BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAVID SCOTT MILES, Claimant, vs. CITY OF DES MOINES, Employer, Self-Insured, Defendant.	:	File Nos. 5048896, 5048897 5048898, 5048899 APPEAL DECISION Head Note No: 1108, 1803

FILED
JUN 14 2017
WORKERS' COMPENSATION

Defendant City of Des Moines, self-insured employer, appeals from an arbitration decision filed on February 5, 2016, in the four above-referenced files. Claimant David Scott Miles cross-appeals in one file, No. 5048898. The four claim files were consolidated and heard on August 13, 2015, and the case was considered fully submitted in front of the deputy workers' compensation commissioner on November 6, 2015.

In File No. 5048896, alleged injury date of November 29, 2012, the deputy commissioner found claimant sustained a cumulative trauma injury to his left knee and awarded claimant 22 weeks of permanent partial disability (PPD) benefits for a ten percent permanent functional loss of use of the left leg. The deputy commissioner also awarded claimant five weeks of healing period benefits commencing January 6, 2014, and three weeks of healing period benefits commencing April 14, 2014, for the November 29, 2012, work injury.

In File No. 5048898, alleged injury date of April 17, 2013, the deputy commissioner found claimant sustained cumulative trauma injuries to both ankles and awarded claimant 8.8 weeks of permanent partial disability benefits for a two percent permanent functional loss of use of each leg. The deputy commissioner also awarded claimant one and two-sevenths weeks of healing period benefits commencing March 19, 2015, for the April 17, 2013, work injury.

In File No. 5048899, alleged injury date of December 20, 2013, the deputy commissioner found claimant sustained a traumatic injury to his low back and right hip, taking the injury into the body as a whole. The deputy commissioner awarded claimant 45 percent industrial disability, which entitles claimant to 225 weeks of permanent partial industrial disability benefits commencing July 2, 2015.

In File No. 5048897, alleged injury date of April 5, 2013, the deputy commissioner found claimant failed to carry his burden of proof that he sustained a cumulative trauma injury to his back. The deputy commissioner awarded claimant nothing for this claim.

In the four files combined, the deputy commissioner found claimant is not entitled to an award of penalty benefits for any of the alleged injuries and the deputy commissioner ordered defendant to pay/reimburse claimant for the cost of the independent medical evaluation (IME) performed by Jacqueline Stoken, D.O., along with claimant's costs of the arbitration proceeding

In File Nos. 5048896 and 5048898, defendant asserts on appeal that the deputy commissioner erred in finding compensable injuries on November 29, 2012, and April 17, 2013.

In File No. 5048899, defendant admits on appeal that claimant sustained an industrial loss from the December 20, 2013, work injury. Defendant asserts the award of 45 percent industrial disability is excessive.

In File No. 5048897, defendant does not explain in its appeal brief why it appealed the denial of this claim.

On cross-appeal in File No. 5048898, claimant asserts the award for the April 17, 2013, injury is incorrect. Claimant asserts that award should have been 48.2 weeks of permanent disability benefits for an 11 percent loss of use of each leg. Claimant asserts the deputy commissioner misread the impairment ratings of Jacqueline Stoken, D.O., in making the award in this file.

Those portions of the proposed agency decision pertaining to issues not raised on appeal are adopted as a part of this appeal decision.

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

ISSUES ON APPEAL

I. Whether claimant sustained injuries on November 29, 2012, and April 17, 2013, which arose of out and in the course of his employment with defendant and, if so, the extent of claimant's entitlement to weekly benefits for those injuries.

II. The extent of claimant's entitlement to industrial disability benefits for the December 20, 2013, work injury

FINDINGS OF FACT

At the time of hearing the claimant was 55 years of age. (Transcript p. 13) Claimant left high school before completing the tenth grade. He does not have a GED. (Id.) At the time of hearing, claimant had been employed by defendant for 34 years. For the last 25 of those years, he was a full-time permanent employee. For the first nine years, he was a casual employee. (Id.) He was a full-time employee of defendant at the time of hearing. Prior to his employment with defendant, claimant was a laborer for a mowing company. (Tr, p. 14)

At the time of his alleged work injuries in this case, claimant was a plant field worker, a position he held for more than twenty years at a wastewater treatment plant operated by defendant. (Tr. pp. 17-18) A plant field worker drives and operates a variety of motorized machines and equipment such as end loaders, backhoes, tandem axle trucks, road graders, snow plows and Terre Gators, which are used to spread waste solids on farm fields. (Ex. A, p. 1) There are no particular physical requirements listed for the position in the job description other than the ability to drive, operate and maintain the equipment. (Id.) However, claimant and his co-workers who testified at hearing, Joseph Case and Brad Tingley, stated the job involves heavy work and repetitive/constant use of the upper and lower extremities over long work shifts, up to 12 hours, sometimes up to six and seven days a week, to operate controls located on the equipment such as foot pedals, climbing ladders to get into and out of cabs or seats on the equipment; and prolonged sitting, walking and standing. (Tr. pp. 19-25, 68-71, 75-77) Also, a significant portion of the work time is spent driving or operating equipment on rough terrain. The resulting bouncing around on the seat of the equipment places strain on the feet and legs to stabilize oneself to remain in a position to operate the machine. (Id.) Defendant's wastewater treatment manager's testimony at hearing did not dispute these assessments of the physical demands of the job. (Tr. pp. 80-88)

