BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMAL JABRI, Claimant, vs. QUAKER OATS COMPANY, Employer, and INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	FILED JUL 15 2019 WORKERS' COMPENSATION File Nos. 5042259 and 5055641 APPEAL DECISION Head Note Nos: 1402.30; 1701; 1801; 1803.1; 2905; 2907; 3202

STATEMENT OF THE CASE

Claimant Jamal Jabri appeals from a combined review-reopening/arbitration decision filed on December 19, 2017. The hearing occurred on May 11, 2017. The parties filed post-hearing briefs on June 12, 2017, and the matter was considered fully submitted on that date.

In File No. 5042259, injury date of April 27, 2010, the deputy commissioner found claimant failed to show he was entitled to receive additional benefits under review-reopening, but was awarded the cost of Dr. Manshadi's independent medical examination (IME).

In File No. 5055641, the deputy commissioner found claimant failed to show he sustained a new injury arising out of and in the course of his employment on or about February 3, 2016.

Because the deputy commissioner found claimant is not entitled to receive weekly benefits in either file, the deputy commissioner did not address defendants' claim under Iowa Code section 85.38 for a credit for short-term disability benefits paid to claimant.

Defendants employer and insurer and the Second Injury Fund of Iowa (the Fund) respond to the appeal, but they do not cross-appeal.

Concerning the review-reopening petition in File No. 5042259, I note that on January 23, 2014, this agency approved an agreement for settlement between claimant and defendants employer and insurer wherein the parties agreed claimant sustained scheduled member functional permanent impairment of 10.66 percent of his left lower extremity, which entitled claimant to receive 23.45 weeks of permanent partial disability (PPD) benefits, resulting from a work injury occurring on April 27, 2010.

Also, one day later, on January 24, 2014, this agency approved an agreement for settlement between claimant and the Fund. In that settlement, the parties agreed claimant sustained 21.21 percent industrial disability, which is a total of 106.05 weeks of PPD benefits. That settlement involved a qualifying first injury to claimant's right knee on January 21, 2002, and the work-related second injury to his left knee on April 27, 2010. The 21.21 percent industrial disability equaled 106.05 weeks, less a credit of 14 percent for the left knee, which is a credit of 30.08 weeks of PPD benefits, and a credit of 17 percent for the right knee, which is a credit of 37.4 weeks of PPD benefits, which left 38.57 weeks of PPD benefits in new money to be paid by the Fund.

Claimant asserts on appeal that the deputy commissioner erred in finding claimant failed to show he was entitled to receive additional benefits in the review-reopening in File No. 5042259. Claimant asserts he demonstrated sufficient change in circumstances based on his worsening condition and bilateral knee replacements to warrant a reassessment and increase of his permanent disability.

Claimant further argues in File No. 5055641 that the deputy commissioner erred in failing to find claimant sustained a cumulative bilateral knee injury that manifested on February 3, 2016. Claimant argues he is entitled to the following: healing period benefits from February 3, 2016, through August 20, 2016; PPD benefits and medical benefits owed by defendants employer and insurer; and significant industrial disability owed by the Fund.

Claimant asserts if the deputy commissioner's decision is reversed in either file and claimant is awarded weekly benefits, it should be found defendants are not entitled to any credit under Iowa Code section 85.38 for short-term disability benefits paid to claimant. In the alternative, claimant asserts if the deputy commissioner's decision is reversed in either file and claimant is awarded weekly benefits, and if it also is found defendants are entitled to a credit under Iowa Code section 85.38 for short-term disability benefits paid to claimant, that credit should be limited to $5,243.33.

Defendants employer and insurer and the Fund assert on appeal that the arbitration decision should be affirmed in its entirety.

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

I performed a de novo review of the evidentiary record and the detailed arguments of the parties. Pursuant to Iowa Code sections 17A.5 and 86.24, the proposed Review-Reopening Decision and Arbitration Decision is reversed in part and it is affirmed in part, with the following additional findings and analysis:

ISSUES ON APPEAL

File No. 5042259 – Injury Date of April 27, 2010 – Review-Reopening

1) Whether claimant sustained a change in condition after the agreements for settlement were approved by this agency in January 2014, such that claimant is entitled to receive additional permanent partial disability benefits from defendants employer and insurer and the Fund, the extent thereof, along with any applicable credit to defendants employer and insurer and the Fund.

2) Whether claimant is entitled to receive healing period benefits from February 3, 2016, through August 20, 2016.

3) Whether claimant is entitled to payment by defendants employer and insurer for past requested medical expenses itemized in Exhibits 2 and 3.

4) Whether defendants employer and insurer are entitled to a credit under Iowa Code section 85.38 for short-term disability benefits paid to claimant.

File No. 5055641 – Alleged New Injury, February 3, 2016 - Arbitration

1) Whether clamant sustained a new cumulative injury that arose out of and in the course of his employment, manifesting on February 3, 2016.

2) Whether claimant is entitled to receive healing period benefits.

3) Whether claimant is entitled to receive permanent partial disability benefits for the scheduled member to be paid by defendants employer and insurer.

4) Whether claimant is entitled to receive industrial disability benefits to be paid by Fund.

