BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KARI STELTZER,	FILED	
Claimant,	DEC 28 2016	
vs.	WORKERS COMPENSATION	File No. 5050626
HOUGHTON AND ASSOCIATES, LLC,		ARBITRATION DECISION
Employer,		
and		
WESCO INSURANCE COMPANY,		
Insurance Carrier, Defendants.		Head Note Nos.: 1402.40, 1403.40, 1703, 1801, 2501, 2907, 3001

STATEMENT OF THE CASE

Kari Steltzer, claimant, filed a petition for arbitration against defendants, Houghton & Associates, L.L.C., as the employer, and Wesco Insurance Company, as the insurance carrier. An in-person hearing occurred on July 20, 2016 in Des Moines, Iowa.

At the commencement of the arbitration hearing, the parties completed and submitted a hearing report. The undersigned accepted the parties' hearing report and approved it via written order. As part of the acceptance of the hearing report, the undersigned accepted the parties' stipulations contained therein. No factual or legal issues relative to the parties' stipulations will be discussed. The parties are now bound by their stipulations, as reflected on the hearing report and order.

At the commencement of hearing, defendants also conceded liability for and agreed to entry of a consent order directing payment, reimbursement, or satisfaction by defendants of all medical expenses contained in Claimant's Exhibit 2. Therefore, defendants will be ordered to reimburse, pay, or otherwise satisfy the expenses totaling $514.82 as itemized and contained in Exhibit 2.

The evidentiary record includes Claimant's Exhibits 1 through 5 and Joint Exhibits A through BB. Claimant testified on her own behalf and defendants called Steve Houghton to testify. The evidentiary record closed at the conclusion of the live

arbitration hearing on July 20, 2016. However, the parties requested the opportunity to file post-hearing briefs and agreed on a briefing deadline of September 16, 2016. The case was considered fully submitted to the undersigned upon submission of the post-hearing briefs on September 16, 2016.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether the alleged January 14, 2014 injury caused temporary disability.

2. Whether claimant is entitled to temporary disability, or healing period, benefits from January 14, 2014 through April 27, 2015.

3. Whether claimant forfeited any right to temporary disability, or healing period, benefits by refusal of suitable work pursuant to Iowa Code section 85.33(3).

4. Whether claimant's alleged right hip and/or low back injuries are causally related to or materially aggravated by the January 14, 2014 work injury.

5. Whether permanent partial disability benefits should be awarded based upon a scheduled member injury to the leg or as an unscheduled injury utilizing an industrial disability analysis.

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

7. Claimant's gross average weekly earnings prior to the date of injury.

8. Whether any weekly workers' compensation benefits are suspended pursuant to Iowa Code section 85.39 for claimant's refusal to submit to a medical evaluation requested by defendants.

9. Whether claimant is entitled to reimbursement or payment of past medical expenses contained in Exhibit 2.

10. Whether claimant is entitled to reimbursement for the expense of her independent medical evaluation pursuant to Iowa Code section 85.39.

11. Whether defendants are entitled to a credit for any overpayment of benefits and whether such credit should be realized or applied in this case or against a future potential injury pursuant to Iowa Code section 85.34(4) and/or Iowa Code section 85.34(5).

12. Whether claimant's costs, as contained in Exhibit 3, should be assessed against defendants.

FINDINGS OF FACT

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

Kari Steltzer started employment with Houghton & Associates, L.L.C. (hereinafter referred to as "Houghton") in August 2013. She worked as a home health aide for Houghton, providing services to clients, including personal care, light housekeeping, running errands and taking clients to doctor appointments. (Exhibit Q, page 302)

On January 14, 2014, claimant was working for Houghton and engaged in her normal duties. As she walked toward the residence of a client, she slipped on ice and fell. Ms. Steltzer alleges that she sustained injuries to her right knee, right hip and low back as a result of the fall. (Claimant's testimony) Defendants concede that claimant injured her right knee in the fall but dispute whether claimant has proven she sustained a right hip and/or low back injury as a result of the fall. (Hearing Report)

Claimant produces and relies upon the medical opinion of Robin L. Sassman, M.D., in support of her claim that she sustained right knee, right hip and low back injuries on January 14, 2014. Dr. Sassman evaluated claimant one time, on January 4, 2016, as an independent medical evaluation. Dr. Sassman reviewed the medical records she was supplied, took a history, and performed what appears to be a thorough examination of claimant. She issued a formal report on June 1, 2016.

