BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

TIMOTHY WENZEL, Claimant, vs. ARCHER DANIELS MIDLAND CO., Employer, Self-Insured, Defendant.	:	File No. 1612257.01 ARBITRATION DECISION Headnotes: 1803.1, 2502

STATEMENT OF THE CASE

Claimant, Timothy Wenzel, filed a petition in arbitration seeking workers' compensation benefits from Archer Daniels Midland Company (ADM), self-insured employer. This matter was heard on October 17, 2022, with a final submission date of November 28, 2022.

Claimant also filed a claim against the Second Injury Fund of Iowa (Fund). The claim against the Fund was settled prior to hearing.

The record in this case consists of Joint Exhibits 1 through 10, Claimant's Exhibits 11 through 16, Defendant's Exhibits A through F, and the testimony of claimant, Arlen Steines, and Karley Pendley.

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

2. Whether claimant is entitled to reimbursement for an independent medical evaluation (IME).

At hearing, claimant indicated that defendant's credit was still an issue in dispute. (Hearing Transcript, pp. 6-7) The parties indicated that if the matter of credit was resolved, the parties would communicate that to the undersigned. If the issue of credit was not resolved, the parties would also communicate that to the undersigned and were

given an opportunity to submit further evidence regarding benefits that had been paid by defendant. (Tr., pp. 6-7)

The parties did not request that additional evidence be filed regarding the issue of credit. The issue of credit was not raised in briefs. Based on this, it is assumed that defendant's credit is not an issue in dispute. As a result, the issue of defendant's credit is not discussed in this decision.

FINDINGS OF FACT

Claimant was 56 years old at the time of hearing. Claimant graduated from high school. (Tr., pp. 11-12) Claimant worked at International Paper from 1984 until the plant closed in November of 2001. Claimant has worked at ADM since January of 2002. (Tr., p. 37)

While employed at ADM, claimant has worked in various departments including feed shipping, loading railcars, and assisting in working as an operator in the control room. (Tr., p. 37)

On the date of injury claimant worked as a department supervisor. Claimant said that as a department supervisor he oversaw 7-8 employees. Claimant assigned tasks as needed. Claimant was also required to lift, stand and walk. (Tr., pp. 14-15)

On February 10, 2016, claimant was on a ladder while doing clean-up work for an audit. Claimant stepped off the ladder and fell approximately 10 feet. (Tr., p. 14) Claimant was taken to a hospital in Clinton where he was assessed as having a fractured ankle. Because of the severity of claimant's ankle fracture, he was taken to the University of Iowa Hospitals and Clinics (UIHC). At the UIHC claimant was assessed as having a left tibial plafond fracture, also known as a pilon fracture. (Joint Exhibit 4, p. 25)

Claimant underwent surgery with Matthew Karam, M.D., for repair of the fracture. An external fixation device was placed outside of claimant's right ankle on February 11, 2016. Claimant was discharged from the UIHC on February 15, 2016. (JE 4, pp. 15, 27-28, 35-39)

Claimant returned in follow-up at the UIHC on February 23, 2016. Claimant had continual ankle swelling and pain. Given his symptoms, a second surgery was scheduled. On February 24, 2016, claimant underwent removal of the external fixator and a second external fixator device was put on his right ankle. (JE 4, p. 27)

Claimant testified he spent approximately 2 months, after his injury, in a nursing home, as he was unable to care for himself. (Tr., pp. 16-17)

On April 1, 2016, claimant was evaluated by Donald Flory, M.D. Claimant had left ulnar pain, which he thought was caused by using a walker and physical therapy. Splinting was put on claimant's left wrist, which improved his pain. (JE 5, p. 244)

On April 5, 2016, claimant was evaluated at the UIHC. Claimant reported the left wrist pain was caused by using a walker. (JE 4, p. 64)

