BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LUCAS SHIELDS,		File No. 5058560
Claimant,		ARBITRATION
vs.		DECISION
POLK COUNTY, IOWA,		
Employer, Self-Insured, Defendant.		Head Notes: 1402.30, 1801, 2502, 2701

FILED
AUG 23 2018
WORKERS' COMPENSATION

STATEMENT OF THE CASE

Claimant, Lucas Shields, filed a petition in arbitration seeking workers' compensation benefits from Polk County, Iowa, self-insured employer. This matter was heard on May 30, 2018 with a final submission date of June 20, 2018.

The record in this case consists of Joint Exhibits A through E, Claimant's Exhibits 1-11, Defendant's Exhibits A through J, and the testimony of claimant and Katherine Shields.

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 arbitration 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

1. Whether claimant sustained an injury that arose out of and in the course of employment.
2. Whether the injury is a result of a temporary disability.
3. The extent of claimant's entitlement to temporary benefits.
4. Whether claimant is due reimbursement for an independent medical evaluation (IME).

5. Whether claimant is entitled to alternate medical care under Iowa Code section 85.27.

At hearing the parties indicated defendant's credit was an issue in dispute. In a June 6, 2018 email, defendant indicated claimant and defendant had reached an agreement regarding the credit to be given to defendant. As a result, the issue of defendant's credit will not be discussed in this decision.

FINDINGS OF FACT

Claimant was 36 years old at the time of hearing. Claimant graduated from high school. Claimant has an AA degree from a community college in criminal justice. Claimant began working for Polk County as a jail detention officer in August of 2008.

As a detention officer, claimant was required to generally supervise and control inmates at the Polk County Jail. The job required claimant to participate in the physical restraint of inmates and to frequently use stairs, crawl, kneel and bend. The job also required claimant to complete physical testing that required claimant to run a quarter of a mile, carry a 150-pound dummy for 50 feet, and lift and hold a 165-pound dummy for 15 seconds. (Claimant's Exhibit 11)

On January 10, 2016 claimant injured his right knee while dealing with an inmate at the Polk County Jail. Claimant filed an injury report on the date of injury indicating he hit his right knee on concrete while restraining a prisoner. Claimant indicated on the report his knee was popping. (Claimant's Ex. 2)

On January 13, 2016 claimant was seen in urgent care for a right knee injury. Claimant was assessed as having right medial knee pain. Claimant was treated with medication. (Joint Ex. D, pp. 128-129)

On January 21, 2016 claimant was evaluated Timothy Vinyard, M.D. Claimant had right knee pain after hitting his right knee on concrete while assisting and dealing with an inmate. Claimant was assessed as having acute right knee pain. An MRI was recommended. (Joint Ex. A, pp. 1-2)

On January 23, 2016 claimant underwent an MRI of the right knee. It showed a Grade II patellar chondromalacia. Dr. Vinyard believed claimant had a bone contusion. Conservative treatment was recommended. (Joint Ex. A, pp. 7-8)

Claimant was evaluated by Eric Hedrick, PA-C on March 29, 2016. Claimant had continued and constant pain of the right knee. A second MRI was recommended. (Joint Ex. A, pp. 16-17)

A second MRI showed a full-thickness fissure of the cartilage overlying the median patellar ridge. Claimant was assessed as having chondromalacia of the right patella. Surgery was discussed and chosen as a treatment option. (Joint Ex. A, pp. 20-21)

In an April 13, 2016 letter Dr. Vinyard opined claimant's symptoms, which led to the consideration of surgery, were directly related to the January 10, 2016 work injury. (Joint Ex. A, p. 26)

On May 3, 2016 claimant underwent knee surgery consisting of right knee medial compartment chondroplasty. (Joint Ex. A, pp. 28-29)

Claimant underwent physical therapy to rehabilitate his knee following surgery. (Joint Ex. A, p. 30)

On June 8, 2016 claimant was seen in physical therapy with complaints of a sore right knee. Claimant was walking at the Ledges State Park for an hour and had knee pain. Claimant also complained of left hip soreness. (Joint Ex. A, p. 137)