Dr. Sassman opines that the January 14, 2014 fall was the direct cause of Ms. Steltzer's right knee pain, need for surgery and ongoing symptoms in the right knee. Dr. Sassman further opines that the January 14, 2014 fall "was at least a substantial aggravating factor" for claimant's right hip pain and low back pain. (Ex. M, pp. 121-122) Dr. Sassman opined that claimant has not achieved maximum medical improvement and recommended additional evaluation or treatment for all three alleged injuries.

Nevertheless, Dr. Sassman was asked to provide a permanent impairment rating and offers an opinion that claimant is entitled to a 10 percent permanent impairment of the right lower extremity as a result of loss of range of motion from the right knee injury. Dr. Sassman offers a 7 percent permanent impairment rating for the right hip as well as a 5 percent permanent impairment of the whole person as a result of the low back condition. After converting and combining these ratings, Dr. Sassman opines that claimant has an 11 percent permanent impairment of the whole person as a result of the 3 injuries.

Defendants assert that Dr. Sassman's opinion should be afforded less weight than the opinions of two treating orthopaedic surgeons, an evaluating orthopaedic surgeon, and the treating occupational medicine physician. Specifically, defendants rely upon the medical notes and opinions of Nicholas Honkamp, M.D., Timothy Vinyard, M.D., Mark Kirkland, D.O., and Nicholas O. Bingham, M.D.

Dr. Honkamp was the initial orthopedic surgeon to evaluate and treat Ms. Steltzer. Dr. Honkamp first evaluated claimant on February 18, 2014. His office note of that date describes the fall on ice and notes symptoms in claimant's right knee. Dr. Honkamp's physical examination appears to be focused upon claimant's right knee. There is no mention in Dr. Honkamp's record of complaints about or evaluation of the right hip or low back on February 18, 2014. (Ex. H, pp. 32-33)

Ms. Steltzer followed up with Dr. Honkamp in August 2014. Again, her complaints and evaluation focused solely upon her right knee. At that time, Dr. Honkamp proceeded with an injection into claimant's right knee. (Ex. H, p. 36) Dr. Honkamp again evaluated Ms. Steltzer on September 17, 2014. At that evaluation, Dr. Honkamp made no notation of complaints in claimant's right hip or low back. Again, his evaluation and recorded history focused solely upon claimant's right knee complaints. Dr. Honkamp recommended surgical intervention for claimant's right knee at that visit. (Ex. H, p. 38)

Dr. Honkamp took claimant to surgery on October 13, 2014 and performed a right knee arthroscopy with microfracture of the trochlear lesion in claimant's right knee. (Ex. H, pp. 40-42) At the post-surgical follow-up on October 21, 2014, claimant offered no complaints of right hip or low back pain. Again, the evaluation appears focused solely upon claimant's right knee. (Ex. H, pp. 45-46)

Between November 25, 2014 and February 6, 2015, Dr. Honkamp evaluated claimant three times. In each of those office notes, Dr. Honkamp recorded only complaints in the right knee and his evaluations focused solely upon the right knee. (Ex. H, pp. 48-55)

However, on February 24, 2015, Dr. Honkamp re-evaluated claimant. In this office note, Dr. Honkamp noted, "she was having some low back pain." (Ex. H, p. 57) Dr. Honkamp evaluated claimant once more on April 28, 2015. In the April 2015 office note, there is no mention of low back or right hip symptoms and again the focus of the history and examination appears to be focused on the right knee. (Ex. H, pp. 59-61)