Claimant returned to the UIHC on July 19, 2016, due to right ankle pain, with increased redness in the leg. Claimant was assessed as having AKI and right foot cellulitis. Claimant's foot was aspirated and claimant was given antibiotics to treat the cellulitis. (JE 4, pp. 76-77) Claimant was also evaluated for his left wrist. He was assessed as having a chronic scaphoid nonunion in the wrist and provided a wrist splint. (JE 4, p. 92)

Claimant returned to Dr. Karam on September 1, 2016. Claimant was full weightbearing. Claimant had drainage from one of the pin sites. He was believed to have another infection and again given antibiotics. (JE 4, pp. 100-104)

On September 21, 2016, claimant had a third surgery to remove the external fixation device. (JE 4, p. 111)

Claimant's condition improved. Claimant was put in a walking boot in early November of 2016. (JE 4, p. 116) Claimant testified he returned to light duty at ADM doing office work in November of 2016. (Tr., p. 18)

Claimant returned to Dr. Karam on February 14, 2017. Claimant was tolerating sedentary duties. Dr. Karam found that claimant was at maximum medical improvement (MMI) as of February 14, 2017, and was to gradually return to regular duties with some limitations. (JE 4, pp. 119-120)

Claimant returned to Dr. Karam on April 4, 2017. Claimant was still doing a full-time desk job, but wanted to return to regular duties. Claimant asked for his restrictions to be lifted. Claimant was found to be at MMI on April 4, 2017, and was returned to regular duty with no restrictions. (JE 4, pp. 127-128)

Claimant said he returned to his job as a production supervisor. He said the work resulted in increased symptoms in his right ankle. Claimant returned to the UIHC on June 26, 2017, with complaints of ankle pain and swelling. He was recommended by Dr. Karam to have an ankle fusion. (JE 4, pp. 129-132)

In a May 12, 2017, report, Rick Garrells, M.D., found claimant had a 13 percent permanent impairment to the right lower extremity. (Defendant's Exhibit D, p. 67)

Claimant saw Dr. Karam on July 21, 2017. An ankle fusion was discussed as a treatment option. Dr. Karam advised claimant to try a leather ankle brace and recommended claimant lose weight. (JE 4, pp. 135-137)

Claimant returned to Dr. Karam on August 28, 2018. Dr. Karam recommended proceeding with an ankle fusion. (JE 4, p. 146)

On October 13, 2018, claimant underwent a right ankle fusion with hardware. Surgery was performed by Dr. Karam. (JE 4, pp. 151-153, 164-167) X-rays of claimant's ankle, found in Exhibit 16, suggest there is a significant amount of hardware still in claimant's ankle at the time of hearing. (Claimant's Exhibit 16, pp. 343-344)

Records indicate following surgery, claimant initially improved with his ankle. In December of 2018, claimant moved to an Aircast boot and had some weightbearing. (JE 4, p. 185) In March of 2019, claimant was found to be doing well and was

ambulating in his boot. Claimant was recommended, at that time, to begin wearing normal shoes and to start work hardening therapy. (JE 4, pp. 198-200)

On July 30, 2019, Dr. Karam noted claimant's ankle had successfully fused. At that time, claimant indicated swelling in his bilateral lower extremities and had bilateral knee, hip and low back pain. (JE 4, p. 212)

In an August 19, 2019 letter, Dr. Karam noted claimant had recently complained of left knee pain. He indicated he did not believe claimant's right knee injury increased the rate of degenerative arthritis in claimant's left knee. (Ex. A, p. 1)

In October 7, 2019, claimant underwent an IME with Joshua Kimelman, D.O. He opined claimant had 24 percent permanent impairment to the right lower extremity. (Ex. B, p. 54) Dr. Kimelman noted that claimant would not be able to return to work at his old job as a supervisor, but could do sedentary work. Dr. Kimelman agreed with Dr. Karam that claimant's left knee arthritis was not increased due to his right lower extremity injury. (Ex. B, p. 55)

