated with the Sisters of Mercy. Defendants accepted the claim for the left leg injury. They filed their answer on July 23, 2018. Defendants denied liability for the left hip and left tarsal tunnel. A first report of injury was filed on February 14, 2018.

The hearing administrator scheduled the case for hearing on September 24, 2019. The hearing took place at Iowa Workforce Development in Des Moines, Iowa at 150 Des Moines Street. The undersigned appointed Ms. Janice Doud as the certified shorthand reporter. She is the official custodian of the records and notes.

Claimant testified at hearing. Ms. Linda Brown, spouse, testified on behalf of claimant. Claimant also called Ms. Connie Albaugh, Assistant Human Resources Director at Mount Mercy University. Defendants called Mr. Tom Doermann, Assistant

Vice President of Human Resources and Operations at Mount Mercy University, as well as Ms. Deborah O'Hara, Facilities Operations Supervisor at Mount Mercy University.

The parties offered joint exhibits 1 through 6. Claimant offered exhibits 1 through 8. Defendants offered exhibits A through F. The exhibits were admitted as evidence in the case.

Post-hearing briefs were filed on November 12, 2019. The case was deemed fully submitted on that date. Finally, a transcript of the proceedings was filed on January 29, 2020.

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 injury;

2. Claimant sustained an injury on January 29, 2018 which arose out of and in the course of his employment;

3. The parties agree the injury resulted in a temporary disability to the left leg;

4. Temporary or healing period benefits are no longer in dispute;

5. The parties agree the weekly benefit rate is $429.29 per week;

6. Defendants have waived any affirmative defenses;

7. Claimant has paid certain costs and defendants do not dispute those costs have been paid.

ISSUES

The issues presented are:

1. Whether claimant sustained an injury to his left hip, his left tarsal tunnel and to his body as a whole as a result of a work injury on January 29, 2018;

2. Whether the alleged injuries are causally related to any permanent disability;

3. If there is a permanent disability as a result of the work injury on January 29, 2018 what is the extent of the permanent disability?

4. Whether the alleged injuries resulted in any industrial disability;

5. Whether the commencement date for the payment of any permanent partial disability benefits is May 21, 2018 or whether claimant is entitled to a running award; and

6. Whether claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant and the four other witnesses who testified at hearing, after judging the credibility of the people who testified, 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 64 years old. He will become 65 in February of 2020. He is married. Claimant resides in Cedar Rapids, Iowa with his spouse of 22 years. He has an eighth grade education. Claimant does not have a general equivalency diploma (GED). Claimant is functionally illiterate. He is incapable of completing his own applications for employment. His spouse must assist him in filling out simple forms.

Personnel at Mount Mercy University hired claimant to work as a custodian at the University. Claimant commenced his employment on March 16, 2015. A job description was submitted as claimant’s exhibit 2. It is adopted by reference as though fully set out herein. The parties agreed claimant was regularly required to bend, kneel, and crouch as part of his regular job duties. He was frequently required to stand, walk, and reach with his hands and arms. (Claimant’s Exhibit 2) Claimant remained employed by Mount Mercy University through May 31, 2018. (Cl. Ex. 5, p. 17)

At his arbitration hearing, claimant testified during direct examination how his injury to his left leg occurred. He stated under oath:

> Q. (By Mr. Steadman) Describe to me what happened on January 29th, 2018, at Mount Mercy.
>
> A. I went into the custodian room, got my shower kit for scrubbing the showers, brought it in, hooked it all up, went and sprayed down the walls, the floor, stepped out, grabbed my mop, mop handle that I scrub my walls and floor with, went back, stepped off my right foot on like a little concrete step, went in with my left foot, stepped inside the shower. That’s when my knee went out sideways on me.
>
> Q. What knee is that?

A. My left knee.

Q. What happened when it went out sideways on you?

A. It made a loud pop.

Q. And did you just hear the pop?

A. I heard it and I felt it.

Q. What did it feel like?

A. Like something popped out of joint.

Q. Did you have any kind of pain?

A. Yes, I did.

Q. What was the pain like?

A. Very sharp pain.

Q. And where was that pain located?

A. Inside of my left knee.

(Transcript, pages 26-27)

Claimant testified he uses a cane since the onset of his work injury. He stated he relies on the cane unless he is sleeping. No medical provider prescribed a cane to assist claimant in ambulating.

Claimant was directed to see Nicholas O. Bingham, M.D. for medical care. Dr. Bingham examined claimant on February 7, 2018. (Joint Exhibit 1, page 1) The physician noted the following with respect to claimant's left knee:

> Musculoskeletal:
>
> Left knee: He exhibits effusion, bony tenderness and abnormal meniscus. Tenderness found. Medial joint line tenderness noted.
>
> Legs:
>
> **McMurry and Thessaly sign's positive for meniscus tear. Drawer sign is negative. Does not appear to be any lateral instability**

(Jt. Ex. 1, p. 2)

Dr. Bingham diagnosed claimant with a sprain of the left knee, and an unspecified ligament. (Jt. Ex. 1, p.2) Dr. Bingham referred claimant for magnetic resonance imaging (MRI). (Jt. Ex. 1, p. 3) Temporary restrictions were imposed too. (Jt. Ex. 1, p. 3)

On February 16, 2018, claimant had MRI testing. Gerald Decker, M.D. interpreted the MRI test results. The results showed:

1. No acute fractures.

2. Curvilinear signal touching the articular surface on a single slice in the posterior or horn of the medial meniscus has a 40% statistical probability of representing a meniscal tear.