5) Whether claimant is entitled to receive reimbursement from defendants employer and insurer for past requested medical expenses.

6) Whether defendants employer and insurer are entitled to a credit under Iowa Code section 85.38 for short-term disability benefits paid to claimant.

FINDINGS OF FACT

This matter involves two files combined for a single hearing.

File No. 5042259 involves a petition for review-reopening of agreements for settlement against defendants employer and insurer and the Fund.

File No. 5055641 involves an alleged new injury to claimant's bilateral knees occurring on February 3, 2016, against defendants employer and insurer.

Claimant was 45 years old at the time of the hearing and had been an employee of defendant-employer for about 20 years. He has a substantial medical history concerning his bilateral knees which predates the hearing in this matter, which is set forth below. (Transcript page 12)

In 2001, claimant injured his left knee, resulting in surgery performed by David Tearse, M.D., orthopedic surgeon, on March 26, 2001. (Jt. Ex. 4, p. 1) On November 26, 2002, Dr. Tearse assigned seven percent permanent partial impairment of the left lower extremity. (Jt. Ex. 4, p. 6)

In January 2002, claimant sustained an injury to his right knee, which resulted in surgery by Dr. Tearse on March 25, 2002. (Jt. Ex. 4, p. 2) On September 17, 2002, Dr. Tearse assigned seven percent permanent partial impairment of the right lower extremity. (Jt. Ex. 4, p. 4)

After recovering from those knee injuries, claimant returned to his regular job at defendant-employer and worked for several years with no additional medical treatment for his knees. (Tr. pp. 24-25)

On April 27, 2010, claimant sustained a new left knee injury arising out of and in the course of his employment with defendant-employer, which led to surgery performed by Hugh MacMenamin, M.D., orthopedic surgeon, on December 17, 2010. (Jt. Ex. 6, p. 1) On April 20, 2011, Dr. MacMenamin assigned four percent permanent partial impairment to claimant's left lower extremity. (Jt. Ex. 1, pp. 3, 4)

Following the 2010 left knee surgery, claimant returned to work at defendant-employer, but testified his left knee never quit hurting and, as a result, he put more weight on his right knee and eventually "both knees started hurting bad." (Tr. p. 26)

After reporting his knee pain, defendant-employer sent claimant to Theron Jameson, D.O., in Burlington, Iowa, for an independent medical evaluation (IME). On August 15, 2012, Dr. Jameson issued a report following the IME. (Ex. A) Dr. Jameson opined claimant sprained his left knee as a result of the April 27, 2010, work injury, which aggravated his underlying degenerative knee condition. However, he also stated that the injury "did not affect or advance the severe arthritic condition that Mr. Jabri has in the lateral compartment of his knee." (Ex. A, p. 5) Confusingly, however, Dr. Jameson agreed with Dr. MacMenamin that claimant sustained four percent permanent

partial impairment of the left lower extremity. (Id.) It is unclear how Dr. Jameson reconciles his opinions that claimant sustained only a sprain, which did not advance his pre-existing knee condition, yet he also sustained four percent permanent impairment as a result of the injury. Dr. Jameson did not assign any permanent restrictions and he did not believe claimant required any additional medical care. (Ex. A, p. 5) On the basis of Dr. Jameson's opinion, defendants employer and insurer denied further medical care.

However, claimant's knee pain persisted and on October 29, 2012, claimant went on his own to Sandeep Munjal, M.D., of Physician's Clinic of Iowa, who noted claimant had "significant degenerative changes," but at that time "his symptoms [were] manageable." (Jt. Ex. 6, p. 10) Dr. Munjal discussed orthopedic options including surgery as well as Synvisc and cortisone injections. (Jt. Ex. 6, p. 10) Dr. Munjal provided multiple injections to claimant. (Jt. Ex. 6, pp. 15, 17, 21)

On November 29, 2012, claimant was seen by Farid Manshadi, M.D. for an IME at the request of claimant's counsel. (Jt. Ex. 9, p. 1) Dr. Manshadi noted claimant continued to have pain in both knees, pain when using stairs, difficulty squatting and kneeling, and walking on uneven surfaces. Dr. Manshadi also noted claimant had difficulty putting on his socks and shoes. (Jt. Ex. 9, p. 4) Dr. Manshadi diagnosed claimant with "chronic left-sided knee pain with reduced range of motion with clinical evidence of patellofemoral chondromalacia," with MRI "evidence of a lateral knee joint arthritis with narrowing." (Jt. Ex. 9, p. 5) Dr. Manshadi causally related an aggravation of the underlying condition of both knees to the April 27, 2010, injury. (Jt. Ex. 9, pp. 5-6) He noted that if the Synvisc injections did not improve claimant's bilateral knee condition, "joint replacement cannot be ruled out." (emphasis added)(Jt. Ex. 9, pp. 5-6)

On December 18, 2012, claimant went on his own to John Albright, M.D., orthopedic surgeon at the University of Iowa Hospitals and Clinics (UIHC) regarding bilateral knee pain. (Jt. Ex. 7, p. 1) Dr. Albright provided conservative care, including pain medication, injections, a TENS unit, braces and work restrictions of no climbing, squatting, or kneeling down. (Jt. Ex. 7, pp. 6, 8) Those restrictions applied to both knees and claimant followed those restrictions at work. (Tr. p. 63)

