BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LAURENCE RUNGE, Claimant, vs. ARCHER DANIELS MIDLAND, Employer, Self-Insured, Defendant.	File Nos. 20009106.01, 22700080.01 ARBITRATION DECISION Head Notes: 1402.40, 1803.1, 2208, 2907

On January 28, 2022, the claimant, Laurence Runge, filed two petitions in arbitration seeking workers' compensation benefits from Archer Daniels Midland, employer, and self-insured defendant. The hearing was held on February 15, 2023. Pursuant to an order from the Iowa Workers' Compensation Commissioner, this case was heard via videoconference using Zoom with all parties and the court reporter appearing remotely.

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

Laurence Runge and Brian Cochran testified live at the trial. The evidentiary record also includes joint exhibits 1-9, claimant's exhibits 1-9, and defendants' exhibits A-K. All exhibits were received into the record without objection.

The parties submitted post-hearing briefs on April 7, 2023, at which time the case was fully submitted to the undersigned.

ISSUES

The parties submitted the following issues for resolution on File No. 20009106.01:

1. The nature and extent of permanent disability sustained by claimant as a result of the stipulated work injury on August 2, 2020.

2. Assessment of costs.

The parties submitted the following issues for resolution on File No. 22700080.01:

1. The nature and extent of permanent disability sustained by claimant as a result of the stipulated work injury on April 1, 2021.

2. Assessment of costs.

FINDINGS OF FACT

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

At the time of the hearing the claimant, Laurence Runge (hereinafter "Runge") was 67 years old. (Hearing Transcript, p. 16). He resides in Hamilton, Illinois with his wife. (Id. at 16-17). Runge graduated from high school in 1973. (Id. at 17-18). During high school, he worked at St. Louis Die Casting. (Id. at 19). After graduating, Runge took a job as a material handler at Chevron, which involved moving cases off the line. (Id. at 19-20). He later transferred to a switchman position, where he hooked up raw material cars. (Id.). Runge worked at Chevron until 1987 when the plant closed. (Id. at 20).

After the Chevron plant closed, Runge went to work for Ogilvie Mills, a wheat processing plant in Keokuk, Iowa. (Tr., pp. 20, 22). He started as a utility cleaner, vacuuming, sweeping, and cleaning up piles of product. (Id. at 21). After a year, Runge bid into a new position—modified operator. (Id.). As a modified operator, he applied product to the outside of a drum dryer and monitored the dryer. (Id. at 22, 24). He performed this job for five years, from 1987 until 1992. (Id. at 21-22, 24).

In 1992, Runge bid into a wet operator position. (Tr., p. 25). Around this time Ogilvie Mills sold the plant to ADM. (Id. at 21). As a wet operator, Runge was responsible for adding flour and water into mixers and then sending the mixture through spin machines which would separate starch from gluten. (Id. at 26). This process required him to hose down floors and screens, change screens, and monitor the machines by checking temperatures, PH levels, and pressure. (Id.). Runge estimated he was responsible for 50 to 75 machines. (Id.). The machines and the computers that monitored them were on different floors. (Id. at 27). Runge estimated he went up and down a 25-step-flight of stairs around 100 times a day when the plant was busy. (Id.). However, at some point ADM put a monitoring computer on the plant floor so the employees would not have to go upstairs as often. (Id.). Runge indicated he also helped the dryer operators occasionally, which required going up and down four or five flights of stairs. (Id. at 28).

Runge retired from ADM on April 1, 2021. (Tr., p. 21, 51). At the time of his retirement, he was working a 40-hour-workweek with some overtime, usually two to four

hours a week, and making $23.51 an hour. (Id. at 29-30; Ex. I, p. 33). In 2002, the Keokuk ADM plant closed. (Tr., p. 55).