On July 2, 2015, Dr. Honkamp authored a report in which he summarized his diagnosis, surgical treatment, confirmed that claimant had achieved maximum medical improvement, and offered a ten percent permanent impairment rating of the right lower extremity as a result of claimant's work injury. (Ex. H, p. 63)

In a report signed July 9, 2016, Dr. Honkamp noted that claimant mentioned right hip pain on her initial intake form but that she never mentioned right hip pain to Dr. Honkamp during his treatment. Dr. Honkamp also noted that claimant reported back symptoms to his nurse on the phone and confirmed that claimant mentioned low back symptoms during his evaluation on February 24, 2015. Dr. Honkamp opined that he did not observe any indication of a right hip condition during his clinical evaluations. (Ex. I, pp. 73-74)

Dr. Vinyard evaluated claimant on August 17, 2015 to provide a second orthopaedic opinion. Dr. Vinyard's office note of that date discusses only the right knee. Review of the patient history provided to Dr. Vinyard and signed by Ms. Steltzer does not demonstrate any complaints of right hip or low back symptoms. Dr. Vinyard mentions no such symptoms in his history or evaluation notes. (Ex. K, pp. 91-92) In his report to defense counsel dated August 17, 2015, Dr. Vinyard noted that claimant denied "any other significant local or systemic complaints" other than the right knee. (Ex. K, p. 94) Dr. Vinyard opined that claimant would not qualify for any permanent impairment as a result of her right knee injury. (Ex. K, p. 96)

Dr. Vinyard evaluated claimant again on May 2, 2016. His note from that date does not demonstrate any right hip or low back complaints from claimant. Again, his evaluation appears focused upon the right knee and included injections into the right knee. (Ex. K, pp. 97) On June 9, 2016, Dr. Vinyard conducted a follow-up evaluation. That evaluation again focused on the right knee with no expressed record of right hip or low back symptoms. (Ex. K, pp. 100-102)

On July 1, 2016, Dr. Vinyard authored a report noting:

> I do not remember at any point Ms. Steltzer complaining of symptoms other than pain in her knee. She only indicated pain in her knee on her patient history form. If she had complained of right hip or low back symptoms, I would likely have made mention of this in my note and referred her on to an appropriate specialist.

(Ex. L, p. 106) Dr. Vinyard declined to comment on causation of any right hip or low back conditions because claimant made no mention of such conditions during his treatment and evaluations. (Ex. L, p. 106)

Defendants scheduled claimant for an independent medical evaluation of their own with Mark Kirkland, D.O. on June 29, 2016. Claimant appeared for the evaluation but left before Dr. Kirkland was able to complete his physical examination. In his history, Dr. Kirkland notes that claimant reported falling directly on her right knee and that she experienced right hip pain after she got up off the ground on January 14, 2014. (Ex. N, p. 133)

Claimant told Dr. Kirkland that she was in a motor vehicle accident as a teenager and "has had pain in her lumbar spine ever since the accident." (Ex. N, p. 133) Dr. Kirkland also recorded that claimant denied any prior knee or hip pain. (Ex. N, p. 133) However, in his review of the medical records, Dr. Kirkland noted that claimant had complaints and treatment for knee pain and bilateral hip pain before the date of accident. (Ex. N, p. 136)

Dr. Kirkland opined that "prior to the injury she was having patellofemoral problems and the injury on or about January 14, 2014 is an aggravation of a preexisting

problem." (Ex. N, p. 136) However, with respect to the low back and right hip complaints, Dr. Kirkland opined:

> Based on the records that I have received, there is substantial evidence that Kari was having low back pain and bilateral hip pain for a very significant time prior to the January 14, 2014 injury. It is my opinion that the right hip and low back are not caused or related to injury on or about January 14, 2014.

