

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH JOHNSON,

Claimant,

vs.

INTERNATIONAL PAPER,

Employer,

and

OLD REPUBLIC INSURANCE
COMPANY,Insurance Carrier,
Defendants.

File No. 21002359.01

ARBITRATION DECISION

Head Note Nos.: 1100; 1108; 1108.50

STATEMENT OF THE CASE

The claimant, Joseph Johnson, filed a petition for arbitration seeking workers' compensation benefits from employer International Paper, its insurer, Old Republic Insurance Company, and the Second Injury Fund of Iowa ("the Fund"). Andrew Giller appeared on behalf of the claimant. John Cutler appeared on behalf of the defendant-employer and insurer. Alec LeSher appeared on behalf of the Fund.

The matter came on for hearing on June 27, 2022, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-6, Claimant's Exhibits 1-9, and Defendants' Exhibits A-I. The Fund chose not to offer any exhibits. The exhibits were received into the record without objection.

The claimant testified on his own behalf. Buffy Nelson was appointed the official reporter and custodian of the notes of the proceeding. On August 17, 2022, the Fund filed a notice of intent to settle as to the disputes between the claimant and the Fund. Therefore, the matter proceeds against International Paper and its insurer only. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on August 19, 2022, after briefing by the parties.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.
2. If the defendants are liable for the alleged injury, the claimant is entitled to temporary disability benefits as follows:
 - a. Healing Period from December 10, 2020, to October 26, 2021; and,
 - b. Temporary Partial Disability from October 27, 2021, to March 1, 2022.
3. That, if the injury is found to be a cause of permanent disability, the disability is a scheduled member disability to the left lower extremity.
4. That the commencement date for permanent partial disability benefits, if any are awarded, is March 1, 2022.
5. That the claimant was married and entitled to four exemptions at the time of the alleged injury.
6. That, although the medical expenses are disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants are not offering contrary evidence.
7. That, although the causal connection of the expenses to a work injury cannot be stipulated, the listed expenses are at least causally connected to the medical condition(s) upon which the claim of injury is based.
8. That the defendant-employer and insurer are entitled to credit under Iowa Code section 85.38(2) for sick pay/disability income in the amount of twelve thousand five hundred seventy-two and 50/100 dollars (\$12,572.50).
9. That the costs listed in Claimant's Exhibit 7 were paid.

The defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the claimant sustained an injury, which arose out of and in the course of employment on December 3, 2020.
2. Whether the alleged injury is a cause of temporary disability during a period of recovery.
3. Whether the alleged injury is a cause of permanent disability.
4. The extent of permanent disability, if any is awarded.
5. The claimant's average weekly wage and corresponding rate of compensation.
6. Whether the claimant is entitled to a reimbursement of medical expenses, as listed in Claimant's Exhibit 8.
7. Whether the claimant is entitled to reimbursement for an independent medical examination ("IME") pursuant to Iowa Code section 85.39.
8. Whether the claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27.
9. Whether an assessment of costs is appropriate.

FINDINGS OF FACT

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

Joseph Johnson, the claimant, was 72 years old at the time of the hearing. (Testimony). He grew up in California, and moved to Cedar Rapids, Iowa, in 1972. (Testimony). He did not graduate high school. (Testimony; Claimant's Exhibit 2:31. 6:52).

In 1973, the claimant was hired by Weyerhaeuser. (Testimony; CE 2:32). Weyerhaeuser eventually became International Paper. (Testimony). He has been working at the same location since 1973. (Testimony). He initially began his job with International Paper as a corrugator stacker. (Testimony). As a corrugator stacker, he took flat boxes off a machine, and put them on a conveyor so that they could be transported to the "finishing side." (Testimony). Stacks of boxes would be "huge," up to 96 by 60. (Testimony). He moved 25 to 30 boxes at a time. (Testimony). He was on his feet all day with this position. (Testimony). He worked that job for about six months. (Testimony).

Mr. Johnson then transitioned to a position as a stacker. (Testimony). As a stacker, he would stand 25 to 30 boxes in a corner so that they could be shipped to a

customer. (Testimony). He stacked boxes repetitively, and was on his feet for his whole shift. (Testimony). He worked this job for six years. (Testimony).

The claimant then moved to a position feeding a United 2124 machine. (Testimony). He took handfuls of sheets of cardboard and fed them into a hopper. (Testimony). From time to time, the machine would jam up, and he would have to climb a ladder to clear the jam by hand. (Testimony). He worked this position for three years. (Testimony).

Mr. Johnson's next position with International Paper was to work a position where he fed a Ward machine. (Testimony). This involved taking a handful of paper, and placing it into a hopper. (Testimony). The paper would come out as flat paper. (Testimony). This position required him to be on his feet for the entire day. (Testimony). He worked this position for about five years. (Testimony).

The claimant moved to a corner post machine job. (Testimony). This involved taking handfuls of cardboard, up to 30 sheets at a time, and feeding it into a machine. (Testimony). The claimant would take sheets of cardboard from a conveyor, and placed them into a machine. (Testimony). The machine ran the flat boards through, and created a corner post to put in appliance boxes in order to stabilize the box. (Testimony). He did this job for about 14 years. (Testimony).