3. Possible partial tear or sprain of the conjoined tendon insertion of the lateral collateral ligament and biceps femoris tendon as above.

4. Mild quadriceps and patellar tendinosis.

5. Chondromalacia and degenerative changes as above.

6. No other acute major ligamentous injury.

7. Possible small radial tear at the free edge of the body of the lateral meniscus.

8. Complex soft tissue and intraosseous ganglion cyst at the margin of the proximal tibia and fibula extending into the fibular head.

(Jt. Ex. 2, p. 8)

Claimant returned to Dr. Bingham on February 19, 2018. The physician noted:

Musculoskeletal:

Left Knee: He exhibits decreased range of motion, swelling and abnormal meniscus. **Gait is grossly antalgic knee range of motion is severely limited by pain**

(Jt. Ex. 1, p. 5)

Dr. Bingham developed an assessment and a plan. He opined:

[P]atient’s MRI showsadvanced [sic] degeneration but a very likely medial meniscus tear and a lateral collateral/distal quadriceps tear [t]hey could be considered acute. Patient can return to work under tightened restrictions. Medications as before. We will refer to orthopedics for evaluation. William was seen today for knee pain.

> Diagnoses and all orders for this visit:
>
> **Derangement of meniscus of left knee**

(Jt. Ex. 1, p. 5)

Defendants authorized Matthew J. Bollier, M.D., an orthopedic surgeon at the University of Iowa, Department of Orthopaedics and Rehabilitation, to treat claimant. Dr. Bollier initially examined claimant on February 26, 2018. (Jt. Ex. 3, p. 9)

Left knee x-rays were taken on February 26, 2018. (Jt. Ex. 3, p. 11) Dr. Bollier noted there was no acute fracture or dislocation. There were early degenerative changes, but the joint space was preserved. (Jt. Ex. 3, p. 11)

Dr. Bollier personally reviewed and interpreted the results of the MRI. He opined:

> 2/16/18 Left knee MRI: partial tear of the lateral collateral ligament, mild quad and patellar tendonitis, mild degenerative changes and chondromalacia noted; no other major ligamentous tears noted, ganglion cyst at margin of the proximal tibia and fibula.

(Jt. Ex. 3, p. 11)

The orthopedist did not acknowledge there was a finding of a meniscal tear. Dr. Bollier assessed claimant's condition as:

> **ASSESSMENT**
>
> William M. Brown is a 63 y.o. male with left knee pain. Imaging reveals a partial tear of the lateral collateral ligament, tendonitis of the quad and patellar tendons as well as early arthritis changes. On physical exam there is no notable laxity of the LCL with testing. To the nearest degree of medical certainty the reported work incident was a significant factor and caused/worsened current knee findings. We did discuss that degenerative changes develop gradually over time and were present prior to the work incident. We discussed treatment options at length. There is a good chance that his symptoms will improve with non-operative treatment and we will start with bracing, physical therapy and anti-inflammatory medication. He should return to clinic for reevaluation in 6 weeks.

(Jt. Ex. 3, p. 11)

Dr. Bollier changed claimant's prescriptions. Claimant was provided with a brace to protect his lateral collateral ligament. The physician ordered physical therapy three times per week for six weeks. Temporary work restrictions were imposed. Claimant was to perform seated office type work only. He was to wear his brace while working

and he was required to get up and walk for five minutes once every hour. (Jt. Ex. 3, p. 12) Dr. Bollier wanted to evaluate claimant's progress after six weeks. (Jt. Ex. 3, p. 12)

Claimant commenced physical therapy on February 28, 2018 at Select Physical Therapy in Cedar Rapids. (Jt. Ex. 4, p. 29) The initial history for the physical therapy notes indicated:

> …Today he presented with moderate pain with knee movement, moderate tenderness and pain to the distal hamstrings and adductors, tenderness at the distal insertion of the LCL, decrease knee range of motion, and swelling around the joint. Due to the pain, strength testing was not tested. Because of the physical demands of his work and the above impairments and limitations he is unable to work full duty at this time.

(Jt. Ex. 4, p. 29) Claimant did not complain of left hip pain at the time of his initial physical therapy session.

Claimant proceeded with his physical therapy sessions. He encountered pain and swelling on the inside of his left leg. (Jt. Ex. 4, p. 34) Kayla K. Uhlenhake, PT, noted claimant's gait pattern improved when he wore his brace. (Jt. Ex. 4, p. 34) The physical therapist noted on March 28, 2018:

> …His muscular tightness has not improved despite that being a focus with soft tissue mobilization. At this time I am a little concerned about his symptoms on the medial side of the knee. When is he [sic] having his high pain levels, that is the area where he is having the most pain. I do not believe that he is ready to return to work at this time.

(Jt. Ex. 4, p. 37)

On April 2, 2018, Ms. Uhlenhake noted claimant had "swelling on the medial side of the knee around the distal medial quadriceps." (Jt. Ex. 4, p. 41)

On April 6, 2018, claimant voiced the following complaints to the physical therapist:

> …Today he presented with moderate pain with knee movement, moderate tenderness and pain to the distal hamstrings and adductors, tenderness at the distal insertion of the LCL, decrease knee range of motion, and swelling around the joint. Due to the pain, strength testing was not tested. Because of the physical demands of his work and the above impairments and limitations he is unable to work full duty at this time.