(Ex. N, p. 137)

Finally, defendants put forth the opinions of the treating occupational medicine physician, Nicholas O. Bingham, M.D., to challenge the causation opinions of Dr. Sassman. Dr. Bingham first evaluated claimant on the date of her work accident, January 14, 2014. His office note of that date records the mechanism of injury as the slip and fall on a sidewalk as claimant approached a client's residence. (Ex. E, p. 19) Claimant described the injury as a twisted knee and noted that she took a bit of an impact on the knee. (Ex. E, p. 19) Dr. Bingham's initial note records that claimant complained of right knee pain and to a lesser degree symptoms in her right hip. (Ex. E, p. 19)

Dr. Bingham noted during his initial evaluation that claimant's right hip range of motion was "mildly limited by pain" and that there was "discomfort with flexion and extension of the hip join and abduction of the leg." (Ex. E, p. 19) By February 4, 2014, however, Dr. Bingham notes, "The hip is not much problem now but her knee is still quite sore." (Ex. E, p. 21) At that juncture, Dr. Bingham referred claimant for orthopaedic evaluation by Dr. Honkamp.

Dr. Bingham offered a report, which he signed on June 22, 2016. In his report, Dr. Bingham notes that claimant's primary complaint was her right knee, though he acknowledges claimant reported right hip and lower back complaints. Dr. Bingham opines that claimant's right hip and low back complaints steadily improved during his treatment and that he was confident that claimant's right hip and low back complaints would "be fully resolved" when he terminated his treatment. Dr. Bingham confirmed that he did not believe further evaluation or treatment of claimant's right hip or low back was necessary when Dr. Bingham concluded his treatment and that he did not observe any conditions of the right hip or low back that would warrant permanent impairment. (Ex. F, p. 28)

Ultimately, the opinions offered by each of the physicians in this case can be read as reasonable and convincing. Review of the underlying evidence is necessary to put these opinions into context and determine which medical opinion is most convincing on the issue of whether claimant's right hip and/or low back conditions are causally related to or materially aggravated by her fall on January 14, 2014.

Dr. Sassman's opinions are supported by the initial medical and physical therapy records, which record complaints of right hip and low back pain immediately after the January 14, 2014 fall. Claimant specifically reported right hip pain on the date of injury. (Ex. E, p. 19) Three days later, she reported right hip pain and mild pain and stiffness in her low back. (Ex. E, p. 20)

Ms. Steltzer commenced physical therapy on December 15, 2014. At her initial therapy appointment, she reported complaints of bilateral hip pain and low back pain, which she attributed to her altered gait. (Ex. J, p. 76) Each of these records supports at least a potential aggravation of pre-existing conditions, as opined by Dr. Sassman.

On the other hand, the opinions, history, and observations noted by Dr. Bingham, Dr. Honkamp, Dr. Vinyard, and Dr. Kirkland are all reasonable and support a finding that claimant's right hip and/or low back symptoms did not arise out of and were not materially aggravated by the fall on January 14, 2014. For instance, Dr. Bingham's observations and opinions pertaining to claimant's right hip and low back symptoms resolving and requiring no further treatment by February 2014 correspond with claimant's lack of any significant complaint of such symptoms to Dr. Honkamp and/or Dr. Vinyard.

A reasonable argument could be made that Dr. Honkamp and Dr. Vinyard were retained to evaluate claimant's right knee and may have ignored or not evaluated her right hip or low back symptoms. However, Dr. Vinyard specifically states that he would have noted such symptoms and made appropriate referrals, if claimant had mentioned either low back or right hip symptoms. I accept Dr. Vinyard's statement as convincing.

I am also persuaded that claimant was not reporting low back or right hip symptoms to Dr. Honkamp. In fact, when claimant did report low back symptoms, Dr. Honkamp specifically recorded those symptoms in his office note of February 10, 2015. No further low back symptoms were reported by claimant or noted by Dr. Honkamp after February 10, 2015. Therefore, I find that claimant did report such symptoms when she experienced them and Dr. Honkamp was recording those complaints. Other than February 10, 2015, however, claimant was not reporting low back or right hip symptoms to Dr. Honkamp.

