

2. Claimant's entitlement to ongoing medical treatment.
3. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Brett Connelly, has worked for the City of Des Moines since 1974. He sustained an injury to his right lower extremity which arose out of and in the course of his employment. This injury caused permanent disability to his leg. The central dispute in this case is the extent of permanent partial disability he sustained due to the July 7, 2017 work injury. (Hearing Report)

While driving truck for the City during the summer of 2017 Mr. Connelly's right knee began to bother him. He developed pain and numbness, especially when climbing up and down the two deep steps on the truck when entering and exiting the vehicle. He reported his problems to the City. The City authorized Mr. Connelly physical therapy and eventually a referral to Patrick Sullivan, M.D., at Des Moines Orthopaedic Surgeons, P.C. (Testimony)

In October of 2017, Dr. Sullivan diagnosed medial meniscal tear. An MRI was consistent with minimal tricompartmental degenerative changes with some fraying tear of the posterior horn of the medial meniscus. He recommended an arthroscopic meniscectomy. (JE1, pp. 1-3)

On November 16, 2017, Dr. Sullivan performed a right knee arthroscopy with medial and lateral meniscectomies. The post-operative diagnoses were work-related acute medial and lateral meniscal tear and work-related patellar chondral lesion. (JE4, pp. 1-2)

Following surgery Dr. Sullivan recommended physical therapy which unfortunately was delayed. Eventually, Mr. Connelly did undergo physical therapy. On January 17, 2018, Mr. Connelly reported to Dr. Sullivan that he was back to work and doing reasonably well. He still had some numbness superior parapatellar region and some posterior knee achiness and discomfort. Dr. Sullivan gave him a knee injection for the achiness and discomfort. He released him to full work without restrictions. Dr. Sullivan placed Mr. Connelly at Maximum Medical Improvement (MMI). (JE1, pp. 4-6; JE3)

On March 12, 2018, Dr. Sullivan stated:

I believe as a result of his work related partial medial and lateral meniscectomy in the right knee he has suffered a PPI of the right lower extremity. Using the AMA Guide he would be allowed a 10% impairment of the right lower extremity. I released him to full duties. I anticipate no future treatment.

(Def. Ex. B, p. 1)

In August of 2018, Mr. Connelly saw David J. Boarini, M.D., for a neurosurgical consultation. Dr. Boarini noted that Mr. Connelly had been seen in the distant past for a cervical problem. In August of 2018 he saw Dr. Boarini for back pain with some radiation into his right thigh. Mr. Connelly dated this problem to the end of last year when he had a meniscus surgery. Dr. Boarini noted that Mr. Connelly had hypesthesia in the right anterolateral thigh. Dr. Boarini suspected the hypesthesia is simple meralgia paresthetica which is a cutaneous nerve problem and not related to the spine. He recommended aggressive weight loss. (JE2, p. 1-3)

On December 5, 2018, at the request of his attorney, Mr. Connelly underwent an IME with Jacqueline M. Stoken, D.O. (JE6) Mr. Connelly reported that he did not have any pain in his right knee, but he did have continuous numbness. His numbness is made worse with standing. Dr. Stoken felt that Mr. Connelly did not require any further treatment for his knee. With regard to impairment, Dr. Stoken stated:

Using the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition*, Chapter 17, table 17-33, page 546, he is allowed 22% Lower Extremity Impairment or 9% Whole Person Impairment due to total medial and lateral meniscectomies of the right knee.

(JE6, p. 7)

Dr. Stoken felt that reasonable work restrictions due to Mr. Connelly's right knee included avoiding prolonged standing and walking and walking on uneven ground. (JE6, p. 8)

On April 22, 2019, after Dr. Sullivan had a chance to review Dr. Stoken's IME, he authored a missive to defendant. He stated that after careful evaluation he stands by his previous assessment. Dr. Sullivan stated:

According to the *AMA Guides to the evaluation of Permanent Impairment, 5th Edition*, Chapter 17, Table 17-33, page 456 [*sic*], he is allowed a 10% impairment of the lower extremity for partial medial and lateral meniscectomies. Dr. Stoken gave him a rating for total medial and lateral meniscectomy which is not true.