Due to physician-imposed work activity restrictions, claimant was assigned in April 2013 by defendant's management to perform the duties of a different position within the department, called a wastewater maintenance system specialist. (Tr. p. 37, Ex. B) This job has three functions: purchasing, receiving and warehousing. The job requires computer skills and the ability to lift and carry up to 70 pounds. (Ex. B, Tr. pp. 81-82) Claimant has remained in that job since April 2013. (Tr. pp. 37-38) Claimant testified he mostly does clerical work while sitting, such as simple data entry in this job. Although claimant is paid the higher hourly rate for the specialist job, he has not been officially transferred into that position and he retains the job title of plant field worker. Claimant and the two co-workers identified above testified at hearing that claimant is not performing all aspects of this job such as the more complicated purchasing tasks requiring more extensive computer software skills, some highly repetitive tasks, and heavy labor duty. (Tr. pp. 37-39, 71-73, 76-77) Even though he is paid a higher hourly rate doing the specialist's duties, claimant is making roughly 20-25 percent less income because he no longer earns overtime pay. A considerable amount of overtime was offered to him in the plant field worker job and overtime is offered to him in his current position. (Tr, p. 41; Ex. 16 & 17) However, claimant testified he rejects overtime work

in his current position because of his continued pain from the various work injuries alleged in this proceeding. (Tr. p. 41-47) Also, claimant does not meet the minimum education qualification for the wastewater maintenance system specialist, job as the job description states a high school degree is required. (Ex. B)

The wastewater treatment manager testified the specialist job is similar to the field worker job, but with not as much equipment operation and with more paper work. The manager did not quarrel with the testimony concerning claimant's limited performance in the specialist position and explained that claimant was placed in this job initially as an accommodation for physician-imposed work restrictions. When those restrictions were lifted, management decided to keep claimant in that capacity as the arrangement was working out well. (Tr. pp 84-88) The manager admitted claimant was not up on his computer skills. (Id.)

In this proceeding, claimant alleges cumulative injuries to his knees and hips on November 29, 2012 (File No. 5048896), a cumulative injury to the low back on April 5, 2013 (File No. 5048897), cumulative injuries to both ankles on April 17, 2013 (File No. 5048898); and, a traumatic injury to the back and right hip on December 20, 2013 (File No. 5048899). Defendant disputed all of those injuries at hearing according to the hearing report. However, defendant paid some medical benefits for those injuries and defendant paid weekly benefits for the asserted December 20, 2013, injury.

Claimant has a significant medical history relevant to his claims in this case. He underwent bilateral tarsal tunnel surgery in 2000 on both ankles by Robert Weatherwax, M.D., orthopedic surgeon. (Tr. p. 14) Claimant filed a workers' compensation claim for that medical condition, but it was denied by defendant and claimant did not pursue the matter further with this agency. (Tr. pp. 14-15) Claimant stated he was returned to regular duties following recovery from those surgeries and had no further problems performing his job over the next ten years or so. (Tr. p.15) However, claimant testified his bilateral ankle pain resumed ten or eleven months after the 2000 tarsal tunnel surgeries. (Tr. pp. 56-57)

On December 15, 2003, claimant sought treatment from a Mercy Clinic physician for low back pain that developed while hunting after dragging a deer out of a creek. He reported he had been seeing a chiropractor for this. (Ex. C) The Mercy Clinic doctor provided medications. (Id.) There are no further reports about this incident in the record.

On June 1, 2011, claimant felt a pop in his right knee while walking on rough ground. (Ex. 4, p. 71) After initial treatment failed and an MRI revealed a torn meniscus, claimant underwent meniscectomy surgery on the right knee on July 14, 2011, by Ian Lin, M.D., an orthopedic surgeon. (Ex. 4, pp. 71-76; Ex. 5, p. 80) Claimant filed a workers' compensation claim for the torn meniscus injury. The claim was accepted by defendant and claimant received medical treatment and weekly workers' compensation benefits for his time off work. (Tr. p. 16) He was released by Dr. Lin to

full duty on July 27, 2011, and he did not receive an impairment rating from Dr. Lin who noted no significant pain in his last office note for that injury. (Ex. 5, pp. 82-83)

Upon referral by a Mercy health provider, claimant saw Steven Craig, M.D., a rheumatologist, on August 30, 2011, about a month after returning to full duty work following the 2011 knee surgery. (Ex. 6, p. 109) Claimant complained to Dr. Craig that over the last 10-20 years he has developed slowly increasing myalgias and arthralgias in his lower extremities, extending from the knee down to the tips of his toes. (Id.) The pain is relatively constant, but can also occur in acute attacks. Claimant also has occasional hip pains. (Id.) He added that he is particularly troubled early in the morning with pain as high as 10/10. (Id.) He explained that increasing activity throughout the morning will loosen him up, but he also has problems with work and using the pedals operating machinery exacerbates his pains. (Id.) Dr. Craig did not see evidence of autoimmune connective tissue disease or inflammatory arthritis and was not convinced that degenerative changes were responsible for his pain. (Ex. 6, p. 110) Dr. Craig's assessment was myofascial pains, but he proceeded with a complete workup and prescribed a trial of gabapentin. (Ex. 6, p. 111)

Claimant returned to Dr. Craig on October 11, 2011, reporting the gabapentin was not helping. (Ex. D, p. 21) The doctor's office note on that date also stated claimant told Dr. Craig he had been reading about fibromyalgia and felt this condition describes much of what he is experiencing. (Id.) Dr. Craig then prescribed Cymbalta. (Id.) Over the next several months, Dr. Craig tried a number of other medications, but claimant reported none improved his condition. (Ex. D, pp. 11-20) Dr. Craig's notes described the remaining office visits as follow-up for fibromyalgia, but he never reported a diagnosis of that condition. (Id.) Dr. Craig's final assessment on July 17, 2012, was myofascial pain syndrome and he stated he had nothing more to offer. Based on some limited research on the internet, it appears myofascial pain syndrome is not the same as fibromyalgia and those conditions are diagnosed and treated differently. (Ex D, p. 3) Dr. Craig did not provide any explanation for the cause of the pain syndrome in his office notes and there are no other reports in evidence from Dr. Craig after July 2012.