Dr. Albright referred claimant to Melissa Willenborg, M.D., also an orthopedic surgeon at UIHC. (Jt. Ex. 7, p. 6) Dr. Willenborg stated claimant's bilateral knee osteoarthritis had failed conservative therapy. However, she also noted claimant's BMI put him at a higher risk for healing and infection, and he was relatively young for total knee replacements. Dr. Willenborg stated if claimant underwent knee replacements at that time, he would likely need revision surgeries at a later date. (Jt. Ex. 7, p. 10) Dr. Willenborg stated claimant wanted to proceed with surgery, but she informed claimant she would not do total knee replacements until claimant lost weight, quit smoking, and had a negative nicotine test. (Jt. Ex. 7, pp. 10-11)

Claimant returned to Dr. Munjal on July 15, 2013. (Jt. Ex. 6, p. 25) Dr. Munjal noted that surgery was discussed with claimant at UIHC, but that claimant has a "very high BMI and personally I will be quite reluctant to proceed with a knee replacement type surgery, I have recommended weight reduction." (Jt. Ex. 6, p. 26) Dr. Munjal

recommended that in light of claimant's BMI and his young age that he proceed "as conservative as possible for as long as possible." (Jt. Ex. 6, p. 26)

As stated above, on January 23, 2014, this agency approved an agreement for settlement between claimant and defendants employer and insurer regarding the left lower extremity injury of April 27, 2010. (Jt. Ex. 1, pp. 1-11) The parties agreed claimant sustained 10.66 percent permanent impairment of the left leg under Iowa Code section 85.34(2)(o). (Jt. Ex. 1, p. 1)

On January 24, 2014, this agency approved an agreement for settlement between claimant and the Fund regarding a first qualifying injury to his right knee on January 21, 2002, and the second qualifying work injury to his left knee on April 27, 2010. (Jt. Ex. 1, p. 12) The parties agreed claimant sustained 21.21 percent industrial disability, with a credit of 37.4 weeks for the right knee first injury, and with a credit of 30.8 weeks for the left knee second injury, resulting in a remaining balance of 38.57 weeks of industrial disability to be paid by the Fund commencing on February 5, 2013. (Jt. Ex. 1, p. 13)

As stated above, prior to the agreements for settlement, Dr. Manshadi, Dr. Willenborg, and Dr. Munjal all discussed with claimant the likely need for bilateral total knee replacements at some point in the future. Although, none of the doctors recommended that claimant proceed with the surgeries prior to the agreements for settlement, Dr. Munjal specifically advised claimant to hold off as long as he could before having the surgeries and Dr. Willenborg noted claimant's case involved some challenges, such as claimant's elevated BMI which would cause additional risks with the surgery. Also, claimant was relatively young and proceeding with the surgeries prior to the agreements for settlement would likely have required revision surgeries later in life. Further, Dr. Willenborg would not consider doing the surgeries until claimant quit smoking.

After the agreements for settlement in 2014, claimant continued to undergo medical treatment for a significant period of time continuing through December 2015. Claimant received treatment from his primary care provider, Mr. Drahos, PA, which included repeated injections into his knees and he wore a prescribed knee brace. (Tr. p. 50)

Near the end of 2015, Claimant was working third shift and wanted to spend more time with his family. He bid on a first shift job, which he started in early January, 2016. (Tr. pp. 31-32) Claimant had been working third shift as a "regular round" winder operator. The first shift job was as a "large round" winder operator. Claimant had worked in the "large round" winder position in the past and was familiar with the physical demands of the job before he accepted it in January, 2016. Thereafter, claimant testified "things started to get really bad with [his] knees." (Tr. p. 32)

Claimant went to Dr. Willenborg on January 11, 2016, who noted claimant's bilateral knee pain and end-stage osteoarthritis. Dr. Willenborg discussed with claimant conservative care versus total knee replacements. Claimant indicated a desire to

proceed with surgery, but Dr. Willenborg required claimant to lose weight before she would do surgery. (Jt. Ex. 7, p. 18) Claimant also testified Dr. Willenborg told him he would need to stop smoking before she would do the surgeries. (Tr. p. 35) At that time, there was apparently no discussion about his age or the possible need for future revision surgeries.

