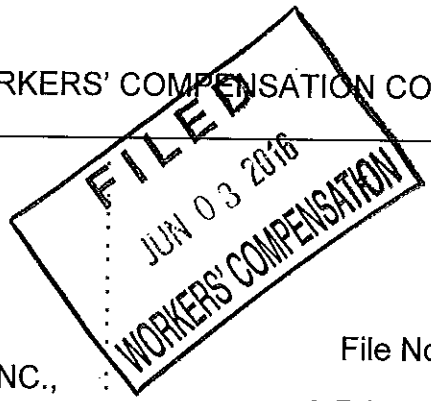
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



PAMELA ESCHER,

Claimant,

vs.

MERCY HOSPITAL IOWA CITY, INC.,

Employer,

and

INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5051740

ARBITRATION

DECISION

Head Note Nos.: 1803, 1806, 2907, 3202

STATEMENT OF THE CASE

Claimant, Pamela Escher, filed a petition in arbitration seeking workers' compensation benefits from Mercy Hospital Iowa City, Inc. (Mercy), employer, Insurance Company of the State of Pennsylvania, insurer, and the Second Injury Fund of Iowa (Fund), all as defendants. This case was heard in Cedar Rapids, Iowa on January 28, 2016 with a final submission date of March 4, 2016.

The record in this case consists of claimant's Exhibits 1-16, defendant Mercy and insurer's Exhibits A through P, and defendant Fund's Exhibits AA through EE, and the testimony of claimant.

ISSUES

1. Whether claimant sustained a right knee injury that arose out of and in the course of employment.

2. Whether the right knee injury is a cause of permanent disability.

3. The extent of claimant's entitlement to permanent partial disability benefits.

4. Claimant's entitlement to Second Injury Fund benefits.

5. The extent of the Fund's credit.

6. Whether apportionment under Iowa Code section 85.34(7)(b) is applicable.

In their post-hearing brief, defendant Mercy and insurer contend they were not liable for costs as detailed in claimant's Exhibit 15. This issue was not detailed as an issue in dispute in the hearing report. It was also not discussed as an issue in dispute during the course of the hearing. (Transcript pages 4-8). For that reason, costs will not be discussed as an issue in dispute in this decision.

FINDINGS OF FACT

Claimant was 64 years old at the time of hearing. Claimant graduated from high school. Claimant received her degree as an LPN in 1980 and as an RN in 1988. (Exhibit BB, p. 19)

From 1980 until approximately November of 1984 claimant worked as a nurse at Mercy. In November of 1984 claimant was laid off for approximately 16 months. During the layoff, claimant ran a quilting store. Claimant returned to work at Mercy in approximately March of 1986. (Tr. p. 11)

During her time at Mercy, claimant worked as a unit clerk, and as a nurse in the ICU, the OB department, and a surgical floor unit. Claimant also worked in utilization review. From approximately 2002 through 2004 claimant had concurrent employment with the University of Iowa Hospitals and Clinics (UIHC) in the surgical unit. From 1999 through 2011 claimant also worked as a clinical instructor for Kirkwood Community College. (Ex. BB, pp. 20-21)

Claimant injured her right knee on August 28, 2000. On November 16, 2000 claimant underwent a right arthroscopic surgery. (Ex. 3, p. 7) In October of 2004 claimant was found to have a 15 percent permanent impairment to the right knee. (Ex. H, p. 30)

On March 19, 2004 claimant fell and injured both knees and her left shoulder. (Ex. 6, p. 1) In March of 2006 claimant had left knee pain that occurred while restraining a patient. (Ex. 5, p. 15) On May 8, 2006 claimant underwent bilateral knee surgery that involved shaving the patellofemoral joint and anterior medialization of the tibial tubercles. (Ex. 1, p. 8; Ex. 3, p. 19) Claimant was assessed as having a 7 percent permanent impairment to both knees. (Ex. M, p. 82)

On September 14, 2011 claimant was getting out of an ambulance when she fell and landed on her left knee. (Ex. 6, p. 11)

On September 16, 2011 claimant began a new job at Mercy as a utilization review coordinator. Claimant testified she took the job as it required less standing and walking.