On November 5, 2019, claimant called UIHC indicating he was having a lot of lower back pain and spasms. Claimant said that if he stood more than 5 minutes at a time he had back spasms. Claimant was trying to ride an exercise bike, take Celebrex and using ice and heat on his back, and nothing helped. Claimant asked to have someone see him for his spine condition. Claimant indicated he did not have hip or back problems prior to his ankle injury. (JE 4, p. 218)

On November 6, 2019, claimant called UIHC and asked the hospital to document that he had lower back pain and hip pain caused by his ankle condition. (JE 4, p. 218)

On November 18, 2019, claimant was evaluated by Dr. Karam. Claimant had complaints of lower back pain, which he related to his ankle fusion. Claimant still had swelling in his lower extremities when he did not wear compression socks. (JE 4, p. 221) Claimant was assessed as having lower back pain, right ankle pain, and swelling of the ankle. Claimant was prescribed physical therapy for core and lumbar strengthening and gait training. (JE 4, pp. 221-223)

Claimant returned to Dr. Karam on January 21, 2020. Claimant was last seen at the UIHC complaining of lower back pain. Dr. Karam noted ". . . this was thought to be related to the leg length discrepancy and alterations in his gait related to his ankle fracture." (JE 4, p. 226) Claimant was recommended to have physical therapy and shoe inserts, but was not able to get either due to denial of coverage by the employer. (JE 4, p. 226)

Dr. Karam noted in his notes:

> It has been explicitly stated in previous visits that Mr. Wenzel's injury is life- and work-altering, and he is unlikely to be able to ever return to the duties he was doing previously (climbing, crawling, walking on uneven surfaces). He continues to struggle with loss of function. He used to be able to play in the yard with his grandkids, and is extremely limited these days. His ankle is incredibly sore, and it swells a great deal regardless of

> methods he has tried to reduce swelling. He does take Celebrex and finds this helps with his pain. We have previously discussed amputation as a definitive treatment strategy, but he is resistant to consider this.

(JE 4, p. 227)

Dr. Karam restricted claimant to light duty work only. He recommended claimant only walk on even surfaces. Claimant was not allowed to climb ladders or work on scaffolding. Claimant was limited to lifting 40 pounds and working up to 8 hours a day. (JE 4, p. 235)

In a January 28, 2020 letter, written by defendant's counsel, Andrew Bries, M.D. indicated he saw claimant on March 6, 2019, for left knee pain. At that time claimant had a bone-on-bone medial compartment arthritis in the left knee. Dr. Bries could not opine if claimant's left knee "flare-ups" were work related. Claimant's eventual need for a total knee replacement on the left was found not to be work related. (Ex. C)

In an April 23, 2020 letter, written by defendant's counsel, Dr. Karam indicated there were no structural changes to claimant's left knee or his lower back and hips caused or related to the February 10, 2016, work injury. (Ex. A, p. 2)

In an October 14, 2021 report, John Kuhnlein, D.O., gave his opinions of claimant's condition following an IME. Claimant had constant anterior and lateral right ankle pain. Claimant had constant lower back pain. (Ex. 11, p. 319)

Claimant was assessed, in part, as having a comminuted right pilon ankle fracture and complaints of lower back pain. (Ex. 11, p. 323) Dr. Kuhnlein opined it was more likely than not that claimant's gait change had resulted in lower back pain developing as a sequela to his February of 2016 fall. (Ex. 11, p. 324) Dr. Kuhnlein found that claimant was at MMI for the ankle fracture as of January 21, 2020. (Ex. 11, p. 325)

Dr. Kuhnlein found that claimant had a 37 percent permanent impairment to the right lower extremity for the ankle fracture, converting to a 15 percent permanent impairment to the body as a whole. He found that claimant had a 5 percent permanent impairment to the left upper extremity for his wrist, converting to a 3 percent permanent impairment to the body as a whole. Dr. Kuhnlein found that claimant's back condition resulted in a 5 percent permanent impairment to the body as a whole. (Ex. 11, p. 325)