On February 3, 2016, claimant was seen by Shirley Pospisil, M.D., occupational medicine physician at Unity Point Health. (Jt. Ex. 5, p. 19) Dr. Pospisil noted claimant reported having injections in his knees about every month and he was eventually told he could not have any more injections. Dr. Pospisil stated "the next step is to have total knee replacements." (Id.) Dr. Pospisil stated claimant "has underlying arthritis that is not work related," and claimant would "not have his knees replaced through workman's [sic] comp at Quaker Oats." (Id.) Dr. Pospisil stated claimant had an "exacerbation" of his knee condition. (Jt. Ex. 5, p. 19) Dr. Pospisil defined an "exacerbation" as "a temporary 'irritation' of an underlying disease process that has not been altered in any way more than temporarily." (Jt. Ex. 5, p. 19) Dr. Pospisil stated that after reviewing the medical records, surgical history and "his history of known arthritic changes in his knees," which has "been long known and documented," that "[t]he ongoing degenerative condition is due to comorbidities and activities of daily living and not accelerated or aggravated by his work." (Jt. Ex. 5, p. 19) Dr. Pospisil stated that the need for claimant's bilateral knee replacements was due "primarily [to] Mr. Jabri's physical make up and long-standing degenerative and arthritic condition." (Jt. Ex. 5, p. 24) Dr. Pospisil assigned restrictions of no overtime, sitting job only, and claimant could not perform any safety sensitive work duties while taking hydrocodone. (Jt. Ex. 5, p. 19) Those restrictions were in place until March 1, 2016. (Jt. Ex. 5, p. 21)

It is curious to the undersigned that Dr. Pospisil opined claimant's condition was not aggravated by his work, but yet she assigned restrictions specifically limiting claimant's exposure to his work by limiting his work hours and restricting his type of work to a sit-down job. This appears to be in opposition to the notion that his work was not an aggravating factor.

Claimant eventually lost a sufficient amount of weight and stopped smoking, such that Dr. Willenborg was willing to proceed with surgery.

On April 5, 2016, Dr. Willenborg performed a right total knee replacement surgery. (Jt. Ex. 7, pp. 23-26)

On May 27, 2016, Dr. Willenborg performed a left total knee replacement surgery. (Jt. Ex. 7, pp. 31-34)

Claimant testified that the medical treatment, specifically the bilateral knee replacements, was helpful. (Tr. p. 38)

Claimant was off work from February 3, 2016, through August 20, 2016. (Hearing Report, p. 1, File Nos. 5055641 and 5042259) On August 22, 2016, claimant was returned to work with no restrictions by Dr. Willenborg. (Jt. Ex. 7, p. 40) Claimant

testified credibly that he did not want restrictions because he believed he would be unable to return to work with restrictions. (Tr. p. 38)

After being released to return to work in August, 2016, claimant returned to the "large round" job at work. (Tr. p. 39) At the end of 2016, he switched back to third shift and the "regular round" winder operator position, because he felt it was easier on his knees. (Tr. pp. 39-40) He has remained in that position, and at the time of the hearing he believed that he is "a really good operator." (Tr. p. 40)

On October 13, 2016, claimant had a follow-up IME with Dr. Manshadi at the request of claimant's counsel. (Jt. Ex. 9, p. 8) Dr. Manshadi noted this was his third evaluation of claimant. (Jt. Ex. 9, p. 8) Dr. Manshadi noted as follows:

> Mr. Jabri reports he is very satisfied with both knee replacements. For example, the pain is not there all the time anymore. The pain only comes on with going down the stairs. He is able to squat now. Kneeling is very hard for him on either knee. He works without restrictions at this point. However, weather changes do cause increased achiness. He reports also that his knees are stiff in the morning, and also when he is too active he has pain in the knees, left worse than right. He also works slower and strategically plans how he will perform the physical demands of his job. He continues to perform his home exercise program.

(Jt. Ex. 9, p. 10)

Concerning causation and permanent impairment, Dr. Manshadi opined as follows:

> I believe Mr. Jabri's left knee worsening is related to his April 27, 2010, left knee work injury which continued to linger throughout the years since April 27, 2010, in relation to his work activities while working at Quaker Oats.
>
> I believe Mr. Jabri's left knee did worsen since the January of 2014 settlement as he continued to receive treatment through his primary care provider, Mr. Drahos, with injections. However, he continued to be able to work without any restrictions and perform his job appropriately, at least from review of records. Further, I do not believe he sustained any permanent impairment above the fourteen (14) percent impairment of the left lower extremity that was provided earlier. As I indicated, he continued to be able to work while receiving injections including corticosteroids and Synvisc injections.

(Jt. Ex. 9, p. 10)

However, Dr. Manshadi then stated elsewhere in his report that claimant sustained thirty-seven (37) percent impairment of the left lower extremity as a result of the total knee replacement. This was based on the American Medical

Association Guides to the Evaluation of Permanent Impairment, Fifth Edition, (AMA guides) Table 1-33. (Jt. Ex. 9, p. 11)

Dr. Manshadi further stated claimant's left knee arthroplasty with Dr. Willenborg was "related to Mr. Jabri's left knee work injuries over the years since 2010"; and, that his "cumulative work activities including those activities from January 1st through February 3, 2016 did materially aggravate his condition, and further, it was also a new injury which dramatically changed his left knee condition to the point that the injections were no longer helpful." (Jt. Ex. 9, pp. 9-11) Dr. Manshadi believed it "was the change in his job to a job which was more intense," when he moved to the "large round" operator position that further aggravated his pre-existing arthritis condition in his left knee. (Jt. Ex. 9, p. 10) Dr. Manshadi did not provide significant detail of the nature of the increased intensity of claimant's work, the relationship of the alleged increased intensity to claimant's condition, or any specific physiological change to claimant's condition.