Claimant was evaluated by Physician's Assistant Hedrick on July 20, 2016. Claimant complained of the knee popping and feeling like the knee had dislocated. An MRI was recommended. (Joint Ex. A, pp. 37-38)

An MRI of the right knee showed a partial-thickness chondral loss and mild patellar tendinosis. Claimant was recommended to continue with physical therapy. Viscosupplementation injections were also recommended. (Joint Ex. A, pp. 41-42)

On August 16, 2016 claimant had his first viscosupplementation injection. Claimant was limited to lifting 50 pounds. (Joint Ex. A, pp. 49-51)

In an August 23, 2016 letter Dr. Vinyard opined claimant suffered a significant right knee injury at work requiring, but not limited to, surgery, MRIs, and viscosupplementation. (Joint Ex. A, pp. 55-56)

Claimant returned to Dr. Vinyard on September 15, 2016. Claimant had ongoing right knee pain. Dr. Vinyard found claimant at maximum medical improvement (MMI). (Joint Ex. A, pp. 58-62)

On August 23, 2016 and September 21, 2016, claimant was evaluated by Philip Ascheman, Ph.D. for a psychological evaluation. Dr. Ascheman opined claimant initially had an adjustment reaction to his fear of being unable to do his job due to a knee injury. Dr. Ascheman found claimant was at MMI for the psychological issues. He opined claimant did not show evidence of a psychological condition that would interfere with his ability to continue his education or do his job. (Joint Ex. B, pp. 105-107)

On September 23, 2016 claimant underwent a functional capacity evaluation (FCE). Claimant was found to have given valid effort on the FCE. The FCE limited claimant to lifting 60 pounds waist to floor. It also found claimant was not able to crawl or kneel without use of mechanical support. (Ex. C)

In a December 6, 2016 note Dr. Vinyard found claimant had no permanent impairment due to his work injury relying on the AMA Guides to the Evaluation of

Permanent Impairment, Fifth Edition. He found claimant was unable to perform all the job tasks of the detention officer, particularly those that required claimant to crawl and kneel without the use of mechanical support. (Joint Ex. A, pp. 65-66)

In letters dated December 12, 2016 and January 26, 2017, Polk County notified the claimant that his temporary total disability benefits would cease as of February 26, 2017. This was because claimant was found to be at maximum medical improvement (MMI), but was unable to perform the essential functions of a detention officer. (Ex. 5, pp. 11-14)

Claimant was evaluated by Todd Harbach, M.D. on December 23, 2016. Claimant had persistent lower back pain starting approximately two months' prior. Claimant was assessed as having back pain with no radiation into the legs, and a significant antalgic gait following knee surgery. He opined claimant's knee problem led to a limp, and the limp aggravated claimant's preexisting degenerative condition in the lumbar spine. As a result, claimant's work injury affected his lumbar spine. Dr. Harbach indicated it would be difficult to improve claimant's back pain until resolution of his limp. (Joint Ex. A, pp. 67-68)

In a December 24, 2016 report Dr. Harbach gave his findings of claimant following exam. Claimant had lower back pain. Dr. Harbach indicated claimant's January 2016 right knee injury caused a significant gait problem, which resulted in a back problem. He noted again that as long as claimant continued to limp, it would be impossible to resolve his back pain. He noted claimant's back pain would probably resolve with resolution of the right knee pain. (Joint Ex. A, pp. 76-81)

Claimant returned in follow up with Dr. Harbach on January 20, 2017. Dr. Harbach again noted claimant's back pain was due to his right knee pain. (Joint Ex. A, pp. 83-86)

In a February 2, 2017 letter Dr. Harbach found claimant had no permanent impairment for his lower back. He found claimant was at maximum medical improvement for the lower back on January 20, 2017. He again noted it would be difficult to treat claimant for his lower back pain until resolution of his right knee pain. (Joint Ex. A, p. 89)