Runge alleges he suffered injuries to his right leg, right hip, and an altered gait on August 2, 2020. (See Petition). At the hearing, he testified that he was hosing down a screen when the hose got tangled around one of his ankles, pinning his foot up against a plate in the floor, and causing him to fall. (Tr., p. 48). The fall fractured Runge's right leg. (Id.). After the accident, an ambulance was called and Runge was transported to the emergency room at Fort Madison Community Hospital. (JE 1, pp. 1-3; JE 2, p. 11). The hospital took x-rays. (JE 2, p. 13, 19). They showed an acute displaced distal tibia fracture and a mildly comminuted and slightly angulated proximal fibula fracture. (Id.). The next day, Brent Woodbury, M.D., performed surgery on Runge's leg—a closed reduction and intramedullary fixation of the tibia fracture. (Id. at 28-29).

Runge received follow-up care from Dr. Woodbury at the Fort Madison Orthopedics. (See JE 2, pp. 38-75). On August 18, 2020, he was placed in a cam boot and released to sedentary work. (Id. at 43). However, it appears Runge did not actually return to work until September 22, 2020. (See id. at 49). According to Dr. Woodbury's treatment note, Runge was "25% weight bearing with a walker" at that time. (Id.). In August, Runge also began physical therapy at Advance Therapy. (See JE 2, p. 44; JE 4, p. 108).

In October 2020, Runge's work restrictions were increased to a maximum of 2 hours standing and walking, wear cam boot as needed. (JE 2, p. 57). In mid-November 2020, he transitioned into wearing his regular shoe. (Id. at 58). At his appointment on November 18, 2020, Runge told Dr. Woodbury that he did not feel he had the physical ability to return to his regular job yet. (Id.). At that time, Dr. Woodbury noted Runge had some restrictions and limitations due to low back issues. (Id. at 60).

Runge's last physical therapy appointment was on December 2, 2020. (JE 4, p. 114). He had a follow-up appointment with Dr. Woodbury on December 18, 2020. (JE 2, p. 63). Runge was still using a walker at that time. (Id.). Dr. Woodbury's treatment note indicates that some of his limitations were due to nonwork-related pathologies. (Id. at 65). At the time of the August 2, 2020 work accident, Runge was already scheduled to attend a neurosurgery evaluation for chronic low back pain. (JE 2, p. 22).

Runge returned to Dr. Woodbury on January 15, 2021. (JE 3, p. 67). He was still using a walker but told Dr. Woodbury he felt up to standing and walking 5-7 hours a day. (Id.). He also complained of a new symptom- a tingling sensation from his groin traveling down his right leg to his foot. (Id.). Dr. Woodbury revised Runge's work restrictions to stand and walk without restrictions, use walker as needed. (Id. at 71).

Runge's last treatment date with Dr. Woodbury was on May 19, 2021. (JE 2, p. 72). By this date he had already retired from ADM. (Tr., p. 21, 51). Runge indicated his right leg was doing well but had lost some strength. (JE 2, p. 72). Dr. Woodbury noted Runge had a history of neuropathy that causes band type sensations in his lower

extremity. (Id.). Dr. Woodbury also indicated Runge was scheduled to undergo a cervical fusion surgery on May 24, 2021. (Id.). Dr. Woodbury placed him at maximum medical improvement for his right leg injury. (Id. at 74). He did not give Runge any permanent restrictions. (Id.).

The joint medical exhibits contain records from the Quincy Medical Group. (JE 3, pp. 76-107). These show that Runge sought treatment for chronic cervical and lumbar pain, as well as lower extremity sensory changes and fatigue with Brian Anderson, M.D.[1] (See JE 2, p. 72; JE 3, p. 96). The records note that Runge has a history of diabetes. (Id.). On January 19, 2022, Daniel Kimple, M.D., performed an EMG. (JE 3, pp. 76-77). It showed chronic axonal denervation/reinnervation changes in the L4-L5 myotome distribution, bilaterally. (Id. at 77). It also showed chronic right peroneal axonal loss, consistent with posttraumatic injury. (Id.).

On February 8, 2022, Dr. Anderson reviewed his EMG. (JE 3, p. 85). Dr. Anderson noted Runge had previously undergone a cervical fusion surgery and was scheduled for a lumbar surgery with Dr. Gold. (Id.). Dr. Anderson diagnosed him with spondylosis with radiculopathy of the lumbar region and spinal stenosis of the lumbar region with neurogenic claudication. (Id. at 86). He recommended decompression surgery. (Id. at 87). Runge's back surgery took place on March 7, 2022. (Id. at 88).