(Jt. Ex. 4, p. 43) The therapist noted at the conclusion of her report for the same date:

> …I am concerned because his flare ups have not been consistent with his activities or previous treatment. His main complaint of pain is isolated to the medial side of the knee, at the distal hamstrings and adductors.

(Jt. Ex. 4, p. 44)

Claimant returned to Dr. Bollier on April 9, 2018. (Jt. Ex. 3, p. 14) Claimant reported to the orthopedist:

> …He states that while the lateral knee pain has subsided, he has been experiencing medial sided knee pain for the past month with no known injury. He complains of constant pain that sometimes migrates into his calf. He has been wearing his brace except when sleeping. He states that his knee gave out on him a couple weeks while at the store. He does not complain of locking. He states that he has not been improving with PT.

(Jt. Ex. 3, p. 14)

Dr. Bollier conducted a physical examination of claimant's musculoskeletal system. Claimant had a normal left hip exam without pain. (Jt. Ex. 3, p. 16) With respect to the left knee, the physician found passive range of motion from 0 to 135°. Claimant had a normal appearing gait. He had tenderness at the medial joint line, but no swelling at the knee. (Jt. Ex. 3, p. 16) Dr. Bollier assessed claimant's condition as follows:

> **Assessment:**
>
> 63 y/o male with left knee partial LCL tear, quadriceps tendinopathy, patellar tendinopathy, mild OA.
>
> His lateral sided knee pain has subsided but he has complained of medial sided knee pain over the past month. This is most likely consistent with a flare up of his OA.
>
> Surgically, there is nothing we have to offer him. He will likely benefit from a corticosteroid injection to help relieve symptoms.

(Jt. Ex. 3, p. 17)

Dr. Bollier injected claimant's left knee with a corticosteroid because of medial knee pain. Claimant tolerated the procedure well. (Jt. Ex. 3, p. 17) Claimant was allowed to return to work. (Jt. Ex. 3, p. 18) Work restrictions remained imposed for six additional weeks. (Jt. Ex. 3, pp. 17-18)

Claimant testified at his arbitration hearing that he reported left hip pain during his appointment on April 9, 2018. (Tr., p. 33) Claimant testified Dr. Bollier just replied,

“Okay.” (Tr., p. 33) There is nothing in the records for April 9, 2018 to reflect a complaint about a left hip problem.

As of April 23, 2018, the physical therapist opined claimant would have a difficult time returning to work because of squatting and crouching. Ms. Uhlenhake did not believe claimant was able to clean toilets and bathrooms at that point in time. (Jt. Ex. 4, p. 46) The therapist recommended four weeks of rehabilitative therapy. (Jt. Ex. 4, p. 46) Work conditioning was recommended on April 24, 2018. (Jt. Ex. 4, p. 48) Ms. Uhlenhake noted swelling on the medial side of the knee around the distal medial quadriceps. (Jt. Ex. 6, p. 49) The physical therapist opined claimant needed work hardening in order to focus on such activities as mopping, sweeping, pushing, and vacuuming for long periods of time. (Jt. Ex. 4, p. 52)

Claimant’s final visit with Dr. Bollier occurred on May 21, 2018. (Jt. Ex. 3, p. 19) The physician conducted an examination of claimant’s left knee. Dr. Bollier found:

> Left knee examination: Slightly antalgic gait, normal station. Skin intact with no signs of ecchymosis, erythema, atrophy, asymmetry. No significant swelling/effusion. Capillary refill brisk; pulses strong. Sensation intact to light touch in all dermatomal distributions. TTP at medial joint line. Non-tender at lateral joint line, quad and patellar tendon insertions. Active and passive ROM 0-125 degrees, positive pain with deep flexion. Positive crepitus/grind. 5/5 strength of quad and hamstrings. Distal motor strength 5/5 and symmetrical. No laxity with varus and valgus stress at 0 and 30 degrees. Negative Anterior/Posterior drawer and Lachman’s tests.

(Jt. Ex. 3, p. 20)

Dr. Bollier assessed claimant’s left knee condition as:

> **ASSESSMENT**
>
> William M. Brown is a 63 y.o. male with left knee pain. He sustained a partial LCL tear, quadriceps and patellar tendinopathy after a work incident on 1/29/18. His knee is stable on exam. His lateral knee pain and tendinopathy symptoms have improved and he has reached MMI for these findings. He has permanent restrictions of no kneeling/squatting. We discussed that he has early arthritis changes which are likely the source of his medial knee pain. This would not be related to his work injury as degenerative changes take many years to develop. Mr. Brown will likely require arthroplasty in the future.

(Jt. Ex. 3, p. 20)

Dr. Bollier opined claimant reached maximum medical improvement. (Jt. Ex. 3, p. 20) The treating orthopedist imposed permanent work restrictions. Claimant was

prohibited from kneeling or squatting. (Jt. Ex. 3, p. 20) Dr. Bollier rated claimant as having no permanent impairment. He determined the zero percent rating as follows:

> **Permanent Partial Impairment Rating**
>
> To the nearest degree of medical certainty he has a permanent partial impairment rating of 0% of the lower extremity according to the Guides to the Evaluation of Permanent Impairment of the AMA, 5th Edition. [sic] Mr. Brown has full and normal knee range of motion, no neurologic dysfunction, no instability, and no other diagnosis-based reason to assign impairment according to Chapter 17 (The Lower Extremities) of the Guides. He was released to work with restrictions.