In a March 22, 2022 letter, Dr. Kimelman indicated he differed with Dr. Kuhnlein's rating for permanent impairment of claimant's lower extremity. He also opined that in his experience with treating lower extremity injuries, he is not aware of any patient of his who had sustained a permanent back injury due to an antalgic gait. He also opined that it was more appropriate to find claimant's lower back condition fell into a DRE category I and not a category II as per the Guides. (Ex. B, pp. 56-57)

In a March 20, 2022 letter written by defendant's counsel, Dr. Karam indicated he disagreed that claimant's right ankle injury caused permanent impairment to claimant's lumbar spine. He also opined that claimant's weight played a more substantial role in claimant's back pain. (Ex. A, pp. 5-6)

Claimant testified he has difficulty using his wrist from the period of time he was using a walker. He said he continues to have left wrist pain. (Tr., p. 19) Claimant said his wrist has not returned to normal function. He said it became better once he left the nursing home, but it is not the same as it was before his injury. (Tr., pp. 62-63)

Claimant said he did not have chronic back pain prior to his February of 2016 injury. Claimant says he continues to have back pain and has missed a few days of work due to back pain. (Tr., p. 21)

Claimant testified he took his restrictions to ADM. He said that ADM found a job for him in the warehouse. Claimant was told by the Clinton ADM plant manager that the warehouse job was the only one at the ADM Clinton facility that he could do given the job restrictions. Claimant said he could not return to work as a production supervisor. (Tr., p. 27)

Claimant said he began his job as a warehouse attendant in 2020. At the time of hearing claimant was still working that position. As a warehouse attendant, claimant drives a fork truck, receives and delivers parts to the plant. (Tr., pp. 28-29)

At the time of his injury, claimant was working 12-hour shifts as a production supervisor. Claimant says he now only works 8-hour shifts due to his permanent restrictions. At the time of hearing, claimant made approximately $84,000.00 per year. (Tr., pp. 30-32)

Claimant testified he lost 170 pounds between July 2021 and October 2022. He said that weight loss has helped somewhat with his ankle, but has not helped at all with his back condition. (Tr., pp. 35-36, 45)

Claimant testified he did not believe he could return to any of his prior positions given his limitations and restrictions. (Tr., p. 38)

Arlen Steines is the safety manager at the Clinton ADM plant. In that capacity he is familiar with claimant and his work injury. Mr. Steines testified that the only job available at the Clinton facility with claimant's restrictions is his current warehouse job. (Tr., pp. 66-67, 74)

Karley Pendley is claimant's supervisor. In that capacity, Ms. Pendley is familiar with claimant's work injury and with claimant's current position. Ms. Pendley says that when she sees claimant walk, he limps. She testified that ADM was accommodating claimant's work restrictions in his current job. (Tr., pp. 86, 89-90)

CONCLUSION OF LAW

The first issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits.

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. 6.904(3).

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).

If claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the Legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in terms of percentages of the total physical and mental ability of a normal man."

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

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

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

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

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

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

A sequela can be an after effect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154, (Arb. September 11, 1989). A sequela can take the form of a secondary effect on the claimant's body stemming from the original injury. For example, where a leg injury causing shortening of the leg in turn alters the claimant's gait, causing mechanical back pain, the back condition can be found to be a sequela of the leg injury. Fridlington v. 3M, File No. 788758, (Arb. November 15, 1991).

A sequela can also take the form of a later injury that is caused by the original injury. For example, where a leg injury leads to the claimant's knee giving out in a grocery store, the resulting fall is compensable as a sequela of the leg injury. Taylor v. Oscar Mayer & Co., 3 Iowa Ind. Comm. Rep. 257, 258 (1982).

Three experts have opined regarding the permanent impairment rating to claimant's right ankle. In 2017 Dr. Garrells found that claimant had a 13 percent permanent impairment to the right lower extremity. Dr. Garrells' opinion was made prior to claimant's 2018 ankle fusion. (Ex. D) The opinion of Dr. Garrells regarding permanent impairment was almost five years old at the time of hearing. Based on these facts, the opinion of Dr. Garrells regarding claimant's permanent impairment to his lower extremity is found not convincing.