On October 21, 2022, Runge returned to Dr. Woodbury for the purpose of obtaining a permanent impairment rating. (Ex. A, p. 1). He was no longer using the walker at the time of this appointment. (Id.). Dr. Woodbury assigned Runge 7 percent permanent impairment to the body as a whole for antalgic limp with shortened stance without use of a cane or brace, citing to Tables 17-5 and 17-33 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Id.). Dr. Woodbury noted that his tibia fracture was well healed and would not receive a rating. (Id.). He also noted Runge had full range of motion in both his knee and ankle. (Id.). He did not provide any permanent work restrictions. (Id.). On October 24, 2022, Dr. Woodbury added an addendum to his report clarifying that 7 percent permanent impairment to the body was the equivalent of 17 percent permanent impairment to the lower extremity. (Id. at 3).

At the behest of his attorney, Runge attended an independent medical exam (IME) with Sunil Bansal, M.D., on December 16, 2022. (CI Ex. 1, p. 1). Dr. Bansal diagnosed Runge with a closed right spiral mid shaft tibia fracture and closed right proximal fibula fracture status post closed reduction with intramedullary fixation, and right peroneal neuropathy and an antalgic gait related to leg length discrepancy and a deviated right foot. (Id.). He assigned Runge 7 percent permanent impairment to the body as a whole for an antalgic gait, citing to Table 17-5 of the AMA Guides. (Id.). Dr. Bansal also gave him a 5 percent permanent impairment rating to the lower extremity, which translates to a 2 percent permanent impairment rating to the body as a whole for

[1] Dr. Woodbury's treatment records indicate Runge received prior treatment for lumbar back pain, but these records are not in evidence. (See JE 2, p. 65).

loss of sensory discrimination in the superficial peroneal nerve distribution. (Id.). As support for this rating, Dr. Bansal cited to Table 17-37 of the AMA Guides. Dr. Bansal suggested permanent restrictions of no prolonged standing or walking for greater than 30 minutes at a time, avoid frequent kneeling, squatting, or walking on uneven ground, as well as multiple stairs. (Id.). He recommended steroid injections for Runge's right hip pain and neuromodulation medication for his peroneal neuropathy. (Id. at 11-12).

The record contains two opinions addressing permanent impairment caused by Runge's work accident on August 2, 2020—one from Dr. Woodbury and one from Dr. Bansal. Of these, I find Dr. Woodbury's rating to be the most accurate under the AMA Guides. Both doctors assign Runge 7 percent permanent impairment to the body as a whole for antalgic gait, citing to Table 17-5 of the AMA Guides. This rating is supported by the evidence. Reports from both Dr. Woodbury and from Dr. Bansal indicate Runge has an antalgic limp with shortened stance. (See Ex A., p. 1: Cl Ex. 1, pp. 8, 10). Dr. Bansal, however, also provided Runge with an impairment rating for loss of sensory discrimination in the superficial peroneal nerve. (Cl Ex., 1, p. 11). This rating does not comply with the AMA Guides. *See discussion below.* Additionally, the medical records show Runge has sensory loss in both legs. (See Cl Ex. 1, p. 10). This indicates the right leg loss of sensation was not only caused by the work injury. The undersigned, hereby, adopts Dr. Woodbury's opinion on permanent impairment and restrictions. While Runge credibly testified that he continues to experience pain in his leg and hips, as well as has trouble with stairs and standing for extended periods of time, it is not clear whether these limitations are causally related to his pre-existing spinal and sensory conditions or the work injury.