On September 21, 2011 claimant was evaluated at the Mercy Hospital Emergency Room. Claimant had pain and swelling in the left knee. Claimant was assessed as having soft tissue injury over the left knee. (Ex. 6, pp. 9-15)

On September 22, 2011 claimant was seen by Sarvenaz Jabbari, M.D. for left knee pain. Claimant was told to treat with ibuprofen. Claimant was allowed to work 50 percent of the day as needed and 50 percent sedentary. (Ex. K, pp. 63-68)

Claimant returned in followup with Dr. Jabbari on November 23, 2011. Claimant was assessed as having chronic knee pain. She was returned to work at regular duty on November 28, 2011. (Ex. K, pp. 73-74)

Claimant testified at hearing that sometime in January of 2012 she returned to full duty. (Tr. p. 82)

On February 28, 2012 claimant was evaluated by Mark Mysnyk, M.D. Claimant indicated she was doing okay but that her left calf was tender. (Ex. 3, p. 24) In a March 23, 2012 letter Dr. Mysnyk found claimant had a 2 percent permanent impairment to the body as a whole for a left knee injury. (Ex. 3, p. 25)

Claimant testified she had left knee pain that caused her problems with focus and concentration. She testified after a supervisor reported a mistake to her, while she was performing a utilization review, claimant told her supervisor she needed to take time off and see Dr. Mysnyk. (Tr. pp. 15-18)

On May 23, 2012 claimant took off for family medical leave (FMLA) for pain in both knees. (Ex. C, pp. 7-11) In a May 30, 2012 letter claimant was approved for FMLA leave. (Ex. C, p. 12)

On July 9, 2012 claimant had a bilateral total knee replacement (TKR). Surgery was performed by Dr. Mysnyk. (Ex. 3, p. 29; Ex. 6, pp. 16-18; Ex. L, p. 75)

On September 7, 2012 claimant was found qualified for discretionary leave by Mercy. Claimant's leave was extended to October 3, 2012. (Ex. 13, p. 3)

On October 4, 2012 claimant was terminated from Mercy. Correspondence from Mercy indicates because claimant did not return to work after discretionary leave was granted, claimant was considered to have resigned her job. (Ex. 13, p. 5)

Claimant testified she expected to return to Mercy after healing from her bilateral total knee replacements. (Ex. O; Deposition pp. 70-71)

Claimant testified she wanted to go back to work at Mercy in October 2012, but she was unable to find work at Mercy within her restrictions. Claimant said Mercy did not have any work for her within her temporary restrictions from October 2012 through December of 2012. (Tr. pp. 32-36)

On February 20, 2013 claimant underwent a functional capacity evaluation (FCE), performed by Mike Lanaghan, PT. Claimant was found to have given consistent effort. Based upon the FCE, Physical Therapist Lanaghan found claimant could return to work in an 8-hour day if allowed to sit when needed, and if claimant was not on her feet for more than 45 minutes to 1 hour at a time. (Ex. 2)

In a March 22, 2013 note, Dr. Mysnyk opined claimant could return to work if her restrictions, as outlined in the FCE, were met. Claimant was found to be at maximum medical improvement (MMI) as of July 26, 2013. (Ex. 3, p. 39)

In a December 1, 2013 note Dr. Mysnyk found claimant had a 50 percent permanent impairment to the left lower extremity. (Ex. 3, p. 39)

In a July 28, 2015 report, Mark Taylor, M.D. gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant had constant pain in both knees. Claimant's pain was greater in the left knee. Dr. Taylor found claimant's September 14, 2011 injury aggravated claimant's preexisting left knee condition and was the cause of claimant's left knee treatment and impairment. He found claimant had a 50 percent permanent impairment to the left knee. Dr. Taylor was unable to state within a reasonable degree of medical certainty that her right knee treatment and impairment was due to the September of 2011 injury. He found claimant's right knee condition was preexisting. He found claimant had a 50 percent permanent impairment to the right knee. (Ex. 1)