Ultimately, I am persuaded by two pieces of evidence. Dr. Sassman records that "there is no evidence that [low back pain] was an ongoing issue" for claimant between October 2013 and the injury date on January 14, 2014. (Ex. M, p. 121) However, Dr. Kirkland records that claimant told him she was involved in a motor vehicle accident as a teenager and has had low back pain ever since that accident. (Ex. N, p. 133)

Perhaps more importantly, claimant sought treatment and reported low back pain one week before this work accident. On January 7, 2014, claimant sought treatment through an orthopaedic surgeon, Barron R. Bremner, D.O. (Ex. C) In the patient history claimant provided to Dr. Bremner, it was noted that she had left hip pain, bursitis, low

back pain and that on January 6, 2014, her right leg gave out on her. She also reported tingling and numbness in her fingers and toes on January 7, 2014. (Ex. C, p. 14)

Dr. Sassman's history and understanding of claimant's low back symptoms is specifically refuted by Dr. Bremner's January 7, 2014 office note. These reported low back symptoms were one week prior to the injury in this case. Certainly, claimant was having ongoing low back complaints prior to the January 14, 2014 fall. Dr. Sassman was not provided this record, not told of these ongoing symptoms by claimant, or failed to note or record these ongoing symptoms. Regardless, the fact that claimant reported ongoing low back symptoms, as well as her right leg giving out, one week prior to the work injury specifically contradicts Dr. Sassman's history and understanding.

Given Dr. Sassman's erroneous history, I question her ultimate conclusions and opinions in this case. I find the causation opinion of Dr. Kirkland regarding claimant's low back and right hip symptoms to be consistent with the other medical evidence I found credible. I find the causation opinions of Dr. Kirkland to be most credible on the issue of claimant's right hip and low back. Therefore, I find that claimant has not proven that the January 14, 2014 work injury caused or materially aggravated her right hip and low back symptoms.

Claimant has clearly proven she sustained a right knee injury as a result of the January 14, 2014 fall. She is entitled to benefits for that injury, but her injury is limited to the right knee.

Both Dr. Honkamp and Dr. Sassman opined that claimant sustained a ten percent permanent impairment of the right lower extremity as a result of the right knee injury. Dr. Vinyard suggested that he would not assign permanent impairment for the right knee injury. Given that claimant had an objectively demonstrated defect in the right knee, which required surgical correction, and which causes ongoing symptoms and the need for permanent work restrictions, I find that the permanent impairment rating offered by Dr. Honkamp is the most convincing impairment rating. I specifically find that claimant has proven a ten percent permanent impairment and disability of the right leg.

Ms. Steltzer also seeks an award of healing period benefits during a period of time that she was under medical restrictions. Specifically, Ms. Steltzer seeks an award of healing period benefits from January 14, 2014 through April 27, 2015. Defendants assert that Ms. Steltzer was offered light duty work consistent with her medical restrictions but she declined the offered work. Defendants further assert that claimant voluntarily quit her employment on February 18, 2014. Upon acceptance of the voluntary resignation by the employer, defendants argue that Ms. Steltzer effectively refused suitable work on that date and all future dates. Claimant contends that she rescinded her resignation on February 21, 2014 and should be entitled to healing period benefits again after that date.

The employer's representative, Steve Houghton, conceded during his testimony that claimant was off work the week after her injury and that she had medical restrictions precluding a return to work for that week. However, he testified that the employer paid claimant wages for all hours she was scheduled to work the week following the injury.

Thereafter, Mr. Houghton testified that suitable light duty work was available and offered to claimant. Ms. Steltzer denied that light duty work was offered to her. In fact, claimant testified that no work was offered to her after January 19, 2014 until February 2014. Yet, she acknowledges that she was paid $264.00 in wages for the week ending February 2, 2014. (Ex. W, pp. 341-342 (line 4); Claimant's testimony) Claimant testified that there were no light duty assignments available during this week. Therefore, claimant believes these wages were paid in lieu of workers' compensation benefits, though she does not believe she was specifically told this.