Concerning claimant's right knee, Dr. Manshadi stated, "I also believe that Mr. Jabri's cumulative work activities, including those activities from January 1, through February 3, 2016 did exacerbate and materially aggravate his pre-existing underlying position of his right knee." (Jt. Ex. 9, p. 11) He noted claimant's history of osteoarthritis in both knees, which was "aggravated by his work activities and then further got aggravated by his job at Quaker Oats from January 1st through February 3, 2016." (Id.) Dr. Manshadi stated he believed claimant's "right knee has worsened since the January 2014 settlement," because "he was able to get by with bracing and injections as well as Synvisc injections. However, those treatments were not helping Mr. Jabri continue to work at Quaker Oats, which eventually led to the right total knee arthroplasty due to severe arthritic changes which were aggravated by his work activities at Quaker Oats." (Jt. Ex. 9, p. 11) Dr. Manshadi related claimant's right knee arthroplasty to his right knee injury "including from January 1st through February 3, 2016, which significantly and materially aggravated and exacerbated his underlying osteoarthritis of the right knee." (Id.) Again, Dr. Manshadi did not provide significant details of the nature of the increased intensity of the job change, the relationship of the alleged increased intensity to claimant's condition, or any specific physiological change to claimant's condition. Dr. Manshadi then assigned 37 percent permanent partial disability of the right lower extremity, based on the AMA Guides, chapter 17, page 546. (Id.)

On January 5, 2017, claimant's counsel wrote a letter to Dr. Willenborg requesting her signature on that letter if it accurately set forth her opinions. (Jt. Ex. 7, pp. 41-42) Dr. Willenborg signed the letter indicating she agreed that "[b]ased on history, Mr. Jabri's work activities (including his new job assigned in January 2016) were a significant factor in aggravating his underlying condition and the need for total knee replacements," and that she would defer to Dr. Manshadi for assessment of permanent impairment. (Jt. Ex. 7, p. 42) Dr. Willenborg does not distinguish the new job assignment in January 2016, from the prior work duties, but merely includes them in the description of activities that were an aggravating factor. In other words, Dr. Willenborg

does not appear to conclude that the job change of January – February 2016, represented a new injury. (Id.)

At the time of the hearing, claimant continued to be employed by defendant-employer in the "regular round" winder operator position. (Tr. pp. 39-40) Claimant takes ibuprofen and Tylenol before work for his condition. (Tr. p. 40)

Claimant testified he has to put his socks and shoes on differently than before because he cannot cross his legs. (Tr. p. 41) He also does not run or jump (Id.), although it is not clear to what extent he engaged in such activities before the settlements in 2014. Also, driving and riding on a lawn mower for long periods of time increases his pain, as does going up and down stairs and hills. (Id.)

Reviewing the expert opinions in this case, I note Dr. Pospisil stated claimant "has underlying arthritis that is not work related," and that he exacerbated his knee condition, which she defined as "a temporary 'irritation' of an underlying disease process . . ." (Jt. Ex. 5, p. 19) She stated the underlying condition was not "aggravated by his work," but assigned restrictions of no overtime and a sit down job only, and specifically restricted claimant's exposure to work and types of work. (Jt. Ex. 5, p. 19) I find this to be inconsistent.

Dr. Willenborg, the treating surgeon indicated her opinion that "Mr. Jabri's work activities, including his new job assigned in January 2016, were a significant factor in aggravating his underlying condition and the need for total knee replacements." (Jt. Ex. 7, pp. 41-42) Dr. Willenborg did not conclude claimant had a new injury in January or February, 2016.

Dr. Manshadi opined claimant's bilateral knee condition has worsened since the January 2014 settlement and was aggravated by his employment. (Jt. Ex. 9, pp. 10-11) Dr. Manshadi also opined claimant's work activity from January 1, 2016, through February 3, 2016, was a "new injury" to claimant's left knee. (Jt. Ex. 9, p. 10) Dr. Manshadi was the only physician to conclude claimant sustained a new injury.

I find claimant's bilateral knee conditions, including the bilateral knee replacements, are causally related to the condition set forth in the 2014 agreements for settlement.

In support of this finding, I accept the opinion of the treating surgeon, Dr. Willenborg, and Dr. Manshadi, that claimant's bilateral knee condition and total knee replacements are causally related to the underlying knee conditions covered by the January 2014 agreements for settlement and represent a worsening of claimant's condition since the agreements for settlement were approved by this agency. In further support of this finding, I note the treating surgeon had a unique opportunity to observe the internal condition of claimant's knee condition, and that her opinion is supported by Dr. Manshadi, who had the opportunity to evaluate claimant both prior to, and subsequent to, the agreements for settlement. I also note that although Dr. Pospisil opined claimant's work did not aggravate his condition, Dr. Pospisil restricted claimant

from specific work hours and types of work which I find to be contradictory. (Jt. Ex. 9, pp. 1, 8)

Concerning impairment ratings, Dr. Willenborg defers to Dr. Manshadi for the assessment of permanent partial disability. Dr. Pospisil does not offer an opinion on the extent of claimant's permanent impairment. I accept the opinion of Dr. Manshadi concerning permanent impairment of claimant's bilateral knees of thirty-seven (37) percent permanent impairment of the left lower extremity and thirty-seven (37) percent permanent impairment of the right lower extremity following the total knee replacements, based on the AMA Guides, Table 17-33, as a result of total knee replacements with a good result. (Jt. Ex. 9, p. 11).