Dr. Taylor recommended claimant have restrictions for both knees. He recommended claimant be allowed to sit or stand when needed. He recommended claimant only stand or walk 45-60 minutes at a time. He recommended she also avoid kneeling, crawling, and climbing ladders. (Ex. 1)

Claimant testified, at hearing, she qualified for Social Security disability benefits in 2015. She said she had claimed disabling conditions in her application that included degenerative joint disease, hyperthyroidism, insomnia, and chronic urinary tract infections. (Ex. CC, p. 24; Tr. pp. 85-86)

In a December 23, 2015 report Rene Haigh, MS, CRC, gave her opinions of claimant's vocational opportunities. Ms. Haigh opined claimant could obtain and maintain employment in the medium physical level category. Ms. Haigh performed a labor market survey in claimant's geographic area and located approximately nine jobs she believed claimant could perform. (Ex. AA)

Claimant testified she stopped working in May of 2012, as her knees hurt and caused her difficulty with focus and concentration at work. She testified she looked for jobs at Mercy between October and December of 2012. Claimant testified she voluntarily resigned from Kirkwood in December of 2011. She testified she has not looked for any work after February 2013. (Tr. pp. 84-86) Claimant testified she did not believe she could function as a nurse given her limitations with her knees. At the time of hearing claimant did not have a valid nurse's license.

Claimant testified she has pain in both knees, left worse than right. She testified activity and weather aggravated pain in her knees. Claimant testified she still does housework, but it takes her a long time given her limitation in her knees. She testified she has difficulty with driving due to her knee condition.

Claimant said she can stand for up to an hour. She said she can only stand 3-4 hours during the course of a day. She said she uses a scooter when going grocery shopping. Claimant testified balance has become worse because of her knee condition.

Claimant testified she still does housework, but it takes longer due to her condition. She said she had to move to a different house, as she has difficulty climbing stairs.

Claimant testified her claim for her September of 2011 injury involves only her left knee.

CONCLUSIONS OF LAW

The first issue to be determined is did claimant have a right knee injury that arose out of and in the course of employment on September 14, 2011.

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

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

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

The Iowa Supreme Court has held that "where an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident." Oldham v. Schofield & Welch, 266 N.W. 480, 482 (1936). The Court explained as follows:

> If an employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable. Where an employee suffers a compensable injury and thereafter returns to work and, as a result thereof, his first injury is aggravated and accelerated so that he is greater disabled than before, the entire disability may be compensated for." Id. at 481.

Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012).

A sequela can also take the form of a secondary effect on the claimant's body stemming from the original injury. For example, where a leg injury causing shortening of the leg in turn alters the claimant's gait, causing mechanical back pain, the back condition can be found to be a sequela of the leg injury. Fridlington v. 3M, File No. 788758, (Arb. November 15, 1991).

Claimant testified at hearing she was not claiming her right knee condition was caused or materially aggravated by her fall of September 2011. (Tr. p. 59; Ex. O, pp. 22-23; Ex. D, p. 15-16)

Dr. Taylor opined he was unable to give a causation opinion linking claimant's right knee treatment and impairment to the September 14, 2011 injury to the left knee. (Ex. 1, p. 11) No expert has opined claimant's right knee injury was caused or was materially aggravated by the left knee injury of September 14, 2011. No expert has opined claimant's right knee injury is a sequela of the left knee injury of September 14, 2011.

I appreciate the Fund's position that claimant's right knee injury was a sequela to the left knee injury of September 2011. However, as noted, claimant indicated in deposition, in responses to discovery, and in testimony at hearing, that the September of 2011 injury only involved the left knee. Dr. Taylor specifically opined he could not find a causal link between treatment and impairment of the right knee and the 2011 injury. No other expert has opined claimant's right knee injury was caused or materially aggravated by the September of 2011 left knee injury. No expert has opined the right knee injury is a sequela to the left knee injury. Given this record, the Fund has failed to carry the burden of proof the right knee injury arose out of and in the course of employment from the incident of September 14, 2011.

As it is found claimant's right knee injury did not arise out of and in the course of employment from the September of 2011 injury, the issue regarding claimant's permanent disability to the right knee in regards to a September of 2011 injury is also considered moot.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits for her left knee injury.