(Jt. Ex. 3, p. 20)

Claimant also testified during his arbitration hearing that he discussed left hip pain with Dr. Bollier during the May 21, 2018 medical appointment. Claimant testified:

> Q. (By Mr. Steadman) Okay. What were your symptoms like at the time you finished treatment with Dr. Bollier?
>
> A. Still hurting in the same spot, and it moved up into my hip a little bit when I do a lot of walking.
>
> Q. Now, you would have seen - - the last time you saw Dr. Bollier was at the end of May?
>
> A. Yes.
>
> Q. And when you say it moved up into your hip, are you saying it moved up to your hip the last time you saw him or would that have been after you finished seeing him?
>
> A. After I - - The next-to-the-last time I told him about that I had - - it was coming up into my hip a lot, and he said, “Okay.” That’s about all he - -
>
> Q. Did you have any other symptoms other - - So you’re saying you have some pain in your knee going up.
>
> A. Yes.
>
> Q. Was there anything other than pain?
>
> A. It was - - I was getting really - - I don’t know how to say it. It would have like a tingle to it coming up to my hip.
>
> THE COURT: A tingle?

THE WITNESS: A tingle.

THE COURT: Up to your hip?

THE WITNESS: Coming up to my hip.

Q. What do you mean by “a tingle”?

A. If I would sit too long or stand too long or walk too far, I’d have really - - it would just get that much worse.

Q. How do you mean “worse”?

A. It would really start hurting bad.

(Tr. pp. 32-34)

Again, there was no reference to any discussion about left hip pain or left hip tingling in the medical report for May 21, 2018. Only the left knee was mentioned in the clinical notes. The May 21st medical notes did not corroborate claimant’s testimony on direct examination.

On May 21, 2018, the physical therapist recommended claimant be discharged from work hardening and returned to his job as a custodian. (Jt. Ex. 6, p. 58) The therapist based her opinion on:

> Pt has shown a lot of improvements within this last week with activity tolerance. Throughout the course of work conditioning he has experiences [sic] flare ups that cause a big decrease in activity. He has reported improvements with strength, range of motion, and symptoms. Within therapy he has demonstrated the ability to perform vacuuming and dusting like activities without difficulty. He has met most of his lifting, and occupational goals. Because of the change in his job description I believe that he can return to working at this time. Pt also stated that he can get back to work. He is capable of vacuuming and dusting to the demands of his jobs. At this time the pt is being discharged from therapy and will be returning to work.

(Jt. Ex. 4, p. 58)

Dr. Bollier removed all activity restrictions on August 1, 2018. (Jt. Ex. 3, p. 23) Dr. Bollier did not examine claimant before the treating physician lifted the restrictions. Dr. Bollier did not explain why he lifted the work restrictions. (Jt. Ex. 3, p. 23)

Pursuant to Iowa Code section 85.39, claimant exercised his right to an independent medical examination. On August 16, 2018, claimant presented to Farid Manshadi, M.D., a physiatrist. (Jt. Ex. 6, p. 68) The examining physician also reviewed

various medical records regarding claimant's work injury. Dr. Manshadi indicated claimant reported the following medical conditions to him:

> Currently Mr. Brown reports constant left-sided knee pain of 7 to 9 out of 10 all the time. The longer he stays on his feet, the worse the pain becomes. He is unable to sleep straight at nighttime due to pain. He also continues to wear a hinged brace. He also reports left-sided hip pain which started by March of 2018, especially with walking. Also his left foot falls asleep on him, mostly the plantar aspect of it. He is only able to sit about 20 minutes and then he needs to get up and walk. He is only able to walk about 10 minutes and then needs to sit down, and he is currently not working.
>
> Mr. Brown also denies having any issues with his left knee or his left hip or numbness in his left foot prior to his work injury. He never sought care for any issues with his left leg previously.
>
> On examination of the left knee, there is evidence of significant tenderness to palpation over the medial aspect of the left knee over the lateral collateral ligament, and that also shows evidence of mild laxity on examination. Left knee active range of motion actively was from 0 to 125 degrees. He also had reduced sensation along the lateral plantar cutaneous nerve in comparison to the right side. Also Tinel's sign was positive over the left medial ankle over the tarsal tunnel.
>
> Also M. Brown had significant tenderness to palpation over the left lateral hip area over the trochanteric area and gluteus medius and minimus. Left hip abductors were 4+/5, on the right side they were 5/5. Gait was severely antalgic with a short step length and reduced stance phase on the left. The left foot was rotated externally.

(Jt. Ex. 6, p. 71)

Dr. Manshadi opined claimant sustained injuries to three body parts as a result of his work injury on January 29, 2018. The three injuries were to the left knee, the left hip, and claimant suffered from left tarsal tunnel syndrome. (Jt. Ex. 6, p. 71) Dr. Manshadi diagnosed claimant with laxity of the lateral collateral ligament with reduced range of motion. (Jt. Ex. 6, p. 71) Because claimant had an antalgic gait, in Dr. Manshadi's opinion, claimant had trochanteric bursitis of the left hip. Finally, Dr. Manshadi opined claimant had tarsal tunnel syndrome on the left side resulting in numbness involving the left lateral plantar cutaneous nerve. The tarsal tunnel syndrome was also attributed to an antalgic gait. (Jt. Ex. 6, pp. 71-72)

Dr. Manshadi opined claimant had a permanent partial impairment rating. (Jt. Ex. 6, p. 72) The independent medical evaluator based his opinion on the AMA Guides to the Evaluation of Permanent Impairment, 5^{th}Ed. The following paragraphs detail how

Dr. Manshadi arrived at his permanent impairment rating of 18 percent to the left lower extremity or 7 percent to the body as a whole.