Runge also asserts he sustained hearing loss and tinnitus, because of his work at ADM. (See Petition). Defendants stipulated that he sustained hearing loss and tinnitus injuries but dispute his level of permanent impairment from the conditions. At the hearing, Runge testified that his job at ADM was very loud. (Tr., p. 32). He explained this was due to OSHA regulations which required that wheat be processed in a confined space to keep out bugs and other contaminants. (Id.). According to Runge, the wet process room contained spin machines, and three to four hundred pumps. (Id.). He stated the equipment and the product running through the lines was loud by itself, but the reverberation off the ceiling and concrete walls made the room even louder. (Id. at 33). Plus, there was additional noise from any malfunctioning equipment and the occasional use of a jackhammer to get stuck product out of the machines. (Id. at 33-35). Runge testified the noise was constant and so loud you could not hear a co-worker speaking to you from three feet away. (Id. at 32, 35). Runge testified the noise in the wet room was around 97 decibels. (Id. at 35-36). An area sound survey of the ADM plant is contained in the joint exhibits. (JE 8, p. 140). According to the survey, the noise level in the wet process room ranged from 94.4 to 97.5 decibels. (Id. at 140-141). ADM required its employees to wear hearing protection. (Tr., p. 36). When he first started at ADM, Runge wore earplugs. (Id.). The last ten years of his employment he wore

earmuffs. (Id.). However, Runge testified that it was very hot in the processing room, and sweating made the earplugs fall out and the earmuffs shift. (Id. at 35).

ADM performed hearing testing on Runge. The first ADM hearing test in the record is from February 5, 1992. (JE 5, p. 116; Ex K, p. 60). It showed mild hearing loss in both ears. (Id.). The hearing test results were as follows:

LEFT EAR							RIGHT EAR						
500	1000	2000	3000	4000	6000	8000	500	1000	2000	3000	4000	6000	8000
10	15	40	50	40	30	98	15	25	50	40	35	25	98

(JE 5, p. 116; Ex K, p. 60).

ADM continued to test Runge's hearing yearly.[2] (See JE 5, pp. 118-119; Ex. K). The test results show a gradual progression in his bilateral hearing loss. The last hearing test provided by ADM is dated September 22, 2009. (JE 5, p. 119). The results were,

LEFT EAR							RIGHT EAR						
500	1000	2000	3000	4000	6000	8000	500	1000	2000	3000	4000	6000	8000
25	40	60	55	60	60	80	20	50	55	60	65	65	70

(JE 5, p. 119; Ex. K, p. 87). The record does not contain any hearing tests performed by ADM after 2009.

Runge had other noise exposures throughout his life. His medical records indicate he has had hearing problems since he was a child. (Ex. K, p. 55). He underwent a hearing test in 1987 at the Keokuk Area Hospital. (Ex. K, pp. 51-53). The 1987 test showed mild hearing loss in both ears except at the lowest tones. (Id.). The results were,

LEFT EAR						RIGHT EAR					
500	1000	2000	3000	4000	6000	500	1000	2000	3000	4000	6000
15	0	25	40	30	25	5	0/5	40	25	20	20

(Id. at 51). Runge was working for Ogilvie Mills in 1987. (Tr., p. 21).

In the last few years of his employment with ADM, Runge also received medical treatment for ear issues. On March 29, 2017, Runge was treated by Jennifer Berge,

[2] The exhibits contain a hearing health history form filled out by Runge on June 2, 1998. (JE 5, p. 115). It indicates that ADM previously tested his hearing in 1997 and found a loss in both ears. (Id.). It also indicates Runge suffered from ringing in his ears. (Id.).

M.D., at the Burlington Ear Nose and Throat (ENT) Clinic, for bilateral ear pressure. (JE 6, p. 120). According to the medical note, his symptoms began with an upper respiratory infection. (Id.). At this appointment, Runge also informed Dr. Berge that he had a long history of hearing loss and wanted to discuss hearing aids. (Id. at 123). Dr. Berge diagnosed him with bilateral middle ear infections. (Id.). Runge continued to experience pressure in his left ear, so on April 25, 2017, Dr. Berge inserted a drainage tube in his left ear. (Id. at 125, 127). Runge had a follow-up visit with Dr. Berge on May 2, 2018. (Id. at 129). At that time, he continued to complain of decreased hearing in his left ear. (Id.). Dr. Berge removed the tube from his left ear. (Id. at 132). On April 16, 2019, Runge returned to the Burlington ENT Clinic for impacted earwax and removal of a part of a Que-tip from his right ear. (Id. at 133-134). In the summer of 2019, he obtained bilateral hearing aids. (JE 7, p. 139). Runge returned to the Burlington ENT Clinic again on October 5, 2021, to have earwax removed. (JE 6, pp. 135-136). This is the last treatment note in the record from Burlington ENT Clinic. (Id.). In November 2021, Runge had his hearing tested at Iowa Audiology. (JE 7, p. 138). The test revealed mild sloping to severe sensorineural hearing loss in both ears with good word recognition. (Id.).