Claimant testified at hearing it was Dr. Craig's belief he had fibromyalgia. Claimant testified he never believed he had fibromyalgia. (Tr. p. 51) Claimant admitted reading about that condition, but stated he was asked to do so by Dr. Craig. (Tr. pp. 51-52) In any event, claimant stopped taking the mediation last prescribed by Dr. Craig due to its side effects. (Tr. pp. 55-56)

Claimant testified that in 2011, he would feel great in the morning, but as the day progressed his knee and ankle symptoms would get worse, but then he would recover or recoup at night and on weekends. However, in 2012, his pain would not subside at night or on weekends. (Tr. pp. 25-26) He was self-medicating with over-the-counter Aleve (presumably after ending the mediation prescribed by Dr. Craig), but claimant was taking far more that the recommended amount. (Id.) He was told by his family doctor, Steven Strang, D.O., to reduce his use of OTC medications. (Id.) Claimant then

filed his workers' compensation claims because his work was aggravating his pain. (Tr. p. 27)

Defendant then referred claimant to the Iowa Methodist Occupational Health and Wellness Clinic and claimant was first seen at that clinic on November 29, 2012, by Jon Yankey, M.D., an occupational medicine physician. Claimant reported to Dr. Yankey that he developed increased bilateral knee pain from the use of his feet to operate defendant's equipment. (Ex. 7, pp. 113-114) Claimant explained that the pain worsens during the course of the work day. (Id.) Dr. Yankey provided the date of injury as the same day of the office visit, November 29, 2012. Dr. Yankey provided claimant with medications and returned him to full duty work. (Id) Dr. Yankey indicated this was a work-related condition. (Id.)

Claimant returned to Dr. Yankey on December 12, 2012, reporting no change in his condition. (Ex. 7, pp. 115-116) Dr. Yankey felt this was probably mild arthritis, he injected claimant's knees with cortisone, and he continued to indicate this was a work-related problem. Dr. Yankey again did not restrict claimant from work. (Id.)

Dr. Yankey saw claimant for the last time on January 2, 2013, and he noted claimant's knee pain had decreased and was secondary to a flare-up of degenerative joint disease of the knees which was resolving. Dr. Yankey continued to indicate the problem was work-related. (Ex. 7, pp. 117-118) Claimant was release p.r.n. with no work restrictions. (Id.)

On February 26, 2013, claimant was seen by Richard Bratkiewicz, M.D., another occupational medicine physician at the same clinic as Dr. Yankey with continued complains of persistent knee and calf pain along with more ankle pain which was worse in the morning and which sometimes occurred during the day with overuse. (Ex. 7, pp. 119-120) Dr. Bratkiewicz noted claimant's treatment by Dr. Craig and he noted claimant stopped taking the medications prescribed by Dr. Craig. (Id.) Dr. Bratkiewicz reported he had reached an impasse and his office had nothing more to offer except referral to a rheumatologist, a route claimant did not want to take. (Id.) Dr. Bratkiewicz stated chronic pain management might be the next step and he referred claimant to a pain specialist. (Id.) Like Dr. Yankey, Dr. Bratkiewicz indicated the problem was work-related. (Id.) Unlike Dr. Yankey, Dr. Bratkiewicz restricted claimant to standing and walking only as tolerated. (Id.)

For reasons not explained in the record, claimant was not immediately referred to a pain specialist as recommended by Dr. Bratkiewicz. Instead, claimant was referred to Ian Lin, M.D., the orthopedic surgeon who operated on claimant's knee in 2011. Dr. Lin saw claimant on March 11, 2013. (Ex. 5, pp. 84-85) Claimant reported to Dr. Lin that he did well after the first knee surgery, but now had bilateral leg pain which extended from knee level to the ankles, but he did not believe this to be a knee problem. (Id.) He had pain in the mornings and pain using his ankles at work and he stated he had six years until retirement and wanted to work until then. (Id.) Dr. Lin reported his examination did not show the problem to be in claimant's back or his knees. Dr. Lin

stated claimant may have had some tendinitis in his lower extremities related to his job. (Id.) Dr. Lin's assessment was knee pain of unknown etiology, and he prescribed steroid medication to see if it would help. (Id.)

Claimant returned to Dr. Lin on March 27, 2013, reporting some improvement with the steroid medication helping the knee pain, but not the ankle symptoms. (Ex. 5, p. 86) Dr. Lin stated there was nothing more he could offer from an orthopedic standpoint, and he told claimant to return to his occupational medicine physician and maybe return to a rheumatologist. (Id.)

Following an EMG test, claimant returned to Dr. Bratkiewicz on April 5, 2013. Dr. Bratkiewicz felt claimant may have had a degenerative disc problem or canal stenosis in the spine, and he ordered an MRI. Dr. Bratkiewicz again stated this was work-related. (Ex. 7, p. 121) When the MRI report indicated modest degenerative disc disease with disc bulging, Dr. Bratkiewicz, on April 17, 2013, referred claimant again to a pain doctor for a possible epidural steroid injection (ESI). (Ex. 7, p. 125) Dr. Bratkiewicz provided an additional restriction at that time for claimant to avoid repetitive ankle flexion and extension movements. (Ex. 7, p. 126) Again, Dr. Bratkiewicz indicated this was work-related. (Id.)

On May 8, 2013, and May 31, 2013, M.S. Iqbal, M.D., a pain management specialist, administered epidural steroid injections which only provided claimant with temporary relief. (Ex. 8, pp.143-153) On June 3, 2013, Dr. Iqbal stated he was unsure of claimant's diagnosis and as such he did not know how to treat him. (Ex. 8, p. 151)

On referral from his family doctor, claimant was seen on July 1, 2013 by Cassim Igram, M.D., an orthopedic surgeon, to evaluate claimant's back. Dr. Igram stated it was not a back problem or anything related to a back problem and he had no further treatment to offer. (Ex. 9, pp. 154-157) Dr. Igram referred claimant back to the occupational doctors with no work restrictions. (Id.)

On August 1, 2013, Dr. Bratkiewicz sent a report to the insurance carrier serving as the third-party administrator for defendant. In that letter, Dr. Bratkiewicz stated while there already had been an extensive work-up of claimant, he recommended claimant be referred to a podiatrist to rule out tarsal tunnel syndrome and, if that condition was ruled out, he would refer claimant to a physiatrist or pain management specialist. (Ex. 7, pp. 130-132).