> I used the American Medical Association's Guides to the Evaluation of Permanent Impairment, 5th Edition, specifically Chapter 17, Table 17-33, page 546, and he does have laxity of the lateral collateral ligament, and as such I assign seven (7) percent impairment of the left lower extremity.
>
> In regard to his left trochanteric bursitis with abnormal gait, I assign another seven (7) percent impairment of the left lower extremity.
>
> In regard to the lateral plantar cutaneous nerve, I assign another five (5) percent impairment of the left lower extremity.
>
> Then using the Combined Values Chart, the total impairment would be eighteen (18) percent impairment of the left lower extremity using Table 17-37.

(Jt. Ex. 6, p. 72)

Dr. Manshadi imposed permanent work restrictions. The restrictions are listed as:

> In regard to any permanent restriction, my recommendation would be to avoid any activity which requires squatting or kneeling. He is to avoid any activity which requires prolonged walking. He may negotiate stairs on an occasional basis. Also no sitting of more than 20 minutes at a time. In general, he needs to be allowed to sit, stand and walk on an as needed basis.

(Jt. Ex. 6, p. 72)

Dr. Manshadi recommended additional treatment for the left hip trochanteric bursitis in the form of cortisone injections. (Jt. Ex. 6, p. 73) The evaluating physician also recommended injections for the left tarsal tunnel syndrome and possibly a surgical release of the nerve. (Jt. Ex.6, p. 73)

In May of 2019, Dr. Manshadi answered nine “yes' or “no” questions posed to him by claimant's counsel. (Jt. Ex. 6, pp. 74-75) Dr. Manshadi answered those questions to a reasonable degree of medical certainty in the affirmative. The nine questions Dr. Manshadi answered are duplicated below:

1. William had arthritis in the left knee predating his January 29, 2018, work injury at Mount Mercy University. You base this opinion on the February 26, 2018, left knee x-ray showing grade 2 osteoarthritis.

2. Prior to William's January 29, 2018, work injury, his left knee arthritis was asymptomatic.

3. In addition to the other diagnoses set forth in your September 17, 2018, report, William has ongoing medial left knee pain, which by history began following the January 29, 2018, work injury.

4. Medial left knee pain following the January 29, 2018, work injury is well-documented in the records of Dr. Bingham at Mercy Occupational Health.

5. Based on the February 16, 2018, MRI, there is a possibility of a medial meniscal tear in the left leg. If it exists, this could account for William's ongoing medial knee pain.

6. The mechanism of injury that William described to you could have resulted in a medial meniscal tear in the left leg.

7. To conclusively rule in or rule out a medial meniscal tear, arthroscopic surgery would need to be performed. The x-ray and MRI are not definitive.

8. If there is no medial meniscal tear, you would attribute the medial left knee pain to arthritis exacerbated by trauma on January 29, 2018.

9. Your diagnosis at present of the medial left knee pain would be internal derangement of the knee with possibility of meniscal tear.

(Jt. Ex. 6, pp. 74-75)

Nearly one year after Dr. Manshadi issued his independent medical report, defendants desired an independent medical examination with a physician of their own choosing. Charles D. Mooney, M.D., MPH, of Iowa Occupational Medicine Consulting Services, PLC, examined claimant on July 18, 2019. (Defendants' Exhibit F) Dr. Mooney issued a report on the same date. (Def. Ex. F) Dr. Mooney also reviewed a number of medical records including the independent medical report authored by Dr. Manshadi. Dr. Mooney did not comment about Dr. Manshadi's opinions. According to Dr. Mooney, claimant reported the following complaints:

Current Complaints:

Current complaints are reviewed. As it relates to his left knee he reports pain is predominantly in the medial aspect of the knee. He reports that it is constant. He rates his pain at a 9 most of the time and up to a 10 with walking and standing for any length of time greater than five minutes and walking half a block. He states that he is dependent on the use of a cane, which was not prescribed. He reports that he does not have swelling of

> his knee. He does not feel like his knee is going to break away and give out on him, only it is extremely painful with weightbearing. He does not report any specific locking, clicking or pivot shift pain, only generalized severe aching pain in the medial aspect. He does note that he has some stiffness if he is sitting for a prolonged period of time. He does not note any specific symptoms nor does he report recurrent swelling.
>
> He also complains of pain in his left hip. He states that the pain feels like it is radiating from his left knee. He states that the pain in his hip started sometime in June of 2018 after his discharge from therapy. He denies any history of prior hip pain or prior injury. He reports that he has not had any specific evaluation, x-rays or therapy as it relates to his symptoms. He describes the pain as aching and actually points to the posterior hip closer to the buttocks, rather than giving a classic “C sign” in demonstrating where his pain is coming from. He reports pain is at 7 or 8 most of the time and again it is increased by walking and standing. He does not get any relief by any specific intervention. He states that he takes Advil no more than three times per week on the advice of his physician.

(Def. Ex. F, p. 4)

Dr. Mooney conducted his own physical examination of claimant. The physiatrist reported:

> **Physical Examination:**
>
> Short statured, overweight male presents with significant pain behavior. He uses a cane in his left hand for weightbearing and has a very cane dependent antalgic gait.
>
> Examination of his bilateral lower extremities reveals his hip range of motion to be actually fairly well maintained and symmetric. He demonstrates 95 degrees of flexion fairly symmetrically, 30 degrees of extension, 40 degrees of abduction, 20 degrees of adduction, 25 degrees of internal rotation and 35 degrees of external rotation.
>
> He does not complain of pain with internal rotation on either hip. He does note some mild tenderness directly over the greater trochanter on the left compared to the right. He also complains of pain into the left buttock compared to the right. No sacroiliac tenderness is elicited by palpation or with Patrick’s testing.
>
> He does not demonstrate any specific hip height abnormality nor does he demonstrate any leg length discrepancy. He has negative log roll testing bilaterally, and resists Scour testing on the left.