Given that the employer paid claimant for her time off work when light duty assignments were not available, I find that the employer offered light duty assignments during the other periods of time in dispute and that claimant declined such assignments other than as she was specifically paid for her work hours before February 18, 2014.

Ms. Steltzer asserts that suitable work was not offered to her on February 18, 2014. Specifically, she testified that she understood special training was required to work at the location where the employer was assigning her for light duty. However, claimant conceded on cross-examination that she did not ask any questions about the light duty work being assigned.

Ms. Steltzer asserted that she was not trained for the light duty jobs she was being assigned. Mr. Houghton testified that specialized training was not required for the work assignments claimant was being offered as of February 18, 2014. The jobs being assigned included playing cards with residents at a health care facility, painting residents' fingernails, reading books to residents, playing board games with residents, chair yoga with residents, and coffee chat with residents. (Ex. S, pp. 315-316)

Ms. Steltzer expressed concerns at trial about whether she would know how to play the card games, board games, that she could not use her legs for chair yoga, but discussed none of these concerns with the employer after the light duty work offer was extended. Instead, Ms. Steltzer resigned her employment less than one hour after she received the written light duty work offer from the employer. (Ex. S, p. 315) The employer testified that any necessary accommodations could have been made to allow claimant to perform the light work duties she was offered on February 18, 2014.

I find that the employer offered suitable work consistent with claimant's medical restrictions. I find that Ms. Steltzer submitted her voluntary written resignation on February 18, 2014. I find that it was reasonable for the employer to accept that resignation given claimant's refusal to perform suitable work.

I find that it was reasonable for the employer to decline to accept a "rescission" of a voluntary resignation. Claimant no longer had a job with the employer after resigning her position on February 18, 2014. The proper mechanism to seek a job from the employer, after resigning her position, was submission of a job application. Claimant did not submit a job application to the employer after February 18, 2014.

Nevertheless, I also find that claimant was under medical restrictions after her knee surgery that precluded her from performing any type of employment from October 13, 2014 through November 2, 2014. (Ex. H, pp. 66-67) No reasonable or suitable job could be offered or performed during that period of time, as the authorized treating physician had claimant completely removed from employment activities during that period of time.

The parties stipulated that the applicable weekly workers' compensation rate is $198.05. (Hearing Report) Defendants paid 25 weeks of benefits at the rate of $279.13, which results in an overpayment of weekly benefits. (Hearing Report) I find that defendants paid the healing period benefits, including the overpayment, in good faith. (Ex. V, pp. 335, 340)

Defendants paid three weeks of healing period benefits. They overpaid the weekly rate by $81.08 per week. Defendants overpaid healing period benefits by a total of $243.24.

Defendants voluntarily overpaid 22 weeks of permanent partial disability benefits by $81.08 per week. Defendants overpaid permanent disability benefits by a total of $1,783.76.

Ms. Steltzer requests an award of alternate medical care. Specifically, she seeks evaluation by a knee joint specialist. I find that Dr. Vinyard is an authorized medical provider. Dr. Vinyard recommends evaluation and potential treatment by a knee joint replacement specialist. As of the date of the arbitration hearing, defendants have not authorized an evaluation with a knee replacement specialist and claimant has not obtained an evaluation by a knee replacement specialist as recommended by Dr. Vinyard.

I find that evaluation by a knee joint replacement specialist is a reasonable treatment recommendation. I find that evaluation by a knee replacement specialist is necessary to diagnose claimant's condition and determine if further medical care is warranted and needed for claimant's right knee. I find that defendants are not offering any alternate medical care. Therefore, I also find that the claimant seeks care that is superior to and more extensive than the defendants' lack of offered care.

CONCLUSIONS OF LAW

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

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

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to

recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

The parties disputed whether this injury should be compensated as a scheduled member injury to the right leg or as an unscheduled injury using an industrial disability analysis. Having found that claimant failed to prove her right hip and/or low back conditions are causally related to or materially aggravated by the January 14, 2014 work accident, I conclude that claimant has proven she sustained only a right knee injury that arose out of and in the course of her employment.