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).

Both Dr. Mysnyk and Dr. Taylor opined claimant had a 50 percent permanent impairment to the left lower extremity as a result of the September of 2011 injury. There is no contrary opinion. Based on this, claimant is due 110 weeks of permanent partial disability benefits for the left knee injury (50% x 220 weeks).

The next issue to be determined is if claimant has proven entitlement to Fund benefits.

Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978);Iowa Practice, Workers' Compensation, Lawyer and Higgs, section 17-1 (2006).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

Claimant had a first knee injury in 2006 to the right knee and was found to have a permanent impairment to the right knee. (Ex. 1, p. 11; Ex. 5, p. 4; Ex. 4; Ex. H, p. 30; Ex. N, p. 82)

Claimant had a second knee injury to the left knee in September of 2011. Claimant was found to have permanent impairment to the left knee. (Ex. 1, p. 10; Ex. 3, p. 39)

Given this record, claimant has carried her burden of proof she qualifies for Fund benefits.

The next issue to be determined is the extent of claimant's entitlement to benefits from the Fund.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature

intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

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

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

A loss of earning capacity due to voluntary choice or lack of motivation to return to work is not compensable. Copeland v. Boone Book and Bible Store, File No. 1059319 (App. November 6, 1997); Snow v. Chevron Phillips Chemical Co., File No. 5016619 (App. October 25, 2007). See Also Brown v. Nissen Corp., 89-90 IAWC 56, 62 (App. 1989) (no prima facie showing that claimant is unemployable when claimant did not make an attempt for vocational rehabilitation)

Claimant was 64 years old at the time of hearing. Claimant has spent most of her work life as a nurse and instructor. She also worked for a short period in utilization review at Mercy.

Claimant had a bilateral total knee replacement. Two experts have opined regarding the permanent impairment to claimant's left knee. As noted above, both Dr. Mysnyk and Dr. Taylor found claimant had a 50 percent permanent impairment to the left lower extremity. Dr. Taylor has also found claimant has a 50 percent permanent impairment for the right knee problems that were "pre-existing." (Ex. 1, p. 11)

Claimant had an FCE that limited her to lifting to 20 pounds occasionally. The FCE also found claimant could work an 8-hour day if allowed to sit when necessary, and that limited claimant to being on her feet no longer than 45 minutes to1 hour at a time. Claimant was also limited by Dr. Taylor in bending, squatting, and climbing. (Ex. 1)

Claimant has been found by the Social Security Disability Determination Services to be disabled, as that term applies to the Federal Social Security Act. The law of the Federal Social Security Act is different from the law of the Iowa Workers' Compensation Act. As noted in the finding of facts, claimant applied for Social Security disability benefits based upon several conditions. The letter finding claimant is disabled under the Social Security Disability Act is not in evidence, and it is unclear what conditions were considered in finding claimant disabled under the Social Security Act. The

findings of the Social Security Disability Determination Services are found to be useful in determining claimant's industrial disability, but are not controlling.

The record indicates claimant left her job with Mercy on her own, as she was unable to concentrate due to knee pain. No doctor has told claimant she cannot work within the restrictions suggested in the FCE. No doctor took claimant off of work. The FCE suggests claimant could return to an 8-hour work day if the restrictions would be applied. (Ex. 2, p. 2)

Claimant testified she has not looked for work since February of 2013. (Tr. pp. 84-86)

A vocational expert, Ms. Haigh, opined claimant could return to work and is employable, and could maintain employment in the medium physical demand category. Ms. Haigh also identified a number of jobs claimant could perform within her geographic labor market. Claimant does suggest some of Ms. Haigh's job suggestions are questionable. (Claimant's post-hearing brief, pp. 11-13) However, no vocational expert rebutted the opinions of Ms. Haigh. In short, Ms. Haigh's report is the only expert vocational opinion in the record regarding claimant's job opportunities.