Considering industrial disability, I note that after the January 2014 agreement for settlement with the Fund, claimant sustained increased functional impairment of 37 percent for each leg, which is 15 percent impairment to the whole person for each lower extremity per Table 17-3, page 527 of the AMA Guides, fifth edition. Combining the two 15 percent impairments under the Combined Values Chart on page 604 of the AMA Guides, fifth edition, produces a total whole person functional impairment of 28 percent. Also, claimant has the obvious change in condition of having undergone bilateral total knee replacements. At the time of the hearing, claimant continued to be employed by defendant-employer. (Ex. C, p. 4) However, claimant testified his overtime hours are less than what he had been working prior to the total knee replacements. (Tr. pp. 48-49)

Based on claimant's bilateral knee replacements, his increased functional impairment, and his reduced hours of work, and considering his continued employment with the same employer along with all other appropriate factors for the assessment of industrial disability, I find claimant has sustained 35 percent industrial disability, which is 175 weeks of PPD benefits.

The parties agreed claimant was off work from February 3, 2016, through August 20, 2016. (Hearing Report, p. 1, File Nos. 5055641 and 5942259) I find claimant was off work during this time due to his bilateral knee condition, including bilateral knee replacement surgeries, until Dr. Willenborg returned claimant to work with no restrictions. (Jt. Ex. 7, pp. 23-26, 31-34, 40) Claimant confirmed that the surgeries were helpful. (Tr. p. 38) Having found above claimant's bilateral knee conditions are related to the conditions set forth in the agreements for settlement, I further note that treatment for the bilateral knees was so intertwined that claimant's time off work related to both knees throughout the course of treatment and recovery is difficult, if not impossible, to separate. Therefore, I find claimant is entitled to receive healing period benefits from defendants employer and insurer from February 3, 2016, through August 20, 2016.

Concerning the claim of February 3, 2016, as a new date of injury, I find the greater weight of the evidence demonstrates a long history of a bilateral chronic knee condition that has worsened since January 2014. Claimant's job change in early January 2016 was more coincidental than causative as supported by the majority of expert testimony and claimant has failed to establish a new injury, whether acute or cumulative, occurred or manifested on or about February 3, 2016. In support of this

finding, I note claimant had undergone significant medical treatment in 2015 involving the uses of braces and a series of multiple injections. There were discussions of knee replacements for years prior to the actual surgeries and the job change in January, 2016, did not significantly alter the medical treatment trajectory which claimant had been on for quite some time, which led to his bilateral knee replacements. I therefore find claimant failed to carry his burden of proof that he sustained an injury to his left knee or bilateral knees on or about February 3, 2016.

I find the weekly benefit rate applicable to the agreement for settlement with defendants employer and insurer, which was approved by this agency on January 23, 2014, is $924.24.

I find the weekly benefit rate applicable to the agreement for settlement with the Fund, which was approved by this agency on January 24, 2014, is $924.52.

I find based on the hearing report in File No. 5042259 (review-reopening) and the parties' stipulation therein, that claimant was paid 23.45 weeks of benefits at the weekly rate of $924.24 prior to the hearing. I find that this is the same as the 23.45 weeks provided in the agreement for settlement approved by this agency on January 23, 2014.

CONCLUSIONS OF LAW

File No. 5042259 – Injury Date of April 27, 2010

1) Whether claimant's condition warrants review-reopening of his assessment of disability following the January 23, 2014, and January 24, 2014, agreements for settlement, and if so, the extent of entitlement from defendants employer and insurer and from the Fund.

A) Causal Connection

The claimant has the burden to show that the current condition for which claimant seeks review-reopening is causally related to the original work injury that was the basis of the prior agreement for settlement or decision.

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).

I have found above claimant's bilateral knee condition is causally related to his work injury of April 27, 2010, which is the subject of the 2014 agreements for settlement. Claimant has carried his burden of proof concerning causation.

B) Change in Condition

Iowa Code section 86.14(2) provides: "[i]n a proceeding to reopen an award for payments or agreement for settlement as provided by section 86.13, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon."

In a review-reopening, "[t]o justify an increase in compensation benefits, the claimant carries the burden of establishing by a preponderance of the evidence that, subsequent to the date of the award under review, he or she has suffered an *impairment or lessening of earning capacity proximately caused by the original injury*." Simonson v. Snap-On Tools Corp., 588 N.W.2d 430, 434 (Iowa 1999).

The Iowa Supreme Court has held that a claimant does not need to prove that the change in the condition was not contemplated at the time of the original decision(s). Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009). However, the party bringing the review-reopening proceeding has the burden of showing that the employee's condition has changed since the original award or settlement was made and that that change in condition relates back to the original injury. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability is not sufficient to justify a different determination on a petition for review-reopening.