Dr. Kimelman evaluated claimant once for an IME in 2019. He opined that claimant had a 24 percent permanent impairment to the right lower extremity. (Ex. B, pp. 52-55)

Dr. Kuhnlein evaluated claimant once for an IME in a report dated October of 2021. Dr. Kuhnlein found that claimant was at MMI as of January 21, 2020. This MMI date was based on the date Dr. Karam issued claimant's permanent restrictions. Dr. Kuhnlein found that claimant had a 37 percent permanent impairment to the right lower extremity. (Ex. 11, p. 325)

Dr. Kuhnlein's date of MMI is consistent with the medical records and opinions of Dr. Karam regarding claimant's permanent restrictions. (Ex. 4, p. 335) Given these facts, it is found that claimant was at MMI for his right ankle as of January 21, 2020. Because Dr. Kimelman's IME and permanent impairment rating were issued in 2019, and were issued before claimant was at MMI, it is found Dr. Kimelman's opinions regarding permanent impairment are premature. Dr. Kuhnlein's rating of permanent impairment for claimant's right ankle is also closer to the time of hearing, and is a more accurate evaluation of what claimant's ability and permanent impairment is at the time of hearing. Given these facts, it is found that Dr. Kuhnlein's opinion finding that claimant has a 37 percent permanent impairment to the right lower extremity is more convincing than the opinion of Dr. Kimelman. Claimant is found to have a 37 percent permanent impairment to the right lower extremity.

Regarding claimant's wrist injury, Dr. Kuhnlein opined that claimant had a 5 percent permanent impairment to the upper extremity based on a loss of range of motion. (Ex. 11, p. 325) Claimant testified that he developed left wrist pain as a result of using a walker after his first two ankle surgeries. Claimant credibly testified that he still has left wrist pain. Given this record, claimant has carried his burden of proof that he has a 5 percent permanent impairment to his left upper extremity.

Three experts have opined regarding claimant's lower back condition. Dr. Kuhnlein found that claimant had a 5 percent permanent impairment to the body as a whole for his lower back condition. Dr. Kuhnlein opined that claimant's lower back condition was a sequela of his fusion of his right ankle due to a gait condition. (Ex. 11, pp. 323-325)

Dr. Kimelman disagreed with Dr. Kuhnlein's opinion regarding claimant's lower back condition. He indicated that in his experience with lower back conditions, he was not aware of any patients he has had who have sustained permanent impairment to the spine as a result of an antalgic gait. (Ex. B, pp. 56-57)

Dr. Kimelman's opinion regarding permanent impairment to the lower back is problematic for several reasons. First, Dr. Kimelman has not seen claimant since 2019. As noted, Dr. Karam's notes of January 2020 indicated that claimant's lower back problem was related to his leg length discrepancy and his alteration in gait due to his fracture. (JE 4, p. 226)

Claimant also credibly testified that he has had lower back problems since his fusion surgery. He credibly testified that he continues to have daily lower back pain, walks with a limp, and has missed some time from work due to his lower back pain.

This testimony is corroborated by the testimony of claimant's supervisor who indicated she always sees claimant limping at work.

Finally, decisions from this agency, and with the Iowa Supreme Court and Iowa Court of Appeals, have held that a gait problem may result in a sequela injury resulting in permanent impairment to the lower back. Cedar Rapids Community School Dist. v. Pease, 807 N.W.2d 839 (Iowa 2011); Finley Hosp. v. Holland, 810 N.W.2d 553 (Table) (Iowa App. 2012); Oelwein Community School Dist. v. Williams, 669 N.W.2d 261 (Table) (Iowa App. 2003); Carson v. Siemens and Second Injury Fund of Iowa, File Nos. 1642424.01 and 1653871.01 (App. January 31, 2022); Freeman v. Swift & Co., File No. 5021273 (Arb. April 14, 2008)

Based on the above, Dr. Kimelman's opinions regarding causation and permanent impairment of claimant's lower back condition are found not convincing.