On February 23, 2017 claimant underwent a second FCE. Claimant was found to have given consistent effort. He was found to be able to work in the heavy category of work indicating claimant could lift up to 61 pounds from 16 inches to waist level. The FCE found claimant was employable. Claimant was limited to performing repetitive squatting, kneeling and crawling. Claimant also had difficulty negotiating stairs. (Claimant's Ex. 7)

Dr. Ascheman again evaluated claimant on February 14, 2017 and March 22, 2017. Claimant was again found to be at MMI regarding a mental condition. He found

claimant did not show any evidence of a psychological condition that would impact his ability to continue education or work. (Joint Ex. B, pp. 108-109)

In a March 9, 2017 letter claimant was terminated from his job as a detention officer, as the employer could not accommodate his permanent restrictions. (Claimant's Ex. 5, p. 15)

In a March 28, 2017 report, Irving Wolfe, D.O. gave his opinions of claimant's condition following an independent medical evaluation (IME). Claimant had ongoing right knee pain. Claimant had constant lower back pain. Claimant had difficulty doing household duties and yard care. Dr. Wolfe found that if claimant was found to be at MMI he had a 7 percent permanent impairment to the body as a whole for the right knee. He also opined claimant had a 2 percent permanent impairment to the body as a whole due to his back problems. The combined values resulted in a 9 percent permanent impairment to the body as a whole. (Claimant's Ex. 8, p. 53) Dr. Wolfe opined he did not believe claimant was at MMI. (Claimant's Ex. 8, p. 55)

Dr. Wolfe found claimant's injury at work caused his knee and back pain. He limited claimant to occasionally walking, using ladders, and stair climbing. He recommended claimant avoid crawling and squatting. (Claimant's Ex. 8, pp. 55-56)

In a May 17, 2017 report, Karen Stricklett, M.S., C.R.C., gave her opinion of claimant's employment opportunities. Based on his restrictions, education, and job experience, she opined claimant had an approximate 60 percent loss of earning capacity. (Claimant's Ex. 6)

In a May 30, 2017 letter Dr. Harbach disagreed with Dr. Wolfe that claimant required further pain management for his back. This is because claimant would continue to have back pain as long as he had his knee pain. (Joint Ex. 8, p. 92)

In a May 30, 2017 letter Dr. Vinyard indicated he had reviewed Dr. Wolfe's IME report. Dr. Vinyard believed claimant was assigned an inappropriate impairment rating because Dr. Wolfe did not find claimant at MMI. (Joint Ex. A, p. 94) Dr. Vinyard disagreed that claimant required evaluation at a pain center. He agreed with the permanent restrictions given in claimant's September 23, 2016 FCE. (Joint Ex. A, pp. 94-95)

In a September 29, 2017 report, Mary Shook, M.D., gave her opinions of claimant's condition following an IME. Claimant indicated anxiety with his inability to return to work. Dr. Shook suggested claimant's kneecap was laterally displaced at the time of his accident. She suggested claimant had problems with lateral patella tracking, which was missed by the treating physician. She opined that the patellar tracking problems were related to the work injury. She did not believe claimant was at MMI. She recommended evaluation and treatment for claimant's problems with a provider outside of Dr. Vinyard's practice. She opined that since claimant was not at MMI she could not opine on permanent impairment. (Ex. D)

Dr. Shook did not believe claimant's back problems were work related. She disagreed with the permanent impairment ratings given by Dr. Wolfe, as she did not believe claimant was found to be at MMI. (Ex. D)

In an October 16, 2017 report, B. Scott Mailey, M.S., C.D.M.S., gave his opinions of claimant's vocational opportunities. Mr. Mailey opined claimant had between a 35-45 percent loss of access to the labor market due to his work injury. He also opined claimant had a 14-22 percent wage loss due to his work injury. (Ex. F)