He has normal deep tendon reflexes in his knee and ankle. He has 5/5 motor strength in extension and flexion of the ankle and eversion and inversion as well as toe dorsiflexion. He does not demonstrate any loss of sensation to light touch or pinprick.

He demonstrates range of motion of the right knee to be 0 degrees of extension and 130 degrees of flexion. Left knee demonstrates 0 degrees of extension and 120 degrees of flexion complaining of pain at the flexion endpoint.

He does not demonstrate any valgas varus deformity or laxity. He does complain of joint line tenderness on the left compared to right, predominantly medially rather than laterally. He does not demonstrate a distinctly positive McMurray's, but does complain of pain with all testing. He does not demonstrate a positive drawer test bilaterally.

He demonstrates symmetrical quadriceps at 54 cm both right and left. He will provide very little effort in manual muscle testing in full extension of the knee complaining of pain and will provide only 2/5 strength on the left in flexion of the knee against resistance compared to 5/5 on the right.

Assessment:

1. Medical record evidence of right knee strain with underlying minor meniscal abnormalities and degenerative arthropathy.

2. Complaints of left hip pain without objective findings, degenerative arthropathy is suspected.

3. Multiple medical comorbidities.

(Def. Ex. F, pp. 5-6)

Dr. Mooney answered a series of questions posed to him by defense counsel with regard to claimant's claim for benefits. (Def. Ex. F, pp. 6-7) Dr. Mooney opined as a result of the work injury on January 29, 2018, there was only a temporary aggravation of claimant's underlying pre-existing conditions including his meniscal disease and arthropathy. (Def. Ex. F, p. 6) Dr. Mooney did not relate claimant's left hip complaints to the work injury on January 29, 2018. The evaluating physician suspicioned claimant had an underlying degenerative condition related to claimant's age. (Def. Ex. F, p. 6) Dr. Mooney agreed with Dr. Bollier's opinion. If future knee surgery was necessary, it would not be related to claimant's work injury. (Def. Ex. F, p. 7) Dr. Mooney concurred with Dr. Bollier. Claimant reached maximum medical improvement on May 21, 2018. (Def. Ex. F, p. 7) Dr. Mooney opined claimant had no permanent impairment to his **right** knee or to his left hip. (Def. Ex. F, p. 7) Finally, Dr. Mooney concluded claimant needed no permanent restrictions and he was capable of returning to his normal activities. (Def. Ex. F, p. 7)

The facts established claimant returned to work for one day. (Tr., p. 34) He worked an eight-hour day. (Def. Ex. A, p. 12) In his deposition, claimant testified he worked in the UC Building, and in the dormitories. Claimant testified he cleaned and mopped floors, as well as dusted. (Def. Ex. A, p. 12) He testified he informed Deborah O'Hara that he was in pain while he was performing his job duties. (Def. Ex. A, p. 2) According to claimant, Ms. O'Hara told him to go home and to ice his leg. (Jt. Ex. A, p. 12) During his arbitration hearing, claimant testified, he experienced pain on the inside of his left knee. (Tr., p. 36)

There were various witnesses who testified about claimant's separation of employment. They differed as to the events leading up to claimant's termination from Mount Mercy University. It is clear; claimant resigned his position. Members of management decided not to contest his unemployment insurance benefits, even though claimant voluntarily terminated his employment. He received the maximum weekly unemployment benefits allowable.

Claimant also applied for and received Social Security disability benefits commencing from July 2018. (Jt. Ex. 5, p. 67) The monthly award totaled $1,464.00 when it was initiated. Claimant alleged arthritis stemming from a work injury to his left knee. He had an antalgic gait according to Tracey Larrison, D.O., the physician who examined claimant for Social Security disability benefits. (Jt. Ex. 5, p. 62) Claimant did not mention any ongoing hip symptoms when he applied for his Social Security disability benefits. There was a decrease in range of motion of the left knee. (Jt. Ex. 5, p. 62) The evaluating physician noted:

> …We discussed that he has early arthritic changes which are likely the source of his medial knee pain. TS releases him to RTW with those limitations noted.

(Jt. Ex. 5, p. 62)

In advance of litigation, defendants conducted surveillance of claimant at his home in Cedar Rapids. The surveillance depicted claimant mowing his lawn with a riding mower on July 8, 2019. (Def. Exs. B and C) On two separate occasions, the undersigned reviewed the surveillance taken. Claimant did not have his cane with him while he was mowing. He occasionally left the riding mower. Claimant was seen bending to pick up drain spouts. When he was walking on the lawn, he ambulated without any visible problems. He did not use his cane. Under cross-examination, claimant testified his left knee was very painful. However, he did not seek medical attention for his knee. (Tr., p. 56)

CONCLUSIONS OF LAW AND RATIONALE

PERMANENT PARTIAL DISABILITY BENEFITS

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 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).

An employee is entitled to appropriate temporary partial disability benefits during those periods in which the employee is temporarily, partially disabled. An employee is temporarily, partially disabled when the employee is not capable medically of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the

employee's disability. Temporary partial benefits are not payable upon termination of temporary disability, healing period, or permanent partial disability simply because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury. Section 85.33(2).