Runge testified that he began experiencing tinnitus 10 to 15 years ago. (Tr., p. 42). However, in health history forms filled out by Runge in 1998 and 2003, he indicated he suffered from ringing in his ears. (JE 5, pp. 115, 117). At the hearing, Runge described his symptoms as a constant rushing sound like water or loud machinery. (Tr., p. 42). He said the sound has gotten louder over time and bothers him the most at night when he tries to sleep. (Id. at 43). It wakes him up two to three times a week and leaves him fatigued during the day. (Id.). Runge did not seek any medical care for his tinnitus prior to his retirement from ADM.

The record is clear that Runge sustained hearing loss in both ears. He also experiences tinnitus in both ears. However, expert testimony is needed to determine Runge's permanent impairment from those conditions. The record contains two expert opinions. Runge has introduced the opinion of Richard Tyler, Ph D. (Cl Ex. 2, pp. 13-25). Defendants offer the opinion of Timothy Simplot, M.D. (Ex. C, pp. 9-15).

At the behest of his attorney, Runge had a phone interview with Dr. Tyler on September 29, 2022. (Cl Ex. 2, p. 13). Dr. Tyler also reviewed Runge's prior hearing tests and ENT records. (Id.). Dr. Tyler did not perform additional audiometric testing during this meeting. (See id. at 13-25). Dr. Tyler diagnosed Runge with occupational hearing loss and tinnitus. (Id.). Dr. Tyler opined that his exposure to high levels of damaging noise at ADM most probably caused these conditions. (Id. at 24-25). In this report, Dr. Tyler assigned Runge 48 percent permanent impairment for his work-related occupational hearing loss. (Id. at 24). He assigned an additional 21.8 percent

permanent impairment for tinnitus.[3] (Id. at 22, 24). Dr. Tyler recommended that Runge get new hearing aids every 4-5 years, as well as counseling and a sound therapy device for his tinnitus. (Id. at 24). He also suggested restrictions of no working around loud noises, no working in locations where noise levels are unpredictable, no working in dangerous environments where accurate concentration is required, and no working in stressful situations. (Id. at 24-25).

At the request of defendants, Runge underwent an evaluation with Dr. Simplot at the Iowa ENT Center on November 8, 2022. (Ex. C). An audiologist from Dr. Simplot's office performed a new hearing test on that date. (Id. at 9-10). A chart mapping the results of that test is contained in Dr. Simplot's report. (Id.). According to that test, the hearing loss in Runge's left ear had significantly progressed since April 2021, even though he was no longer working at ADM. (Id. at 11). Given this, Dr. Simplot decided to calculate Runge's permanent impairment utilizing his hearing test performed in November 2021 at Iowa Audiology. (Id.). That test found as follows:

LEFT EAR	RIGHT EAR
500 1000 2000 3000	500 1000 2000 3000
35 65 70 75	40 70 80 75

(Id. at 15; JE 7, p. 138).

Dr. Simplot's report also contains a copy of the age-related hearing loss figures contained in Iowa Administrative Rule 876-8.10 and his calculations utilizing those figures. (Ex. C, p. 15). Based on the November 2021 test results, Dr. Simplot assigned Runge 47.3 percent permanent impairment for his hearing loss after correcting for age. (Id). Dr. Simplot assigned an additional 5 percent permanent impairment for his tinnitus. (Id. at 12). Dr. Simplot causally related both Runge's hearing loss and his tinnitus to his employment at ADM. (Id.). He indicated Runge would benefit from continued use of hearing aids for both ears. (Id. at 14). Dr. Simplot disagreed with Dr. Tyler's suggestion of using both hearing aids and a sound therapy device. (Id.). He suggested a restriction of wearing hearing protection in all loud environments. (Id.).