Claimant was evaluated by Matthew Bollier, M.D. on November 13, 2017. Dr. Bollier opined claimant's work injury was a significant factor in claimant's cartilage deficit and the later need for treatment. Dr. Bollier opined it was reasonable to consider a cartilage resurfacing surgery. Dr. Bollier opined surgery had a good chance of improving claimant's symptoms. Surgery was discussed and chosen as a treatment option. (Joint Ex. C, pp. 117-121)

In a November 17, 2017 letter Dr. Bollier indicated claimant's cartilage defect was caused by the work injury. He indicated claimant would benefit from surgery consisting of cartilage resurfacing. He opined it would be best if claimant had the surgery in the next two months. (Joint Ex. C, pp. 124-126)

In a January 11, 2018 letter Dr. Vinyard opined claimant's work injury materially aggravated or accelerated a preexisting knee condition claimant might have had. He disagreed with Dr. Bollier that a cartilage resurfacing surgery would be beneficial to claimant. Dr. Vinyard believed it was possible claimant could return to work with a work conditioning program. (Joint Ex. A, pp. 100-103)

In an undated letter Mr. Mailey indicated he believed claimant's abilities fit within the redefined detention officer position. Based on this assumption, and an assumption that claimant would successfully undergo work hardening, Mr. Mailey speculated claimant might be able to return to his detention officer job with Polk County. (Ex. G)

In a January 20, 2018 letter Dr. Bollier indicated he had reviewed Dr. Vinyard's January of 2018 letter. He disagreed with Dr. Vinyard's diagnosis. He believed cartilage resurfacing was indicated and that the need for surgery was related to the January of 2016 work injury. (Joint Ex. C, p. 127)

In a February 18, 2018 letter Dr. Shook indicated she had reviewed reports from Drs. Bollier, Vinyard, and Wolfe. She believed claimant's ongoing complaints were likely due to chondromalacia patella, which was personal in nature. She opined claimant's back complaints were not caused by the work injury. She opined claimant only sustained a bone bruise on his knee, which should have healed after six months. She disagreed with the opinions of Dr. Wolfe and Dr. Bollier. (Ex. E)

In a February 26, 2018 report, Emile Li, M.D. gave her opinions of claimant's condition following an IME. She opined Dr. Bollier's plan for surgery was reasonable. (Claimant's Ex. 9)

In a February 28, 2016 letter, Dr. Li indicated claimant's current knee pain was due to his January of 2016 work injury. She also indicated Dr. Bollier's proposal regarding knee surgery was a reasonable treatment option. (Claimant's Ex. 9, p. 65)

Claimant testified he still has knee and back pain at the time of the hearing. He testified he believed he still has mental health issues. Claimant says he has anger and depression, as he had a job he loved and feels the job was taken away from him.

Claimant testified he receives IPERS Special Services Disability of approximately $3,299.00 per month. He also received between $15,000.00 - $20,000.00 from a Criminal Victim's Assistance Fund.

Claimant testified his knee still does not work properly. He said he wants to have the surgery recommended by Dr. Bollier. He said he also wants to continue to treat with Dr. Harbach for his back.

Claimant says he still rides his motorcycle. He said he has tried to make some money detailing motorcycles, which he does at home. Claimant said he applied for a job as a warehouse manager. Claimant said he has not pursued further education. He has not used Iowa Vocational Rehabilitation.

Katherine Shields testified she is claimant's wife. She said prior to his work injury, claimant had no physical or mental health issues. She said since the date of injury, claimant has always been in pain and his knee always hurts. She said claimant wants to get better so that he is able to return to work.

CONCLUSIONS OF LAW

The first issue to be determined is whether claimant's knee and back conditions arose out of and in the course of employment.

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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

Both treating physicians agree claimant had a work-related injury on January 10, 2016 when he injured his right knee while assisting in handling a prisoner. Defendant contends claimant has a problem with patellar tracking in his right knee, which is personal in nature. Defendant contends claimant has already reached MMI and thus any further care claimant may require is due to a preexisting condition personal in nature. (Defendant's brief, pp. 6-7)

Regarding claimant's right knee injury, there is no evidence claimant had knee problems before the January of 2016 knee injury at work.