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

The first issue for determination is whether claimant sustained a temporary injury or a permanent injury on January 29, 2018. Prior to the date of his work injury, claimant had not sought treatment for any left knee, left lower extremity, or left hip problems, or any arthritic conditions. It was only after the work injury at Mount Mercy University that claimant began to experience difficulties with his left knee and left lower extremity. In other words, claimant’s preexisting arthritis and degenerative knee conditions were materially aggravated, accelerated, worsened or lighted up so that the two conditions resulted in disability.

Defendants admit claimant sustained a temporary disability to his left knee. The parties have stipulated no additional temporary benefits are due to claimant.

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).

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).

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).

Defendants deny there are any permanent disability benefits due under a scheduled member theory or under an industrial disability theory. This deputy determines claimant has a scheduled member disability to his left leg pursuant to Iowa Code section 85.34(2)(p). Claimant does not have a permanent injury to his left hip or to his body as a whole. He does not have a work related tarsal tunnel syndrome.

In his deposition, claimant acknowledged he had not reported left hip problems to his medical providers prior to his independent medical examination with Dr. Manshadi on September 17, 2018. The medical records do not show a history of left hip problems. Claimant testified about the left hip during his deposition on April 25, 2019:

> Q. (By Chris Scheldrup) And I've reviewed all those records, and there is no reference in any of these records to you having any complaints involving your hip; would you agree with me that you did not make any statements to these doctors until you saw Dr. Manshadi on September 17th, 2018?
>
> A. No, I didn't have no problem.
>
> Q. So you had no problems with your hips at all until you saw Dr. Manshadi on September 17th, 2018.
>
> A. Yes.
>
> Q. So when Dr. Manshadi puts in his report that you told him that you started having hip pain in March of 2018, that's a false statement; that's not correct.
>
> A. I did have a little bit of a pain because the way I was walking.
>
> Q. You just told me under oath that you didn't have any problems with your hip, correct?
>
> A. No, not up till then.
>
> Q. Okay. And so in September when you see Dr. Manshadi, when he puts down in his report that you said you had hip pain beginning March of 2018, that's not a correct statement, true?

A. No.

Q. I am correct, aren't I?

A. Yes.

Q. Do you know how Dr. Manshadi then came up with this idea that you had pain starting back in March of 2018 if you did not have that at that time?

A. 'Cause the way I was walking. The way I was walking.

Q. Well, you never told him that you had - -

A. No.

Q. - - hip pain beginning March of 2018; he just put that together on his own.

A. Yes.

Q. So it's your testimony that it wasn't till you saw Dr. Manshadi on September 17th, 2018, that you first recognized that you may have had some hip pain, correct?

A. Yes.

Q. What was it, do you think, that started the onset of a claim of hip pain in terms of it being on the same day you saw Dr. Manshadi on September 17th, 2018; did you do something while going into his office that caused the hip pain?

A. No.

Q. So you had no hip pain until you went into Dr. Manshadi's office, and then you recall having hip pain when you talked to him, is that correct?

A. I said I had a little bit of hip pain.

Q. But you will agree with me that you never mentioned anything about hip pain or symptoms to any of your treating physical therapists or doctors until you first saw Dr. Manshadi on September 17th, 2018?

A. (The witness nodded his head.)

Q. Correct?

A. I didn't say nothing to nobody. [sic]

(Def. Ex. A, pp. 14-15)

Additionally, claimant testified during cross examination at his arbitration hearing:

Q. (By Chris Scheldrup) Now, I want to talk about a claimed hip issue. Your injury occurred on January 29th, 2018; correct?

A. Yes.

Q. The truth of the matter is, you never had any complaint of any problems with your hips until you met with Dr. Manshadi and he suggested that you had hip pain; isn't that correct?

A. No, I've always had hip pain. It just goes in and out.

Q. Do you recall – I'm going to go through and describe and go through your prior testimony.

Well, let me just confirm with you, you'd agree with me that you never mentioned anything about the hip pain to any of your treating doctors until you first met with Dr. Manshadi as part of the IME. Would you agree with me on that?

A. Yes.

Q. You never sought any medical care for any claims of anything dealing with your hip until after you met with Dr. Manshadi as part of this litigation; correct?

A. Correct.

Q. In fact, it was Dr. Manshadi that first raised the issue that there may be some hip component, and you never had any problems with that until that medical appointment with Dr. Manshadi. Isn't that also true?

A. Fair.

Q. And when Dr. Manshadi put in his report that the hip pain began in March of 2018, that was an incorrect statement in terms of the onset of hip pain; correct?

A. Correct.

Q. In fact, I asked you, "So it's your testimony that it wasn't until you saw Dr. Manshadi on September 17th, 2018, that you first recognized that you may have some hip pain; correct?" And you answered, "Yes."

A. Yeah.

(Tr., pp. 58-60)

The surveillance video did not depict claimant walking with any apparent hip problems. Claimant did not have an antalgic gait pattern. He did not use a cane when he was walking on uneven grass. Claimant did not display outward signs of pain during the course of the surveillance. He seemed to operate his riding lawn mower without apparent difficulty. The undersigned determines claimant has failed to prove by a preponderance of the evidence he has a permanent injury to his left hip. Claimant does not have an injury to the body as a whole. Likewise, there is no medical evidence to support a claim for tarsal tunnel syndrome.