Of the experts presented, I find Dr. Simplot to be the most convincing. Dr. Tyler did not actually evaluate Runge. (Cl Ex. 2, p. 13). Nor did he perform additional audiometric testing. (Id.). Finally, in his report, Dr. Tyler admits that he arrives at his permanent impairment ratings utilizing his own methods rather than those provided in the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (Id. at 19) (stating "Based on my knowledge and experience and considering all tinnitus patients I

[3] Dr. Tyler's report actually provides two different impairment ratings for Runge's diagnosed conditions. (Cl Ex. 2, p. 24). For the tinnitus, he assigned 87 percent whole body impairment and 21.8 percent whole body impairment. (Id.). He assigned 81 percent for 4, 6, 8 kHz hearing impairment and 48 percent for .5, 1, 2, 3 kHz hearing impairment. (Id.). However, Runge's post-hearing brief only references the 48 percent and 22 percent ratings, therefore, those are the ratings cited by the undersigned. (Cl Post-Hearing Brief, pp. 8-10).

have seen; I then assign my own severity rating for Mr. Runge."). Dr. Tyler explains that he does not use the AMA Guides to assign impairment because he does not think the authors of the guidelines fully appreciate the consequences of hearing loss and tinnitus. (Id. at 22).[4] In contrast, Dr. Simplot's ratings both comply with the AMA Guides and are supported by the evidence. Clearly, Runge suffers from tinnitus. Both experts agree on that. Runge has complained about tinnitus symptoms since 1998. (JE 5, p. 115). However, he was able to successfully perform his job at ADM and a review of his medical records fails to show any treatment for the myriad of conditions for which Dr. Tyler assigns impairment, such as inability to concentrate and emotional issues like anxiety and depression.

Dr. Simplot's opinion is supported by the hearing evidence, Runge's testimony, and his hearing tests over a thirty-year period. I accept Dr. Simplot's opinions as accurate with respect to the diagnosis of Runge's conditions and the level of compensable hearing loss pursuant to Iowa Code chapter 85B, as well as permanent impairment from tinnitus.

Runge voluntarily retired in April 2021. (Tr., pp. 29-30). At the time of his voluntary retirement, he was working full time—40 hours per week, but still using a walker because of his right leg injury. (Id.). At the hearing, Runge testified that he planned to work for a few more years but had to retire due to the August 2020 work injury. (Id. at 52-53). He stated that he loves working and would like to go back, but he is not sure what he can do. (Id.). Runge receives $895 a month in pension benefits from ADM. (Id. at 53).

Brian Cochran (hereinafter "Cochran") also testified at the hearing. (Tr., p. 88). He is a reliability engineer at ADM. (Id.). In 2017, Cochran was hired to be the superintendent for the Keokuk ADM plant. (Id.). He performed that job for approximately 18 months before being promoted to plant manager. (Id. at 89, 94). As the superintendent, Cochran oversaw all aspects of plant production. (Id. at 89). He interacted with Runge, but he was never his direct supervisor. (See id. at 89-90). Cochran testified that Runge was a dedicated and valued employee at ADM. (Id. at 90-91). He confirmed that Runge's description of the wet operator position was accurate and complete. (Id. at 92).

Cochran testified that Runge always wore hearing protection when he was on the plant floor, but it was not required, and Runge did not wear hearing protection in the control room. (Tr., pp. 93, 95). He confirmed that the wet process area of the plant was noisy and necessitated hearing protection. (Id. at 95). Cochran indicated that Runge told him about his plans to retire early in 2021, while he was still on light duty for his right leg injury. (Id. at 96). At his exit interview, Cochran asked Runge why he was retiring. (Id.). According to Cochran, Runge indicated that he and his wife were both

[4] Dr. Tyler's report acknowledges that the maximum rating for speech recognition problems under the AMA Guides is 5 percent whole-body impairment. (Cl Ex. 2, p. 22).

having health issues, and he wanted to spend more time with his grandkids. (Id. at 97, 99).

Runge is not currently working. He testified that he wanted to continue working in some capacity after his retirement from ADM, but it does not appear he has applied for any jobs since his last day of work.

CONCLUSIONS OF LAW

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

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

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).