On August 21, 2013, claimant was seen by R.D. Lee Evans, D.P.M. with complaints of chronic medial ankle pain, with zingers into his foot and leg and up into the anterior shin area. Dr. Evens ordered repeat nerve conduction studies. (Ex. 5, p. 87). Claimant returned to Dr. Evans on August 27, 2013. The EMG study indicated tarsal tunnel syndrome only on the left, but Dr. Evans noted claimant had bilateral symptoms. (Ex. 5, p. 91) Dr. Lee then injected both ankles. (Id.)

Claimant returned to Dr. Evans on September 18, 2013, reporting the injections helped for only about eight days. (Ex. 5, p. 92) Another bilateral tarsal tunnel release surgery was discussed. (Id.) Based on the causation views of Dr. Evans which will be discussed later in this decision, defendant denied authorization and payment for any further treatment for the ankles by Dr. Evans in October 2013. (Ex. 13, p. 228) Apparently utilizing claimant's group health insurance, Dr. Evans, performed tarsal tunnel release surgery on claimant's right side on January 6, 2014, and the same surgery on claimant's left side on April 14, 2014. (Ex. 5, pp. 98, 104) Dr. Evans eventually released claimant back to full duty after each surgery. Those release dates were February 10, 2014, and May 5, 2014, respectively. (Ex. 5, 102, 105) There has been no further treatment of claimant for ankle pain.

Prior to the tarsal tunnel surgeries by Dr. Evans, claimant sustained his fourth alleged injury in this case on December 20, 2013, when he slipped and fell on ice and began complaining of increased acute low back and right hip pain. Defendants paid workers' compensation benefits for the hip and back pain related to that injury.

Claimant was first treated for the new hip and back complaints by Dr. Bratkiewicz on December 26, 2013. Dr. Bratkiewicz diagnosed right hip and low back strain, but he did not prescribe additional medications as claimant was already taking Tramadol and Dr. Bratkiewicz did not recommend additional work restrictions as claimant was performing only sedentary work. (Ex. 7, p. 135)

Claimant returned to Dr. Bratkiewicz on January 3, 2014. Dr. Bratkiewicz opted to delay physical therapy for the new complaints until after claimant's first tarsal tunnel surgery on the right side, which was scheduled for January 6, 2014. (Ex. 7, p. 137)

After starting physical therapy, claimant returned to Dr. Bratkiewicz on February 7, 2014, and the doctor recommended continued therapy and use of OTC medications.

On February 17, 2014, Dr. Bratkiewicz again recommended continued therapy, but refilled claimant's prescription for Tramadol. When claimant returned on March 3, 2014, and reported no improvement and was now walking with a limp, Dr. Bratkiewicz referred him to an orthopedist. Claimant remained on restrictions of minimal lifting and only sedentary work. (Id.)

On March 14, 2014, claimant was evaluated by Anthony Stark, D.O., a physical medicine and rehabilitation specialist. Dr. Start recommended additional injections into the knees, physical therapy for the hip and low back with a possible future injection therapy in the hip. (Ex. 9, 166). Work restrictions were maintained. (Id.) The knee injections were not approved by defendant. (Ex. 13, p.229)

Claimant returned to Dr. Bratkiewicz on March 21, 2014. (Ex. 7, p. 141) Dr. Bratkiewicz indicated there was not much more he could offer because he was not a long term pain management doctor. (Id.) Dr. Bratkiewicz prescribed the current restrictions of lifting no more than five pounds and only sedentary work. (Id.)

At his last visit with Dr. Bratkiewicz on April 10, 2014, claimant reported he was pursuing further care on his own. (Ex. 7, p. 142) Claimant had already seen Anadeep Kumar, M.D., another physical medicine and rehabilitation specialist, on April 3, 2014, for his right hip and back complaints from the December 13, 2013, fall at work. (Id.) Dr. Bratkiewicz stated in his office note he needed to talk to the insurance adjusters regarding what their reasoning was for denying care for claimant's knees. (Id.)

Claimant sought care for his knees on his own using his group health insurance with providers at Iowa Orthopedic Center, P.C. Claimant was first seen at Iowa Ortho by orthopedic surgeon, Craig Mahoney, M.D., on June 3, 2014. After obtaining insurance approval, Dr. Mahoney's PAC, Casey Howe, assessed underlying arthritis and he administered the injections recommended by Dr. Stark. (Ex. 9, p. 171) However, in a return visit on August 15, 2014, Howe reported claimant had little improvement of his knee pain. (Ex. 9, p. 172) Cortisone injections were then administered to both knees by Howe. (Ex. 9, p. 173) On September 19, 2014, claimant reported those injections helped for only about one week. (Ex. 9, p. 175) Dr. Mahoney felt more physical therapy was indicated, but he first wanted a consult with Scott Meyer, M.D., his partner.

Dr. Meyer evaluated claimant on September 26, 2014. Dr. Meyer felt claimant's symptoms were characteristic of patellofemoral pain syndrome, rather than underlying arthritis. (Ex. 9, p. 180) However, Dr. Meyer concurred with more physical therapy and the use of anti-inflammatories. (Id.) Also, an MRI of the left knee was ordered.

Claimant was next seen by Michael Clark, Dr. Meyer's PAC on December 8, 2014. Claimant reported his knee pain was unchanged, but he was able to hunt deer the preceding weekend. Dr. Meyer recommended a diagnostic knee arthroscopy and debridement of the left knee. The surgery was performed by Dr. Meyer on March 19, 2015. The post-operative diagnosis was left knee patellar chondromalacia grade 3 and medial femoral condyle grade 2-3 and plica syndrome. (Ex. 9, p. 188) The surgery was described as left knee arthroscopic plica excision, and arthroscopic chondroplasties of the patella and medial femoral condyles. (Id.) In a post-op visit on April 24, 2015, claimant reported to PAC Clark that his knee symptoms were acute and unchanged. (Id.) In his last visit, PAC Clark reported claimant still had underlying degenerative changes and would likely require cortisone injections and viscosupplementation in the future. (Ex. 9, p. 191) Claimant was sent to physical therapy to see how well he might do. (Id.) Claimant was released PRN. (Id.) The evidence does not show Dr. Meyer ever addressed causation for the conditions he treated.