With respect to any permanency to the left leg, it is the determination of this deputy workers' compensation commissioner, claimant has a permanent partial disability to the left leg. The determination is based on the opinions expressed by Dr. Manshadi after the independent medical examination on August 16, 2018 and after the physician prepared answers to questions posed in May of 2019. The independent medical examiner performed an exhaustive review of claimant's medical records concerning the work injury. Dr. Manshadi opined claimant had a seven (7) percent permanent impairment to the left lower extremity as a result of his work injury on January 29, 2018. The impairment rating was based on the AMA Guides to the Evaluation of Permanent Impairment, 5th Ed. It is true; claimant had some arthritis or degeneration around the area of the left knee prior to January 29, 2018. Nevertheless, his arthritis/degenerative conditions were asymptomatic before the work injury. Only after his work injury did claimant develop problems with his left knee. In other words, his preexisting condition or disability was permanently and materially aggravated, accelerated, worsened, or lighted up. Dr. Manshadi imposed some reasonable restrictions for the left leg. Those restrictions were detailed in earlier paragraphs and are hereby incorporated by reference. (See: Jt. Ex. 6, p. 72)

The undersigned did not find Dr. Mooney's opinions to be persuasive. Dr. Mooney discussed a right knee on Exhibit F, page 7. He returned claimant to full duty work and with no restrictions. Not even members of management at Mount Mercy University believed claimant was capable of performing all of his duties as a janitor in May of 2018. Management team members believed claimant needed some accommodations and restricted duties.

Then there were the opinions of Dr. Bollier. He returned claimant to work with a zero percent permanent impairment rating but with restrictions of no kneeling or squatting. (Jt. Ex. 3, p. 22) Without ever examining claimant again, Dr. Bollier removed the restrictions on August 1, 2018. The orthopedist provided no explanation for the removal of the restrictions. This deputy had no understanding why there was a change when the physician had not seen the patient after May 21, 2018. The undersigned did not find Dr. Bollier's actions to be consistent with normal treatment protocols.

Therefore, it is the determination of this deputy, claimant has a permanent partial disability to the left leg due to his left knee injury on January 29, 2018. Claimant has sustained a permanent partial disability in the amount of seven (7) percent.

Claimant's permanent partial disability shall be calculated according to Iowa Code section 85.34(2)(p). The subsection states:

> p. The loss of two-thirds of that part of a leg between the hip joint and the knee joint shall equal the loss of a leg, and the compensation therefor shall be weekly compensation during two hundred twenty weeks.

The calculation is: 220 weeks x 7 percent equals15.4 weeks of total permanent partial disability benefits owed. Prior to the date of the hearing, claimant was paid zero weeks of permanent partial disability benefits. The parties stipulated the weekly benefit rate is $429.29 per week. Therefore, claimant is entitled to: 15.4 weeks x $429.29 equaling $6,611.07.

Accrued benefits shall be paid in a lump sum, together with interest, as allowed by law. 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 percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. April 24, 2018).

Claimant is requesting alternate medical care benefits pursuant to Iowa Code section 5.27. Claimant has not had any medical treatment for his left knee since May 21, 2018. That was the last appointment he had with Dr. Bollier.

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).

Under Iowa law, the employer is required to provide care to an injured employee and is permitted to choose the care. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.;

Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

> [T]he words “reasonable” and “adequate” appear to describe the same standard.
>
> [The New Mexico rule] requires the employer to provide a certain standard of care and excuses the employer from any obligation to provide other services only if that standard is met. We construe the terms "reasonable” and “adequate” as describing care that is both appropriate to the injury and sufficient to bring the worker to maximum recovery.

In the present case, Dr. Bollier released claimant from medical treatment. The orthopedist did not causally connect claimant’s medial knee condition to the January 29, 2018 work injury. Consequently, Dr. Bollier did not relate a future left knee arthroplasty to the work injury either. Dr. Manshadi opined otherwise. For the same reasons as stated previously, the undersigned accepts the opinions of Dr. Manshadi with respect to the need for future medical treatment of the left knee over the opinions of Dr. Mooney and Dr. Bollier. Defendants shall provide reasonable and necessary medical treatment for the left knee. The left knee condition is causally related to the January 29, 2018 work injury. Defendants shall have the right to choose the medical care provider. Defendants shall schedule an appointment with the medical care provider within ten (10) days of the filing of this decision.

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).

Defendants are liable for the following costs in the amount of:

1. Certified Shorthand Reporter	$70.00
2. Deposition Transcriptions	$236.25
3. Service Charges	$6.67
4. Doctor Reports	$136.21
5. Filing Fees	$100.00
TOTAL	$549.13

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay unto claimant fifteen point four (15.4) weeks of permanent partial disability benefits commencing from May 21, 2018 and payable at the rate of four hundred-twenty-nine and 29/100 dollars ($429.29).

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

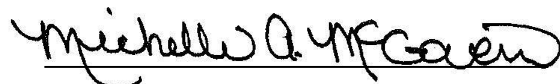
Defendants shall take credit for all benefits paid prior to the date of the hearing.

Defendants shall pay the costs to litigate as detailed in the body of the decision.

The attorneys of record, if they have not already done so, shall register within seven (7) days of this order in the Workers' Compensation e-Filing System (WCES) and as a participant in this case to receive future filings from this agency.

Defendants shall file all reports as required by law

Signed and filed this 19th day of February, 2020.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nate Willems (via WCES)
Casey Steadman (via WCES)
Chris Scheldrup (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.