When an expert's opinion is based upon an incomplete or incorrect 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 Co., 154 N.W.2d 128 (Iowa 1967); Bodish v. Fischer, Inc., 257 Iowa 516, 522, 133 N.W.2d 867 (1965). 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).

Based on the above findings of fact, I conclude the opinion of Dr. Woodbury is more accurate than that of Dr. Bansal, and I adopt it. Both doctors assign Runge 7 percent permanent impairment to the body as a whole for antalgic gait, citing to Table 17-5 of the AMA Guides. However, Dr. Bansal also gave Runge an impairment rating for loss of sensory discrimination in the superficial peroneal nerve. (Cl Ex., 1, p. 11). This rating does not comply with the AMA Guides. The explanation provided under Table 17-5 states, “The lower limb impairment percents shown in Table 17-5 stand alone and are not combined with any other impairment evaluation method.” AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, p. 529; see also, Klemme v. Team One Logistics, LLC, 2021 WL 5570368, File No. 1659543.01 (Arb. Decision, Nov. 22, 2021); Snyder v. Prairie View Management, Inc., 2019 WL 7759819, File No. 5061825 (Arb. Decision, Dec. 27, 2019). Dr. Bansal’s additional impairment rating does not comply with the AMA Guides. See 876 IAC 2.4.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or for loss of earning capacity under section 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is “limited to the loss of the physiological capacity of the body or body part.” Mortimer v. Fruehauf Corp., 502 N.W.2d 12 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of aftereffects 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 that determines whether the schedules in section 85.34(2)(a) - (u) 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). Where an injury is limited to a scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

While Runge has hip complaints, no doctor has opined that he has any permanent impairment to his hips. Given this, there is no evidence in the record showing he sustained permanent injury to his body as a whole, and no evidence that the anatomical situs of his compensable injury extends into his body as a whole. He has only proven permanent disability to his right lower extremity. According to Dr. Woodbury, a 7 percent whole body rating converts to 17 percent lower extremity impairment. (Ex. A, p. 3). I find Runge is entitled to 17 percent permanent impairment of the lower extremity, which is equal to 37.4 weeks of permanent partial disability benefits at the stipulated rate of $692.21. Benefits commence on May 19, 2021. Defendants, however, are entitled to credit for the 37.4 weeks of permanent partial disability benefits already paid prior to hearing.

Runge is also asserting a claim for hearing loss and tinnitus as a result of his work at ADM. Under Iowa Code section 85B.4(3), "occupational hearing loss" is defined as that portion of permanent sensorineural loss that exceeds an average hearing level of 25 decibels at the frequencies of 500, 1000, 2000 and 3000 Hz when "arising out of and in the course of employment caused by excessive noise exposure." "Excessive noise exposure" is defined as exposure to sound capable of producing occupational hearing loss. Iowa Code § 85B.4(1).

Iowa Code section 85B.5 provides a table establishing presumptive "excessive noise exposure" at various decibel levels tied to duration of exposure; for example, 8 hours per day at 90 dBA. There is no presumptive excessive noise exposure at levels below 90 dBA. The longest duration identified in the table is 8 hours. The table in section 85B.5, is not the minimum standard defining an excessive noise level in section 85B.4(2). The table in section 85B.5 lists noise level times and intensities which, if met, will be presumptively excessive noise levels of which the employer must inform the employee. See Muscatine County v. Morrison, 409 N.W.2d 685 (Iowa 1987). Runge provided evidence that his noise exposure exceeded the levels identified by the table in section 85B.5.

Defendants agree Runge sustained hearing loss and tinnitus injuries because of his work at ADM but dispute his level of permanent impairment from the injuries and the correct method of calculating that impairment. As detailed above, I accept the opinion of Dr. Simplot as the most accurate on the question of Runge's permanent impairment under the AMA Guides for these conditions.