As stated previously, Dr. Kumar evaluated claimant on April 3, 2014, for his hip and back complaints related to the December 20, 2013, fall injury. Dr. Kumar's assessment at that time was lumbar strain, possible lumbar radiculopathy, low back pain secondary to fall, right hip pain, degenerative disc disease with lumbar spondylosis at L5-S1, and osteoarthritis. Dr. Kumar outlined some possible treatment options, but requested another MRI to further evaluate the back before planning his care approach. (Ex. 10, p. 195) Current restrictions were maintained. (Id.)

On May 5, 2014, Dr. Kumar recommended additional medications and home exercises, but was still awaiting the MRI. On May 20, 2014, Dr. Kumar noted the lumbar spine MRI was negative and he raised claimant's restriction to lifting no more than 10 pounds, but claimant was to remain doing sedentary work with no driving. (Ex. 10, p. 200) Dr. Kumar recommended referral to an orthopedic surgeon for evaluation of claimant's hip pain and also possible injection therapy. (Id.) On June 2, 2014, Dr. Kumar administered trigger point injections into the lumbar spine, but these provided only "transient" relief. Home exercises and continued medications were prescribed. (Ex. 10, pp. 202-204)

On July 16, 2014, claimant was evaluated by Christopher Nelson, D.O., an orthopedic surgeon, for the hip pain from the December 20, 2013, fall. Dr. Nelson's impression was right hip flexor strain. (Ex. 5, p. 106) When claimant returned to Dr. Kumar on July 23, 2014, the doctor noted claimant was in physical therapy ordered by Dr. Nelson, but that fact is not reflected in Dr. Nelson's records in evidence.

Claimant returned to Dr. Nelson on August 27, 2014, who also noted claimant was in physical therapy and taking anti-inflammatories which were helping. (Ex. 5, p. 107) Dr. Nelson at this time released claimant to full duty work from the standpoint of his hip. (Id.) On September 3, 2014, Dr. Kumar reported claimant stated his hip pain was significant and impairing his ability to work. (Ex. 10, p. 208) Claimant also reported continued low back problems. (Id.) Dr. Kumar stated in his office notes that from his reading of Dr. Nelson's notes, claimant was at maximum medical improvement (MMI) for his hip and also for his low back. Dr. Kumar stated nothing else needed to be done and claimant should continue his medications and his home exercise program. (Ex. 10, p. 209) Dr. Kumar also stated as follows:

> I do not see any significant physical function impairments residual to his injuries in the absence of specific organic pathology or lesions in his diagnostic workup.

(Id.)

Claimant's last visit with Dr. Nelson occurred on October 8, 2014. Dr. Nelson reported claimant was approaching MMI and would return to work with no restrictions and need not return for follow-up. (Ex. 5, p. 108)

In his note for an office visit on October 13, 2014, Dr. Kumar essentially restated his statements contained in his previous office note, but he noted claimant's continued hip and back pain. (Ex. 10, p. 210)

In a letter to defendant dated January 2, 2015, Dr. Kumar responded to a letter from defendant he received the previous month which is not in evidence. In his response, Dr. Kumar noted both he and Dr. Nelson placed claimant at MMI, and while claimant continued to have low back pain, from an orthopedic standpoint claimant did not require permanent restrictions. (Ex. 10, p. 212) However, Dr. Kumar changed his

opinion regarding functional impairment. Dr. Kumar now opines that under the AMA Guides, Fifth Edition, claimant sustained five percent permanent impairment of the whole person as a result of the injury on December 20, 2013. (Id.) Dr. Kumar did not explain why he changed his opinion regarding permanent impairment.

On referral by Dr. Strang, claimant was seen on June 4, 2015, by Christian Ledet, M.D., a pain management specialist. Dr. Ledet noted the prior extensive workup of claimant's complaints and he stated further injections were not warranted at that time. Dr. Ledet suggested a trial of low dose naltrexone. (Ex. 18, p. 255)

On June 22, 2015, claimant reported no change in his condition and Dr. Ledet increased the dosage of naltrexone. (Ex. 18, p. 256) There are no further reports from Dr. Ledet in evidence.

At the request of his attorney, claimant underwent a functional capacity evaluation (FCE) by Charles Goodhue, M.S., on June 2, 2015. According to the evaluator, claimant gave a valid, maximum and consistent effort. From testing, the evaluator concluded claimant falls in the lower end of the U.S. Dept. of Labor's medium work category. (Ex. 2, p. 41) Recommended lifting limitations are as follows:

> Floor to waist is limited to 75 lbs. rarely, 55 lbs. occasionally, 35 lbs. frequently, and 20 lbs. constantly;
>
> Waist to overhead is limited to 50 lbs. rarely, 35 lbs. occasionally, 20 lbs. frequently, and 10 lbs. constantly;
>
> Horizontal is limited to 80 lbs. rarely, 60 lbs. occasionally, 40lbs. frequently, and 25 lbs. constantly; and,
>
> Push (static) is limited to 70 lbs. rarely, 55 lbs. occasionally, 40 lbs. frequently, and 25 lbs. constantly.