Under the Iowa Workers' Compensation Act permanent partial disability is categorized as either to a scheduled member or to the body as a whole. See section 85.34(2). Section 85.34(2)(a)-(t) sets forth specific scheduled injuries and compensation payable for those injuries. 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). Compensation for scheduled injuries is not related to earning capacity. 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).

I found that claimant sustained a 10 percent loss of function in her right leg as a result of the February 4, 2010 work injury. The Iowa legislature has established a 220 week schedule for leg injuries. Iowa Code section 85.34(2)(o). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of her leg. Iowa Code section 85.34(2)(v). Ten (10) percent of 220 weeks equals 22 weeks. Claimant is, therefore, entitled to an award of 22 weeks of permanent partial disability benefits against the employer. Iowa Code section 85.34(2)(o), (v).

Claimant also requests an award of past medical expenses. Claimant's medical expenses are detailed and summarized at Exhibit 2. 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).

Ms. Steltzer also requested an award of healing period benefits from January 14, 2014 through April 27, 2015. Having found that the employer paid claimant for her lost time when work was not available, I conclude that the employer paid wages in lieu of benefits pursuant to 876 IAC 8.4 the week after the injury and the week ending February 2, 2014.

With respect to the remainder of the weeks before February 18, 2014, I found that the employer offered suitable employment consistent with claimant's medical restrictions and that claimant declined those offers. Pursuant to Iowa Code section 85.33(3), claimant is precluded from receiving healing period benefits during these periods of time.

I found that claimant voluntarily resigned her employment with Houghton on February 18, 2014. The employer accepted that resignation. Having resigned her employment, Ms. Steltzer declined all suitable employment offers as of February 18, 2014 and into the future. Schutjer v. Algona Manor Care Center, 780 N.W.2d 549, 559 (Iowa 2010). Therefore, I conclude Ms. Steltzer is precluded from receiving healing period benefits from February 18, 2014 forward during any periods of time when suitable work could be offered to her.

However, I did find that claimant was medically restricted and unable to perform any work, including light duty assignments, from October 13, 2014 through November 2, 2014. During this time period, claimant was off work and unable to work. She had just had knee surgery and clearly was not at maximum medical improvement. Suitable work could not have been offered to claimant during this period of time. Therefore, claimant is entitled to an award of healing period benefits from October 13, 2014 through November 2, 2014. Iowa Code section 85.34(1).

Defendants asserted that their obligation to pay any award of benefits should be suspended pursuant to Iowa Code section 85.39 because claimant failed to submit to the orthopaedic evaluation defendants requested with Dr. Kirkland. This issue was debatable because claimant did appear for the requested evaluation and at least partially complied with the defendants' request. Nevertheless, I find that this issue is now moot.

Defendants have paid all weekly benefits that have been determined to be owed. There remain no additional benefits to be paid at this time. Therefore, a suspension of benefits pursuant to Iowa Code section 85.39 would be meaningless or irrelevant at this juncture. Defendants' request to suspend benefits pursuant to Iowa Code section 85.39 is now moot and is denied.

The parties reached an agreement on the past medical expense issue at the commencement of hearing. I conclude that defendants are liable for payment, reimbursement, or should otherwise be ordered to hold claimant harmless for all expenses detailed in Exhibit 2. Iowa Code section 85.27.

Ms. Steltzer also seeks an award of alternate medical care and specifically an award that she be provided an evaluation by a knee joint replacement specialist pursuant to the recommendation of Dr. Vinyard. "Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

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

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

When a designated physician refers a patient to another physician, that physician acts as the defendant employer's agent. Permission for the referral from defendant is not necessary. Kittrell v. Allen Memorial Hospital, Thirty-fourth Biennial Report of the Industrial Commissioner, 164 (Arb. November 1, 1979) (aff'd by industrial commissioner). See also Limoges v. Meier Auto Salvage, I Iowa Industrial Commissioner Reports 207 (1981).

In Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997), the supreme court held that "when evidence is presented to the commissioner that the employer-authorized medical care has not been effective and that such care is 'inferior or less extensive' than other available care requested by the employee, . . . the commissioner is justified by section 85.27 to order the alternate care."

Having found that claimant seeks medical care that is recommended by an authorized medical provider and that the care claimant seeks is superior to and more extensive than the lack of care being offered by defendants, I conclude that claimant has established an entitlement to alternate medical care. Defendants will be ordered to provide claimant with an evaluation with a knee joint replacement specialist pursuant to the recommendation made by Dr. Vinyard. Iowa Code section 85.27(4).

Ms. Steltzer seeks an award of the expense of her independent medical evaluation with Dr. Sassman pursuant to Iowa Code section 85.39. 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).

Defendants authorized care through Dr. Honkamp. Dr. Honkamp offered an opinion as to permanent impairment on July 2, 2015. (Ex. H, p. 63) Dr. Sassman performed her evaluation on January 4, 2016. (Ex. M, p. 114) Given that claimant was not satisfied with Dr. Honkamp's impairment rating and given that Dr. Sassman's evaluation occurred after Dr. Honkamp rendered an impairment, I conclude that claimant has proven entitlement to reimbursement of her independent medical evaluation fee from Dr. Sassman. Dr. Sassman charged $3,389.50, which is found to be consistent with other similar evaluation fees charged by providers submitting reports to this agency. Dr. Sassman's charges are specifically found to be reasonable in this case. Defendants will be ordered to reimburse claimant for Dr. Sassman's charges.

Finally, claimant seeks an assessment of her costs. Costs are assessed at the discretion of the agency. Iowa Code section 85.40. Exercising the agency's discretion and recognizing that claimant received an award of benefits consistent only with the amount of benefits voluntarily paid by the defendants, there is an argument that costs should not be assessed. However, claimant did receive an award of minimal medical expenses and an award of alternate medical care.

The parties obtained mixed results in this litigation, but claimant required the exercise of this agency's jurisdiction to obtain payment of past medical expenses and to secure future medical care to which she was entitled. Therefore, I conclude that it is reasonable to assess claimant's filing fee pursuant to 876 IAC 4.33(7) and her deposition transcript charges totaling $227.30 pursuant to 876 IAC 4.33(2). All other requests for costs are denied.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant healing period benefits from October 13, 2014 through November 2, 2014 at the stipulated rate of one hundred ninety-eight and 05/100 dollars ($198.05) per week.

Defendants shall pay claimant twenty-two (22) weeks of permanent partial disability benefits commencing on April 28, 2015 at the stipulated rate of one hundred ninety-eight and 05/100 dollars ($198.05) per week.

Defendants shall be entitled to the stipulated credit for benefits paid against this award.

Defendants shall also be entitled to a credit totaling two thousand twenty-seven and 00/100 dollars ($2,027.00) for overpayment of weekly benefits in this case against any future injury sustained in the employ of this employer, pursuant to and subject to the limitations of Iowa Code section 85.34(5).

Defendants shall pay, reimburse, satisfy directly with the provider, or otherwise hold claimant harmless for all medical mileage and medical expenses itemized in Claimant's Exhibit 2 and totaling five hundred fourteen and 82/100 dollars ($514.82).

Defendants shall reimburse claimant for Dr. Sassman's independent medical evaluation pursuant to Iowa Code section 85.39 in the amount of three thousand three hundred eighty-nine and 50/100 dollars ($3,389.50).

Defendants shall provide claimant an evaluation and any causally related medical care for her right knee injury through a joint replacement specialist pursuant to the recommendations of Dr. Vinyard.

Defendants shall reimburse claimant's costs totaling three hundred seventy-seven and 30/100 dollars ($337.30).

Defendants 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 28th day of December, 2016.

WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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WHG/srs

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.