Claimant has a 50 percent permanent impairment to both lower extremities. She has limitations that would prevent her from returning to work as a nurse. An unrebutted FCE found claimant could return to work within restrictions. That opinion is collaborated by the opinion of Ms. Haigh. Claimant has made no effort to find employment since February of 2013. When all relevant factors are considered, it is found claimant has a 60 percent industrial disability or loss of earning capacity.

Using the same factors as detailed above, claimant is also found not to be an odd-lot employee.

The next issue is the credit due to the Fund. As noted, claimant was found to have a 50 percent permanent impairment for the second injury to the left lower extremity. Claimant contends the Fund is due 7 percent, or 15.4 weeks credit, in regards to the first injury. (Claimant's post-hearing brief, pp. 13-14)

However, claimant's own IME expert found claimant had a 50 percent permanent impairment to the right lower extremity. (Ex. 1, p. 11) Dr. Taylor notes he could not opine claimant's right knee condition was caused by the September of 2011 left knee injury. He also notes claimant's ". . . right knee issues were pre-existing." (Ex. 1, p. 11) (See also claimant's post-hearing brief, pp. 4-5)

Claimant contends, in her brief, the reason she has a high industrial disability is due, in part to the fact she has a 50 percent permanent impairment to both lower extremities. (Claimant's post-hearing brief, pp. 5, 10) As detailed above, claimant's permanent impairment to the right knee is considered in determining claimant's industrial disability. It is unclear how industrial disability can be based, in part, on

claimant having a 50 percent permanent impairment for pre-existing right knee injury, and yet grant the Fund credit for only 7 percent for the first right knee injury.

Claimant has a right knee condition that qualifies as a first injury for the purposes of Second Injury Fund benefits. Dr. Taylor found claimant had a 50 percent permanent impairment to the right knee. Dr. Taylor opined claimant's condition is due to her pre-existing condition. Claimant contends she has a high industrial disability due, in part, to a 50 percent permanent impairment to the right lower extremity. Based on this, the Fund is due a credit of 110 weeks for the first injury to the right lower extremity.

The Fund is liable for the industrial disability that exceeds the disability to the first and second injuries. Claimant is found to have a 60 percent industrial disability, or loss of earning capacity. The Fund is due a credit of 220 weeks (220 x 50% x 2). Based on the above, claimant is due 80 weeks of Fund benefits (500 weeks x 60% - 220 weeks).

The final issue to be determined is if apportionment under Iowa Code section 85.34(7)(b) applies regarding the defendant-employer's liability. Claimant indicated in a brief she believes defendant Mercy and insurer are due a credit for 7 percent paid for claimant's left knee injury of 2006. (Claimant's post-hearing brief, p. 13) As claimant has stipulated apportionment applies in this situation, defendant Mercy and insurer shall be given a credit for the 7 percent paid in 2006 for claimant's left lower extremity injury.

ORDER

THEREFORE IT IS ORDERED:

That defendant Mercy and insurer shall pay claimant one hundred ten (110) weeks of permanent partial disability benefits for the left knee injury of September 2011 at the rate of eight hundred seventy-three and 47/100 dollars ($873.47) per week commencing on July 26, 2013.

That defendant Mercy and insurer shall be given a credit, under Iowa Code section 85.34(7)(b), as detailed above.

That defendant shall pay interest on unpaid weekly benefits as ordered above and as set forth in Iowa Code section 85.30.

That defendant Mercy and insurer shall receive a credit for any permanent partial disability benefits previously paid.

That defendant Fund shall pay claimant eighty (80) weeks of Fund benefits at the rate of eight hundred seventy-three and 47/100 dollars ($873.47) per week commencing two hundred twenty (220) weeks after July 26, 2013.

That defendant Mercy and insurer shall file subsequent reports of injury as required under rule 876 IAC 3.1(2).

That defendant Mercy and insurer shall pay the costs of this matter detailed in Exhibit 15 as required under rule 876 IAC 4.33. The Fund shall not be liable for costs in this matter. Second Injury Fund of Iowa v. Greenman, No. 05-0855 (Iowa Ct. of Appeals, October 25, 2006) Unpublished, 725 N.W.2d 658 (Table).

Signed and filed this 3rd day of June, 2016.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.