(Ex. 2, p. 42)

> Carrying is limited as follows:
>
> Right and Left carry limited to 60 lbs. rarely, 45 lbs. occasionally, 35 lbs. frequently, and 15 lbs. constantly;
>
> Front carry limited to 70 lbs. rarely, 55 lbs. occasionally, 40 lbs. frequently, and 25 lbs. constantly;

(Ex. 2, p. 44)

The FCE found Claimant is able to perform constant elevated work. Claimant should only engage in occasional bending, rotation, crawling, kneeling, crouching, standing and walking, (Ex. 2, pp. 45-46) He can sit frequently. (Ex. 2, p. 46) He can

climb stairs and ladders rarely. (Ex. 2, p. 47) The evaluator also stated claimant should be allowed to transition between sitting, standing and walking as tolerated and he should continue his home exercises. (Ex. 2, p. 41)

Also at the request of his attorney, claimant was evaluated on June 24, 2015, by Jacqueline Stoken, D.O., an occupational medicine specialist. Her report dated July 1, 2015, sets out a complete medical history. From her examination, her review of the medical records, and her review of a functional assessment questionnaire completed by clamant, Dr. Stoken opined claimant suffered work injuries to his lumbar spine, left knee, and bilateral ankles on November 29, 2012. (Ex. 1, p. 20) She rejects the diagnosis of reflex sympathetic dystrophy by Dr. Iqbal. (Id.) She provides the following impairment ratings using the AMA Guides, Fifth Edition:

> Lumbar injury: five percent permanent partial impairment of the whole person.
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> Left Knee Injury: ten percent impairment of the lower extremity;
>
> Bilateral Ankle Injuries: For each ankle: seven percent impairment of the lower extremity for extension of 0 degrees; two percent impairment of the lower extremity for inversion of 20 degrees; and two percent impairment of the lower extremity for eversion of 10 degrees.

(Ex. 1, p. 20)

Dr. Stoken goes on to adopt the Goodhue FCE results as claimant's permanent restrictions. (Ex. 1, p. 21)

Claimant's testimony concerning his current physical limitations is fairly consistent with the FCE results, which essentially prohibit him from returning to the job of Plant Field Worker. (Tr. pp. 43-47) He states his limitations also prevent him from doing all of the physical requirements for the job of wastewater maintenance system specialist. He believes his retention in that job is an accommodation by defendant for his work-related disability. (id.)

While his last authorized physicians do address his hip and back complaints following the December 20, 2013, fall injury, Drs. Nelson and Kumar removed all work restrictions, and his last occupational physician, Dr. Bratkiewicz, never removed his restrictions before his care was ended by defendant. Dr. Stoken recommends restrictions consistent with the valid FCE. The fact that defendant has not returned claimant back to the field worker job and condones his current partial performance in the specialist position is further evidence of claimant's current physical limitations.

Causation Opinions:

As noted above, the reports from authorized physicians Dr. Yankey and Dr. Bratkiewicz indicate the symptoms they were treating at the time (ankles, knees, low

back and right hip) were work-related. On September 20, 2013, Dr. Bratkiewicz specifically addressed causation stating as follows:

> He [claimant] desires to keep working under the present restrictions and he is hopeful that he can change his job position so that he does not aggravate his underlying chronic conditions, albeit work-aggravated and probably in my opinion work-related over the multiplicity of the years and the multiplicity of the repetitive trauma and requirements of his job description.

(Ex. 7, p. 133)

In reply to an inquiry from defendant's insurance adjuster as to whether the need for the tarsal tunnel surgeries was due to claimant's job duties or a pre-existing personal health condition, Dr. Evens stated as follows on October 2, 2013:

> I have been taking care of Mr. Miles for recurrent tarsal tunnel syndrome. Certainly, this would be a recurrent tarsal tunnel syndrome related to his original tarsal tunnel from several years ago.

(Ex. 5, p. 94)

In a letter to defendant's insurance adjuster dated October 28, 2013, Dr. Lin addressed causation of the bilateral knee condition as follows:

> As you know, I last saw Mr. Miles back in March 2013. At that point, I did not believe that his knee pain was a result of his original work injury. I think the causation may be rheumatologic in origin. I don't believe that his job caused him to have the knee pain.

(Ex. 5, p. 95)

In a letter drafted by claimant's counsel to Dr. Evans dated November 1, 2013, Dr. Evans agreed if "the Judge" found claimant was extensively using his feet to operate pedals on defendant's equipment and that such activity intensified claimant's ankle pain throughout the course of the day and by the end of the day, and claimant has a significant deterioration in his functionality, such activity likely materially aggravated, lighted up or accelerated his underlying pre-existing condition which then led to the necessity for his care and treatment. (Ex. 5, p. 96) In yet another letter to defense counsel dated January 6, 2014, Dr. Evans added as follows:

> The patient did require tarsal tunnel release on January 6, 2014. As to causation, I certainly am not being evasive in my responses, I am just not entirely sure as to the causation. I have not observed Mr. Miles working. He has talked to me about what duties are required of him and the job that he does at work.

> To a degree of medical certainty, I am unable to determine as to whether or not the patient's tarsal tunnel has any relevance to his work other than his legs are dependent during the day and he does run pedals periodically through the day.
>
> Certainly, a portion of his current problem would be preexisting as he had had tarsal tunnel in the past. At this point the patient may require ergonomic evaluation and Functional Capacity Examination to help establish causation.

(Ex. 5, p. 97)

Dr. Stoken causally relates all of the permanent impairments and restrictions involving the lumbar spine, left knee and bilateral ankles to the injury of November 29, 2012.

Injury Findings:

I find claimant suffered two work injuries. The first injury is a cumulative trauma injury to both ankles, knees and low back. The most logical injury or manifestation date is November 29, 2012, as initially found by Dr. Yankey and later found by Dr. Stoken. This was the time claimant realized his knee and ankle conditions were being aggravated by his work, he reported his injuries, and he initially received medical treatment from the authorized providers at Methodist Occupational Health and Wellness clinic, Drs. Yankey and Bratkeiwicz. While the knee and ankle problems are separate and were treated surgically at different times, they arose simultaneously from claimant's work activities for defendant. In making this finding, I did not find convincing the views of Dr. Lin concerning his evaluation of claimant in March 2013. Given his greater clinical experience and apparent greater knowledge of claimant's work activity, the opinions of Dr. Bratkeiwicz are more convincing. Also, Dr. Lin's statement that he did not believe the job caused knee pain is inconsistent with his office notation that the job may have caused some tendonitis. Turning to the views of Dr. Evans, one must admit they are somewhat confusing. However, overall, I interpret his views to mean a significant portion of claimant's ankle problems are work-related due to an aggravation of a prior ankle condition.