Dr. Karam also opined, in a brief letter written by defendant's counsel, that he disagreed that claimant's right ankle injury caused permanent impairment to claimant's spine. (Ex. A, pp. 5-6) Dr. Karam's opinion given in the 2022 letter is also problematic for several reasons. As noted above, the 2022 letter appears to conflict with Dr. Karam's 2022 medical notes indicating that claimant's lower back pain was ". . . thought to be related to the leg length discrepancy and alterations in his gait related to his ankle fracture." (JE 4, p. 226) Dr. Karam's notes indicated that he recommended claimant's back problems, related to his ankle fracture, be treated with physical therapy and shoe inserts. This recommendation was denied by defendant. Dr. Karam's opinion on causation is also based in part on his belief that claimant's weight has caused his back condition. As noted above, claimant lost approximately 170 pounds between July of 2021 and October of 2022. Claimant credibly testified at hearing that despite this weight loss, he still continually has daily back pain.

Because Dr. Karam's 2022 opinion appears to conflict with his 2020 notes and recommendations for care, and because his opinion regarding causation is based upon claimant being obese, Dr. Karam's opinions regarding causation of claimant's lower back condition are found not convincing.

Given the above, claimant has carried his burden of proof that he has a sequela injury to his lower back due to his ankle fracture. It is found that claimant has a 5 percent permanent impairment to the back due to a sequela injury from his ankle fracture.

Claimant has a 15 percent body as a whole injury due to his ankle injury. He has a 3 percent permanent impairment to the body as a whole due to his wrist injury. He has a 5 percent permanent impairment to the body as a whole due to his lower back injury. Based on the combined values charts in the Guides found at page 604, claimant has a combined value of 21 percent permanent impairment to the body as a whole due to his 2016 work injury.

Claimant continues to work at ADM. Claimant was given a warehouse job. The record indicates that out of the approximately 100 jobs at ADM, given his permanent restrictions, the warehouse position is the only job that claimant could do at the ADM Clinton facility. The record indicates that claimant is accommodated in his job. The record indicates that given his limitations, claimant could not return to work at any of his prior jobs, including his prior position with ADM.

Based on this record, it is found that claimant has a 30 percent loss of earning capacity or an industrial disability. Claimant is due 150 weeks of permanent partial disability benefits.

The next issue to be determined is whether defendant is liable for reimbursement for the 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).

Defendant contends that they should only be found liable for payment of half of Dr. Kuhnlein's IME bill. This is because part of the IME report addresses claimant's Second Injury Fund claim, which was settled prior to hearing. (Defendant's Post-Hearing Brief, pp. 35-36)

In review of Dr. Kuhnlein's report, there is little reference to claimant's Second Injury Fund claim. The only reference appears to be two sentences found at the bottom of Exhibit 11, page 325. Since little of the IME report addresses claimant's Second Injury Fund claim, 5 percent of Dr. Kuhnlein's billing will be reduced. Dr. Kuhnlein charged $6,292.50 for the IME. Five percent of that amount is approximately $314.63 ($6,292.50 x 5 percent). Defendant is liable for payment of $5,977.87 for the IME bill ($6,292.50 - $314.63).

ORDER

THEREFORE IT IS ORDERED:

That defendant shall pay claimant one hundred fifty (150) weeks of permanent partial disability benefits at the rate of seven hundred fifty-one and 80/100 dollars ($751.80) per week commencing on October 7, 2019.

That defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018)

That defendant shall receive credit for benefits previously paid.

That defendant shall reimburse claimant five thousand nine hundred seventy-seven and 87/100 dollars ($5,977.87) for Dr. Kuhnlein's IME.

That defendant shall pay costs.

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

Signed and filed this 31st day of January, 2023.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Corey Walker (via WCES)

Peter Thill (via WCES)

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