(Def. Ex. C, p. 1)

On November 4, 2019, Dr. Stoken authored a missive to claimant's counsel. She discussed Mr. Connelly's complaints of right leg paresthesias. Dr. Stoken noted that Dr. Boarini diagnosed Mr. Connelly with meralgia paresthetica. Dr. Stoken stated that this condition "may have become 'lit up' due to the knee injury." (JE7, p. 1) However, she felt the condition was more likely than not related to his weight. Notably, Dr. Stoken did not address Dr. Sullivan's impairment rating or Dr. Sullivan's criticism of her impairment rating. (JE7, p. 1)

With regard to the impairment ratings of the right knee. Both Dr. Sullivan and Dr. Stoken utilized Table 17-33 of The Guides. Dr. Sullivan assigned 10 percent impairment of the lower extremity for partial medial and lateral meniscectomies. However, Dr. Stoken assigned 22 percent impairment to Mr. Connelly for total medial and lateral meniscectomy. On April 22, 2019, Dr. Sullivan stated that it was not true that Mr. Connelly had total medial and lateral meniscectomy. Dr. Sullivan is the orthopaedic surgeon who repaired Mr. Connelly's knee. I find that Dr. Sullivan is in the best position to state whether Mr. Connelly had total medial and lateral meniscectomy. Thus, I find Dr. Sullivan's opinions to carry the greatest amount of weight in this case. I find Mr. Connelly sustained 10 percent impairment to his right lower extremity.

Claimant is seeking additional medical treatment for Mr. Connelly's right leg paresthesia. Claimant is seeking treatment as set out in Dr. Stoken's November 4, 2019 letter. In that letter Dr. Stoken states, "Meralgia Paresthetica is treated with tricyclic antidepressants or anti-seizure medications to relieve the pain for some people with meralgia paresthetica." (JE7, p. 1) However, I find that Mr. Connelly has failed to demonstrate that his meralgia paresthetica is causally connected to the July 7, 2017 work injury. Even claimant's own IME doctor, Dr. Stoken, opined this was more likely than not related to his weight, but it may have been lit up by his knee injury. I find claimant has failed to demonstrate that defendant should be responsible for future medical treatment for meralgia paresthetica.

Finally, claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy hearing the case. 876 IAC 4.33. I find that claimant was generally successful in his claim and that an assessment of costs against defendant is appropriate. Specifically, claimant is seeking the filing fee in the amount of one hundred and no/100 dollars (\$100.00). I find that this is an appropriate cost under subsection 7. Claimant is also seeking costs in the amount of two hundred fifty and no/100 dollars (\$250.00) for a November 4, 2019 report Dr. Stoken. I find this is an appropriate cost under subsection 6. Thus, defendant is assessed costs totaling three hundred fifty and no/100 dollars (\$350.00).

CONCLUSIONS OF LAW

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

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

The Iowa legislature enacted statutory changes that became effective July 1, 2017. The legislature changed how scheduled member injuries are evaluated and the amount of permanent disability awarded. For injuries occurring on or after July 1, 2017, the legislature stated:

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

Iowa Code section 85.34(2)(x) (2017).

Leg injuries continue to be compensable on a 220-week schedule after the 2017 statutory changes. Iowa Code section 85.34(2)(p). Thus, I conclude that claimant has demonstrated entitlement to 22 weeks of permanent partial disability benefits as a result of the July 7, 2017 work injury. Iowa Code section 85.34(2)(p),(w) (2017); Blizek v. Eagle Signal Company, 164 N.W.2d 84 (Iowa 1969).

Based on the above findings of fact, I conclude that Mr. Connelly sustained 10 percent permanent partial impairment to his right lower extremity. As such, he has shown entitlement to 22 weeks of permanent partial disability benefits commencing on the stipulated date of January 17, 2018.

Claimant is seeking alternate medical treatment. The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions

compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Based on the above findings of fact, I conclude that Mr. Connelly has failed to carry his burden of proof to show by a preponderance of the evidence that his meralgia paresthetica is related to the July 7, 2017 work injury. Thus, defendant is not responsible for the treatment recommendations made by Dr. Stoken for this condition.

Claimant is seeking an assessment of costs. Costs are to be assessed at the discretion of the deputy hearing the case. Based on the above findings of fact, defendant is assessed costs in the amount of three hundred fifty and no/100 dollars (\$350.00).

ORDER

THEREFORE, IT IS ORDERED:

All weekly benefits shall be paid at the stipulated rate of six hundred sixty-two and 55/100 dollars (\$662.55).

Defendant shall pay twenty-two (22) weeks of permanent partial disability benefits commencing on the stipulated commencement date of January 17, 2018.

Defendant shall be entitled to credit for all weekly benefits paid to date.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

Defendant shall reimburse claimant costs as set forth above.

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

Signed and filed this 21st day of July, 2020.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nathaniel Boulton (via WCES)

Luke DeSmet (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.