Dr. Vinyard, on three different occasions, has indicated claimant's injury to his knee, and subsequent treatment was work related. (Joint Ex. A, pp. 26, 55-56, 102)

This opinion of causation has been corroborated by Drs. Wolfe, Bollier, and Li. (Joint Ex. C, pp. 117-126; Claimant's Ex. 8 and 9)

As noted in the finding of facts, both Drs. Bollier and Vinyard are authorized treating physicians who specialize in orthopedic surgery.

Dr. Shook saw claimant for an IME. Dr. Shook opined that Dr. Vinyard misdiagnosed claimant and that claimant actually has a preexisting patellar tracking problem. In her initial opinion Dr. Shook noted, "in my opinion the complaints related to lateral tracking of the patella are caused by the work incident." (Ex. D, p. 46) In her second opinion Dr. Shook opined claimant's current complaints were due to a chondromalacia patella, which she considered personal in nature. (Ex. D, p. 73)

There is no evidence in the record that claimant had any prior knee problems before January of 2016. Both of claimant's treating physicians for his knee condition opined claimant's knee problems were work related. Two other IME physicians also agreed claimant's problems to his knee were caused by work. Dr. Shook initially opined claimant's problems were work related. In a subsequent opinion Dr. Shook opined claimant's continued knee condition was personal in nature. Dr. Shook failed to explain why claimant's knee problems, following a work injury, are personal in nature, where claimant had no prior history of a knee condition. Given this discrepancy, Dr. Shook's opinion regarding causation of claimant's continued knee problems is found not convincing. Given this record, claimant has carried his burden of proof his continued knee problems are caused by the January of 2016 work injury.

Regarding the back condition, Dr. Harbach treated claimant for an extended period of time. Dr. Harbach opined claimant's back condition was caused by a limp, which was caused by his knee problem. (Joint Ex. A, pp. 67-68, 76-81, 89) Dr. Wolfe corroborated Dr. Harbach's opinion. (Claimant's Ex. 8, pp. 55-56)

As noted, Dr. Shook saw claimant for an IME. Dr. Shook did not believe claimant's back condition was work related. (Ex. A, p. 76) Dr. Shook fails to adequately explain why claimant had no back problems prior to his knee injury, and only acquired a back condition after his injury. Given this discrepancy, the opinions of Dr. Shook regarding causal connection for the back problem are found not convincing.

Dr. Harbach and Dr. Wolfe both opine claimant's back problems are caused by his January of 2016 work injury. The opinions of Dr. Shook are found not convincing. Claimant has carried his burden of proof that his back condition is work related.

The next issue to be determined is if claimant has reached MMI.

Claimant had no prior knee condition before his January 2016 injury. Claimant now has restrictions regarding kneeling and crawling. These restrictions eventually led

to his termination with Polk County. Claimant repeatedly testified at hearing that he did not believe he was at MMI and desired further treatment for both his back and knee. (Tr. pp. 36, 61)

Dr. Wolfe evaluated claimant for an IME. Dr. Wolfe found claimant was not at MMI. (Claimant's Ex. 8, pp. 43, 55)

Dr. Bollier, a physician authorized to treat claimant, also opined claimant was not at MMI. (Joint Ex. C, pp. 120, 125-127)

Dr. Vinyard opined claimant was at MMI and had no permanent impairment. This opinion is shared, in part, by Dr. Shook. (Ex. D; Ex. E) These opinions are at odds with the facts of this case. Claimant had a healthy knee before his injury. He lost his job due to restrictions caused by that knee injury. Claimant limps and still does not have full use of his knee. Given the discrepancies with Drs. Vinyard and Shook's opinions, it is found their opinions regarding MMI are not convincing.

Prior to his injury, claimant had a normal knee. Since his work injury, claimant has permanent restrictions. These permanent restrictions led to claimant being terminated by Polk County. Claimant testified he does not believe he is at MMI. Dr. Wolfe and Dr. Bollier both opine claimant is not at MMI. The opinions of Dr. Vinyard and Dr. Shook regarding claimant's MMI are found not convincing. Given this record, claimant has carried his burden of proof that he has yet to reach MMI.