In this case, I found above that claimant has sustained a change in condition, which included the obvious physiological change of a bilateral knee replacement with accompanying substantial increase in permanent partial disability. This is not a mere difference of opinion concerning permanent partial disability ratings, but rather a clear physiological change in condition. In addition, claimant testified that his employment has been impacted in the form of reduced hours of work. I conclude claimant has carried his burden of proof that he sustained a change in condition warranting review-reopening of his underlying agreements for settlement.

C) Extent of Scheduled Member Impairment (Employer)

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).

Where an injury is limited to scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a-t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably the following language in the 66 year old case of Soukup v. Shores Co., 222 Iowa 272, 277; 268 N.W. 598, 601 (1936):

> [t]he legislature has definitely fixed the amount of compensation that shall be paid for specific injuries . . . and that, regardless of the education or qualifications or nature of the particular individual, or of his inability . . . to engage in employment . . . the compensation payable . . . is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; 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).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National Union C. M. Co., 194 Iowa 819, 184 N.W. 746 (1921). Pursuant to Iowa Code section 85.34(2)(u) the workers' compensation commissioner may equitably prorate compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

In this case, I have accepted Dr. Manshadi's assessment of permanent partial disability. I conclude based on his opinion that claimant has sustained 37 percent permanent partial impairment to his left leg due to the April 27, 2010, work injury.

Claimant was previously paid 10.66 percent permanent partial impairment of his left lower extremity, 23.45 weeks, for the injury in the agreement for settlement approved by this agency on January 23, 2014. Defendant-employer is therefore entitled to a credit for permanent partial disability benefits previously paid.

I conclude 37 percent permanent impairment of the left lower extremity is 81.4 weeks of PPD benefits (220 weeks multiplied by 37 percent equals 81.4 weeks) and

81.4 weeks minus 23.45 weeks paid pursuant to the agreement for settlement leaves a balance of 57.95 weeks of permanent partial disability benefits to be paid by defendants employer and insurer pursuant to this award.

D) Defendants Employer and Insurer's Claim for Credit Under Section 85.38

Defendants employer and insurer assert they are entitled to a credit in the amount of $13,420.32 under Iowa Code section 85.38(2)(a) for short-term disability benefits paid to claimant. Claimant asserts defendants employer and insurer are not entitled to such a credit. In the alternative, claimant asserts if defendants employer and insurer are entitled to a credit under section 85.38(2)(a), the correct amount of the credit is $5,243.33.

The burden of proving entitlement to a credit under section 85.38(2)(a) rests upon the employer who seeks the credit. Miller v. Maintainer Corporation of Iowa, Inc., File No. 5020192 (App. Decision December 2, 2009); Albertsen v. Benco Manufacturing, File No. 5010764 (App. Decision July 27, 2007; Greenlee v. Cedar Falls Community Schools, File No. 934910 (App. Decision December 27, 1993); McKernan v. Morningside College, File No. 955069 (App. Decision February 22, 1993).

In order to prove entitlement to a credit, defendants employer and insurer must prove the following:

1. Benefits were received under a group plan;

2. Contribution to that plan was made by the employer;

3. The benefits should not have been paid if workers' compensation benefits were received; and

4. The specific amounts to be credited or deducted from the payments made or owed under chapter 85. Reikens v. Cummins Filtration, Inc., a/k/a Fleetguard, File No. 5031199 (App. Decision April 23, 2013); Damiano v. Universal Gym, File No. 1071309 (App. Decision January 17, 2008); Greenlee, supra; McKernan, supra.

In this case, claimant acknowledges short-term disability benefits were paid to him by a plan whose premiums were paid by defendants employer and insurer and by claimant. (Ex. 4, p.4; Ex. 7, p. 12; Ex. B, p. 4, Ex. C, p. 6) However, defendants employer and insurer failed to introduce evidence that the plan excludes coverage for work-related injuries. A copy of the short-term disability plan is not part of the record, nor were any witnesses called to testify about this topic. Therefore, defendants employer and insurer failed to prove they are entitled to a credit for the short-term disability benefits paid to claimant

E) Extent of Industrial Disability (Second Injury Fund)

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 593; 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man." Functional impairment is an element to be considered in determining industrial disability, which is the reduction of earning capacity. However, consideration must also be given to the injured worker's 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 workers' 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 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.

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

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 (Iowa 1995).

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 Community School District, 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).

In assessing an unscheduled, whole-body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387 (Iowa 2009).

I have found for the reasons stated above that claimant has sustained 35 percent industrial disability, which is 175 weeks of PPD benefits.

Claimant was previously paid 21.21 percent industrial disability in the agreement for settlement approved by this agency on January 24, 2014. The Fund is therefore entitled to a credit for industrial disability benefits previously paid. In addition thereto, the Fund is entitled to the additional credit derived from the increased functional impairment of the April 27, 2010, injury to the left leg. I have concluded above that claimant is entitled to receive 37 percent impairment of the left leg which is 81.4 weeks of PPD benefits. Thirty seven (37) percent minus the 10.66 percent impairment to the leg that claimant received in the prior settlement is 26.34 percent of the leg. Under the AMA Guides, fifth edition, Table 17-3, page 527, and rounding to the nearest whole percent, this converts to 10 percent of the whole person. Under the Combined Values Chart on page 604 of the AMA Guides, combing 21.21 percent and 10 percent of the whole person, rounding to the nearest percent, produces a 29 percent whole person impairment. The Fund is therefore entitled to receive a credit of 29 percent industrial disability, which is a credit of 145 weeks of PPD benefits. The Fund therefore shall pay claimant 30 weeks of PPD benefits in new money pursuant to this award.