I find claimant suffered a second work injury on December 20, 2013. This was a single traumatic event, a slip and fall, which materially aggravated the lumbar spine portion of his November 29, 2012, injury. There is really no conflicting evidence and defendants are not challenging on appeal the finding of a work injury on December 20, 2013.

Impairment Findings:

I find the work injury of November 29, 2012, is a cause of permanent partial disability, not total disability. Using the ratings of Dr. Stoken for the left knee and left

ankle and the combined values chart in the AMA Guides, Fifth Edition, at page 604, I find the work injury of November 29, 2012, is a cause of a 20 percent permanent partial loss of use to the left leg, based on eleven percent impairment for the left ankle and ten percent impairment for the left knee. Again, using the same ratings and the AMA Guidelines chart, I find the work injury of November 29, 2012, also caused eleven percent permanent impairment of the right leg. As will be explained in the Conclusions of Law section below, the left and right leg impairment ratings are converted into a single body as a whole rating (eight percent and four percent) and again using the combined values chart, these ratings combine to result in a single body as a whole rating of 12 percent. Therefore, the work injury of November 29, 2012, is found to be the cause of a 12 percent permanent impairment of claimant's body as a whole. However, this is not an industrial loss but a combined scheduled loss as will be explained in the next section.

I do not include Dr. Stoken's rating for the low back in the findings of impairment for the November 29, 2012, injury because she did not indicate the impact, if any, on this rating due to the traumatic injury in December 2013. However, Dr. Stoken's rating of five percent of the whole person is the same as opined by Dr. Kumar. Dr. Stoken and Dr. Kumar only differ on permanent restrictions.

Therefore, based on the uncontroverted views of Dr. Kumar, I find the second work-related injury which occurred on December 20, 2013, is a cause of a five percent permanent impairment of the body as a whole. This is an industrial loss and consequently, we must address loss of earning capacity, if any, caused by this injury. It should be noted claimant's move to the wastewater maintenance specialist job occurred before his December 20, 2013, fall injury.

More troublesome is a finding of permanent restrictions caused by the December 20, 2013, work injury. Drs. Kumar and Nelson did not impose permanent restrictions, despite ongoing complaints of disabling pain from claimant which formed the basis of Dr. Kumar's impairment rating under the AMA Guides. Although we have a valid FCE, Dr. Stoken does not delineate which restrictions are due to the back and which are the result of the leg problems, as the walking and standing limitations outlined in the FCE could result from either of these injuries. I find the work injury of December 20, 2013, to be a significant contributor to the FCE restrictions on lifting, carrying, and sitting. Those restrictions prevent claimant from returning to the field worker job and to his past manual labor work. While the leg restrictions initially led to the reassignment of claimant's job, his post-December 20, 2013, condition likely contributed to the decision to retain claimant in the wastewater maintenance system specialist job. As a result of claimant's inability to perform overtime work, he has lost about 20 percent of his actual income. He likely cannot return to heavy manual labor. On the other hand, his hourly rate has increased and there does not appear to be much of a risk of claimant losing his current employment with defendant. I therefore find that the work injury of December 20, 2013, is the cause of 35 percent industrial disability.

CONCLUSIONS OF LAW

I. 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.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W. 2d 368 (Iowa 1985).

In this case, I find claimant carried his burden of proof and demonstrated by the greater weight of the evidence that he suffered cumulative trauma injuries to his left knee and his bilateral ankles on November 29, 2012, arising out of and in the course of employment with the City of Des Moines, Iowa.

II. 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).

A treating physician's opinions are not to be given more weight than a physician who examines the claimant in anticipation of litigation as a matter of law. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404.408 (Iowa 1994); Rockwell Graphic Systems, Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

The extent of claimant's entitlement to permanent disability benefits is determined by one of two methods. If it is found that the permanent physical impairment or loss of use is limited to a body member specifically listed in schedules set forth in one of the subsections of Iowa Code section 85.34(2)(a-t), the disability is considered a scheduled member disability and measured functionally. If it is found that the permanent physical impairment or loss of use is to the body as a whole, the disability is unscheduled and measured industrially under Code subsection 85.34(2)(u). Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983); Simbro v. Delong's Sportswear, 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

Industrial disability was defined in Diederich v. Tri-City Ry. Co., 219 Iowa 587, 258 N.W.2d 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. However, consideration must also be given to the injured workers' medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured worker's qualifications intellectually, emotionally and physically; the worker's earnings before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted; Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616, (Iowa 1995); McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Serv. Stores, 255 Iowa 1112, 125

N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

November 29, 2012, Injury:

I find in this case that claimant suffered a simultaneous permanent injury to both legs. Therefore, permanent disability benefits are awarded using Iowa Code section 85.34(2)(s). The presiding deputy incorrectly failed to apply that Code section simply because claimant did not assert application of that Code section. When there are simultaneous injuries to both legs, use of Iowa Code section 85.34(2)(s) is mandatory and not dependent on what is argued by the parties.

Under Iowa Code section 85.34(2)(s), this agency must first determine the extent of industrial disability or loss of earning capacity caused by the two simultaneous injuries. If there is a 100 percent or total loss of earning capacity, the clamant is entitled to permanent total disability benefits. If the injury causes a loss of earning capacity less than total or less than 100 percent, the extent of the permanent disability is measured only functionally as a percentage of loss of use for each extremity which is then translated into a percentage of the body as a whole and combined together into one body as a whole value. This can be done using the AMA guides. If the industrial disability is total or there is a total loss of earning capacity, then claimant is entitled to permanent total disability benefits under Iowa Code section 85.34(3). Simbro v. DeLong's Sportwear 332 N.W. 2d 886 (Iowa 1983); Burgett v. Man An So Corp., III Iowa Industrial Commissioner Reports 38 (App. November 30, 1982).