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

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

The record indicates claimant's temporary total disability benefits were stopped on or about February 26, 2017. (Ex. 5, p. 13) Claimant has been found not to be at MMI. He is due temporary total disability benefits commencing on February 26, 2017 and running until claimant is found to have reached MMI.

The next issue to be determined is whether claimant is due reimbursement for an IME.

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

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

In a December 6, 2016 note, Dr. Vinyard, the employer-retained physician, opined claimant had no permanent impairment. (Ex. A, pp. 65-66) In a March 28, 2017 report, the employer-retained physician, Dr. Wolfe, gave his opinions regarding claimant's permanent impairment. Given the chronology of these opinions concerning claimant's permanent impairment, claimant is due reimbursement for Dr. Wolfe's IME.

The next issue to be determined is if claimant is entitled to alternate medical care.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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

> [T]he employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

By challenging the employer's choice of treatment – and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See Iowa R. App. P. 14(f)(5); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). Determining what care is reasonable under the statute is a question of fact. Id. The employer's obligation turns on the question of reasonable necessity, not desirability. Id.; Harned v. Farmland Foods, Inc., 331 N.W.2d 98 (Iowa 1983). In Pirelli-Armstrong Tire Co., 562 N.W.2d at 433, the court approvingly quoted Bowles v. Los Lunas Schools, 109 N.M. 100, 781 P.2d 1178 (App. 1989):

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

The commissioner is justified in ordering alternate care when employer-authorized care has not been effective and evidence shows that such care is "inferior or less extensive" care than other available care requested by the employee. Long, 528 N.W.2d at 124; Pirelli-Armstrong Tire Co., 562 N.W.2d at 437.

An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988).

Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening Decision June 17, 1986).

After claimant was evaluated by Dr. Wolfe for an IME, defendant employer sent claimant to Dr. Shook for an IME. In her initial IME report, Dr. Shook recommended claimant be sent to an orthopedic surgeon outside of Dr. Vinyard's group practice. (Ex. D, p. 49)

In response to Dr. Shook's recommendation, claimant was sent to Dr. Bollier. Dr. Bollier is a physician authorized to treat claimant. Dr. Bollier indicated claimant required surgery consisting of cartilage resurfacing to unload the patellofemoral joint. (Joint Ex. C, p. 120)

Instead of following through with the advice of the authorized treating physician, defendants asked for follow up opinions from both Dr. Vinyard and Dr. Shook.

Claimant had an injury at work in January of 2016. The injury led to claimant's permanent restrictions. The permanent restrictions led to claimant losing his job with Polk County. At the time of hearing claimant still had constant pain in the right knee from the January of 2016 work injury. Defendant authorized claimant to treat with Dr. Bollier. Dr. Bollier recommended claimant undergo surgery consisting of cartilage resurfacing. Defendant has denied the medical care recommended by their authorized treating physician. Defendant has not authorized any other care for claimant's knee. Given this record, the care that has been provided at this time is found to be unreasonable. Claimant has carried his burden of proof he is entitled to the alternate medical care consisting of surgery recommended by Dr. Bollier.

ORDER

Therefore it is ordered:

That defendant shall pay claimant temporary total disability benefits at the rate of eight hundred and 64/100 dollars ($800.64) per week commencing on February 26, 2017 and continuing until claimant has reached MMI.

That defendant shall pay accrued weekly benefits in a lump sum.

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

That defendant shall receive a credit under Iowa Code section 85.38, as detailed in the June 6, 2018 email.

That defendant shall provide the alternate medical care consisting of surgery recommended by Dr. Bollier.

That defendant shall pay the costs of this matter.

That defendant shall reimburse claimant for the IME costs associated with Dr. Wolfe.

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

Signed and filed this 23rd day of August, 2018.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.