2) Whether claimant is entitled to healing period benefits from February 3, 2016, through August 20, 2016

Healing Period benefits are payable to an employee who has sustained a permanent partial disability "beginning on the first day of disability after the injury, and until the employee has returned to work or it is medically indicated that significant improvement from the injury is not anticipated or until the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury, whichever occurs first." Iowa Code section 85.34(1)

I have found above that claimant is entitled to receive healing period benefits for the period of February 3, 2016 through August 20, 2016.

I have also found that the recovery and healing period involved for the bilateral knees is so intertwined that it cannot be logically separated. There is no clear evidence

that any of the healing period applies exclusively to one knee and not the other. I also note that the bilateral surgeries occurred only about six weeks apart. Therefore, based on the evidence presented, defendants employer and insurer are responsible for payment of healing period from February 3, 2016, through August 20, 2016.

3) Whether claimant is entitled to medical benefits from the employer as set forth in Exhibits 2 and 3.

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 16, 1975).

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally mandated in a workers' compensation proceeding to support a finding that the care provided was reasonable. The success, or lack thereof, of the care provided is evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File No. 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995)

The Court in Bell Bros. stated:

> We do not believe the statute can be narrowly construed to foreclose all claims by an employee for unauthorized alternative medical care solely because the care was unauthorized. Instead, the duty of the employer to furnish reasonable medical care supports all claims for care by an employee that are reasonable under the totality of the circumstances, even when the employee obtains unauthorized care, upon proof by a preponderance of the evidence that such care was reasonable and beneficial. In this context, unauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer.

Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010)

I have found above that defendants employer and insurer denied further medical treatment after Dr. Jameson issued his opinion on August 15, 2012. Having found claimant's bilateral knee condition is compensable under review-reopening, and in light of claimant's testimony that the medical treatment he received was beneficial, and applying the above law, I conclude claimant is entitled to payment by defendants employer and insurer of the medical expenses itemized in Exhibits 2 and 3, concluding that the treatment in question was reasonable and beneficial. Defendant employer and insurer shall pay those charges.

File No. 5055641- alleged injury date of February 3, 2016

1) Whether clamant sustained a new cumulative injury that arose out of and in the course of his employment, manifesting on February 3, 2016.

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).

I have found, for all of the reasons stated above, that claimant has failed to carry his burden of proof that he sustained a new injury, whether cumulative or acute, which arose out of and in the course of his employment on or about February 3, 2016.

2) All remaining issues in this file are moot.

ORDER

IT IS THEREFORE ORDERED that the review-reopening/arbitration decision filed on December 19, 2017, is reversed in part and affirmed in part.

In File No. 5042259, I reverse the finding that claimant did not sustain a change in condition sufficient to warrant review-reopening of his prior agreements for settlement.

In File No. 5055641, I affirm the finding that claimant failed to carry his burden of proof that he sustained a new injury arising out of and in the course of his employment on or about February 3, 2016.

File No. 5042259 – Injury Date of April 27, 2010

Defendants employer and insurer shall pay claimant healing period benefits from February 3, 2016, through August 20, 2016.

Defendants employer and insurer shall pay claimant fifty seven point nine five (57.95) weeks of permanent partial disability benefits, at the weekly rate of nine hundred twenty-four and 24/100 dollars ($924.24), commencing on August 21, 2016.

Defendant Second Injury Fund of Iowa shall pay claimant thirty (30) weeks of permanent partial disability benefits, at the weekly rate of nine hundred twenty-four and 24/100 dollars ($924.24), commencing 57.95 weeks after August 21, 2016.

Defendants employer and insurer 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) However interest shall only accrue from the date of this appeal decision.

Defendant Second Injury Fund of Iowa shall pay accrued weekly benefits in a lump sum together with interest from the date of this appeal decision 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).

Defendants employer and insurer shall pay medical providers directly for any outstanding medical expenses, reimburse claimant for any out-of-pocket expenses paid, and otherwise hold claimant harmless for the medical expenses itemized in Exhibits 2 and 3.

Pursuant to rule 876 IAC 4.33, defendants employer and insurer shall pay claimant's costs of the arbitration proceeding, and defendants employer and insurer shall pay the costs of the appeal, including the cost of the hearing transcript.

Pursuant to rule 876 IAC 3.1(2), defendants employer and insurer and the Second Injury Fund of Iowa shall file subsequent reports of injury as required by this agency.

File No. 5055641 – Alleged Injury Date of February 3, 2016

Claimant shall take nothing from these proceedings.

All remaining issues in this file are moot.

Pursuant to rule 876 IAC 4.33, the parties shall pay their own costs of the arbitration proceeding, and claimant shall pay any separate costs attributable to the appeal in this file.

Signed and filed on this 15th day of July, 2019.

Joseph S. Cortese II

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