Tinnitus is an unscheduled injury that is compensable under Iowa Code section 85.34(2)(v). See Chapa v. John Deere Ottumwa Works, 652 N.W.2d 187 (Iowa 2002); Ehteshamfar v. UTA Engineered Systems Div., 555 N.W.2d 450 (Iowa 1996). When an injury claim involves both an occupational hearing loss and tinnitus, the entire claim converts to an injury compensable under Iowa Code section 85.34(2)(v). Ehteshamfar, 555 N.W.2d at 453. Runge has proven both occupational hearing loss and tinnitus caused by noise exposure while working at ADM. Accordingly, I conclude that his claim

is compensable pursuant to Iowa Code section 85.34(2)(v). Iowa Code section 85.34(2)(v) states as follows:

> In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs "a" through "u" hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity. Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

In Hoefer v. Lennox, File No. 20003191.01 (App., June 20, 2023), the Commissioner determined that when an employee retires of their "own volition, not due to his hearing loss or tinnitus or any action by the employer," the employee's recovery for those hearing conditions is calculated functionally. Runge voluntarily retired in April 2021. He was not "terminated from employment" by ADM, neither is there any evidence that the defendant-employer took any adverse action against him which led him to resign, resulting in an involuntary discharge attributable to the employer. Id. Given this, Runge's recovery for the April 2, 2021 date of injury is limited to his functional loss.

For functional loss determinations, Iowa Code Section 85.34(2)(x) states:

> . . . when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of impairment pursuant to paragraphs "a" through "u", or

> paragraph "v" when determining functional disability and not loss of earning capacity.

The Workers' Compensation Commissioner has adopted the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001), for evaluating functional disability. 876 IAC 2.4.

I have accepted the opinion of Dr. Simplot. He assigned Runge 47.3 percent permanent impairment for his work-related hearing loss under the AMA Guides 5th edition. (Ex. C, p. 15). Dr. Simplot also assigned an additional 5 percent permanent impairment for his tinnitus. (Id. at 12).

Under Iowa Code section 85B.6, the maximum compensation payable for a total occupational hearing loss is 75 weeks. "For partial occupational hearing loss, compensation is payable for a period proportionate to the relation which the calculated binaural, both ears, hearing loss bears to one hundred percent, or total loss of hearing." Iowa Code § 85B.6. Dr. Simplot assigned Runge 47.3 percent permanent impairment for work-related hearing loss. (Ex. C, p. 15). Under Table 11-3, of the AMA Guides, a 47.3 percent binaural hearing impairment converts to a 16 percent whole person impairment. Using the combined values chart on page 604 of the AMA Guides, Runge has established he sustained 20 percent permanent impairment as a result of his combined occupational hearing loss and tinnitus, entitling him to receive 100 weeks of permanent partial disability benefits at the stipulated rate of $638.78. Benefits commence on April 1, 2021. Defendants, however, are entitled to a credit for the 11 weeks of permanent partial disability benefits already paid prior to hearing.

Runge also seeks an award of the costs outlined in claimant's exhibit 9. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 IAC 4.33; Iowa § Code 86.40. Administrative Rule 4.33 provides as follows:

> [c]osts 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, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Id.

Runge incurred costs for the filing fees for his petitions. (Cl Ex. 9, p. 88). Runge's claims are compensable. I conclude that it is reasonable to assess his filing fees pursuant to 876 IAC 4.33(7). Therefore, I assess costs totaling $200.60.

ORDER

THEREFORE, IT IS ORDERED:

In File No. 20009106.01, defendants shall pay Runge 37.4 (thirty-seven point four) weeks of permanent partial disability benefits at the stipulated rate of six hundred ninety-two and 21/100 dollars ($692.21) per week commencing on May 19, 2021. Defendants, however, are entitled to a credit for the 37.4 (thirty-seven point four) weeks of permanent partial disability benefits already paid prior to the hearing.

In File No. 22700080.01, defendants shall pay Runge one hundred (100) weeks of permanent partial disability benefits at the stipulated rate of six hundred thirty-eight and 78/100 dollars ($638.78) per week commencing on April 1, 2021. Defendants are entitled to a credit for the 11 (eleven) weeks of permanent partial disability benefits already paid prior to hearing.

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 pay costs of two hundred and 60/100 dollars ($200.60).

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

Signed and filed this 23rd day of August, 2023.

Amanda Rutherford

AMANDA R. RUTHERFORD
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Pothitakis (via WCES)

Peter John Thill (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.