In this case, I find claimant has not suffered a total loss of earning capacity from this cumulative trauma injury. Consequently, claimant's entitlement to permanent disability benefits is measured functionally. Based upon the findings herein of a combined 12 percent impairment of the body as a whole as a result of the November 29, 2012, injury, claimant is entitled as a matter of law to 60 weeks of permanent partial disability benefits under Iowa Code section 85.34(2)(s) which is 12 percent of 500 weeks, the maximum allowable for a simultaneous injury to two extremities in that subsection. The presiding deputy found the weekly compensation rate for this injury date to be $725.89. This was not challenged on appeal by either party. The parties stipulated to a PPD commencement date of July 1, 2015.

December 20, 2013, Injury:

I find this injury has caused a five percent permanent impairment of the body as a whole, a nonscheduled loss of use. Consequently, this agency must measure claimant's loss of earning capacity as a result of this impairment.

A showing that claimant had no loss of his job or actual earnings does not preclude a finding of industrial disability. Loss of access to the labor market is often of paramount importance in determining loss of earning capacity, although income from continued employment should not be overlooked in assessing overall disability.

Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Bearce v. FMC Corp., 465 N.W.2d 531 (Iowa 1991); Collier v. Sioux City Comm. Sch. Dist., File No. 953453 (App. February 25, 1994); Michael v. Harrison County, Thirty-fourth Biennial Rep. of the Industrial Comm'r, 218, 220 (App. January 30, 1979).

Although claimant is closer to a normal retirement age than younger workers, proximity to retirement cannot be considered in assessing the extent of industrial disability. Second Injury Fund v. Nelson, 544 N.W.2d 258 (Iowa 1995). However, this agency does consider voluntary retirement or withdrawal from the work force unrelated to the injury. Copeland v. Boones Book and Bible Store, File No. 1059319 (App. November 6, 1997). Loss of earning capacity due to voluntary choice or lack of motivation is not compensable. Id.

A release to return to full duty work by a physician is not always evidence that an injured worker has no permanent industrial disability, especially if that physician has also opined that the worker has permanent impairment under the AMA Guides. Such a rating means that the worker is limited in the activities of daily living. See AMA Guides to Permanent Impairment, Fifth Edition, Chapter 1.2, p. 2. Work activity is commonly an activity of daily living. This agency has seen countless examples where physicians have returned a worker to full duty, even when the evidence is clear that the worker continues to have physical or mental symptoms that limit work activity, e.g. the worker in a particular job will not be engaging in a type of activity that would cause additional problems, or risk further injury; the physician may be reluctant to endanger the workers' future livelihood, especially if the worker strongly desires a return to work and where the risk of re-injury is low; or, a physician, who has been retained by the employer, has succumbed to pressure by the employer to return an injured worker to work. Consequently, the impact of a release to full duty must be determined by the facts of each case.

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 617 (Iowa 1995). However, an employer's special accommodation for an injured worker can be factored into an award determination to the limited extent the work in the newly created job discloses that the worker has a discerned earning capacity. To qualify as discernible, employers must show that the new job is not just "make work" but is also available to the injured worker in the competitive market. Murillo v. Blackhawk Foundry, 571 N.W.2d 16 (Iowa 1997)

A change or expected change in employee's actual earnings is strong evidence of the extent of the change in earning capacity. The factor should be considered and discussed in cases where the extent of industrial disability is adjudicated. Webber v. West Side Transport, Inc., File No. 1278549 (App. December 20, 2002) In his current position, claimant has declined to work overtime offered by defendant, but there is no

evidence in the record that any physician has indicated claimant should not work overtime.

As stated above, upon considering all of the factors which must be considered in analyzing industrial disability, I find claimant sustained industrial disability of 35 percent as a result of the December 20, 2013, work injury. Such a finding entitles claimant to 175 weeks of permanent partial disability benefits as a matter of law under Iowa Code section 85.34(2)(u), which is 35 percent of 500 weeks, the maximum allowable number of weeks for an injury to the body as a whole in that subsection.

The deputy commissioner found the weekly compensation rate for the December 20, 2013, injury to be $659.71. This was not challenged on appeal by either party. The parties stipulated to a PPD commencement date of July 2, 2015.

ORDER

IT IS THEREFORE ORDERED that the arbitration decision filed on February 5, 2016, is MODIFIED as follows:

Regarding File No. 5048896, injury date of November 29, 2014:

Defendant shall pay claimant five (5) weeks of healing period benefits commencing January 6, 2014, defendant shall pay claimant three (3) weeks of healing period benefits commencing April 14, 2014, and defendant shall pay claimant one and two-sevenths (1 2/7) weeks of healing period benefits commencing March 19, 2015, at the weekly rate of $725.89.

Defendant shall pay claimant 60 weeks of permanent partial disability benefits at the weekly rate of $725.89 commencing July 1, 2015.

Defendant shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendant shall be given credit for any benefits previously paid.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Regarding File No. 5048897, alleged injury date of April 5, 2013:

Claimant shall take nothing in this file.

Regarding File No. 5048896, alleged injury date of April 17, 2013:

Claimant shall take nothing in this file.

Regarding File No. 5048899, injury date of December 20, 2013:

Defendant shall pay claimant 175 weeks of permanent partial disability benefits at the weekly rate of $659.71 commencing July 2, 2015.

Defendant shall pay accrued weekly benefits in a lump sum together with interest pursuant to Iowa Code section 85.30.

Defendant shall be given credit for any benefits previously paid.

Pursuant to rule 876 IAC 3.1(2), defendant shall file subsequent reports of injury as required by this agency.

Regarding All Files

Defendant shall pay/reimburse claimant for the cost of Dr. Stoken's IME.

Pursuant to rule 876 IAC 4.33, defendant shall pay claimant's costs of the arbitration proceeding and the parties shall split the costs of the appeal, including the cost of the hearing transcript

Signed and filed this 14th day of June, 2017.

JOSEPH S. CORTESE II
WORKERS' COMPENSATION
COMMISSIONER

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