Mr. Johnson's current position is as a baler operator. (Testimony). He moved to this position because it paid more, and he liked the job. (Testimony). He drives a forklift, picks up scraps from each machine (sometimes by hand), and takes the scraps to a machine. (Testimony). He exits his forklift, walks six to ten feet, and feeds paper into a hogger. (Testimony). He feeds the paper into the hogger by sliding it from the forklift. (Testimony). The paper enters a chute, and the machine presses the cardboard into bales, which weigh an average of 1,100 pounds. (Testimony). He then takes the bales from a conveyor, and places them into a storage area until he has enough bales to fill a trailer. (Testimony). He is on his feet about 20 percent of the time, walking and checking on material, and to make sure that wires tying bales are operating. (Testimony). Part of his job requires him to replace the wires that tie the bales. (Testimony). He walks about 50 feet when he does this. (Testimony). He estimated that he exits his forklift 100 times per shift. (Testimony).

He uses both hands and feet to operate the forklift. (Testimony). He enjoys working this position, as it involves driving and working by himself. (Testimony). He liked not having a crew to report to. (Testimony). The work was also less physically taxing than his previous work. (Testimony).

Some medical records that predate the alleged injury in this matter were submitted for the record. These are noted as they occurred chronologically before the alleged fall of November 10, 2020. On August 28, 1996, Mr. Johnson visited IMC. (Joint Exhibit 1:1). He complained of an injury to his right long finger. (JE 1:1). He injured the finger when it became caught in a roller at work. (JE 1:1). He recovered,

but still had persistent pain and “progressive triggering” of the finger. (JE 1:1). He also had mild diffuse swelling of the finger. (JE 1:1). The provider observed active triggering of the finger “with tenderness at the A-1 pulley area and triggering palpable there.” (JE 1:1). Mr. Johnson was provided with a cortisone injection. (JE 1:1).

Timothy Loth, M.D., examined the claimant on August 4, 2015, for complaints of a mass developing over the dorsal aspect of his right ring finger. (JE 2:2-3). The mass slowly enlarged which bothered Mr. Johnson. (JE 2:2). Dr. Loth recommended excision, but Mr. Johnson decided “to wait on that for now.” (JE 2:3).

On October 6, 2015, Melissa Fagan, A.R.N.P., examined the claimant with regard to his right ring finger. (JE 2:4-6). He had a good result from an injection provided on August 4, 2015. (JE 2:4). This resolved his triggering, “for the most part.” (JE 2:4). He continued to have soreness, stiffness and swelling in his hand. (JE 2:4). Mr. Johnson wanted to try another injection, and agreed that if that did not alleviate his symptoms, he would pursue a right ring finger A1 pulley release. (JE 2:5).

On September 8, 2020, Mr. Johnson reported to Daniel Trautman, M.D.’s office at UnityPoint Health in Hiawatha, Iowa. (JE 3:10-16). Mr. Johnson complained of pain in his right third finger for the last one to two years. (JE 3:14). He noted no specific injury. (JE 3:14). Dr. Trautman observed that the claimant had mild swelling of his third digit in his right hand. (JE 3:14). Dr. Trautman suspected that the claimant had osteoarthritis and recommended an x-ray. (JE 3:14-15). Mr. Johnson requested a referral to a specialist. (JE 3:15). X-rays performed that day showed mild and moderate degenerative changes involving the radiocarpal, interphalangeal, and metacarpal spaces. (JE 3:16). The findings were most pronounced at the third metacarpal phalangeal joint. (JE 3:16).

Peter Chimenti, M.D., examined the claimant on September 21, 2020. (JE 2:7-9). He had a non-work-related complaint regarding his right hand, which included stiffness, swelling, and pain about the right middle finger. (JE 2:7). His pain was moderate and intermittent. (JE 2:7). Mr. Johnson denied a known history of trauma to the middle finger. (JE 2:7). Mr. Johnson attempted to wear compression sleeves on his right middle finger, but did not achieve significant benefit. (JE 2:7). Physical examination revealed swelling and tenderness to palpation along the MP joint line of the right middle finger without laxity to collateral stress testing. (JE 2:8). X-rays showed large osteophytes and asymmetrical narrowing of the joint space of the right middle finger MP joint that Dr. Chimenti opined was consistent with osteoarthritis. (JE 2:8-9). Dr. Chimenti diagnosed the claimant with arthritis of his right middle finger. (JE 2:9). The doctor provided the claimant with several treatment options, including a surgery, anti-inflammatory medications, or another injection. (JE 2:9). The claimant declined a surgery and did not want to take additional medications, so Dr. Chimenti provided the claimant with an injection. (JE 2:9).

On November 10, 2020, Mr. Johnson was coming back from a break, when he was talking to a coworker. (Testimony). He then turned, and tripped over a box that he

described as having a shaft on it. (Testimony). He tripped over the box with his left foot. (Testimony). The box was present because maintenance was preparing to install a part. (Testimony). He did not see the box before he walked into it. (Testimony). Mr. Johnson told his supervisor, who witnessed the fall, to “log it in just in case something happens further down the line.” (Testimony). However, he did not request medical treatment immediately. (Testimony). Mr. Johnson made sure that his supervisor logged the injury after the finishing his shift. (Testimony). He did not feel immediate pain in his left ankle. (Testimony).

Two or three weeks after the incident, Mr. Johnson began having symptoms in his left ankle. (Testimony). Specifically, Mr. Johnson was unable to put pressure on his ankle. (Testimony). He eventually visited Dr. Nassif. (Testimony). He chose to visit Dr. Nassif because he previously treated Mr. Johnson for a right foot issue. (Testimony). He alleges a date of injury of December 3, 2020, because he remembered his symptoms beginning “about a week” before he first saw Dr. Nassif. (Testimony).

On December 10, 2020, Mr. Johnson reported to Eugene Nassif, Jr., D.P.M., at Foot & Ankle Specialists of Iowa. (JE 4:17-19). Mr. Johnson complained of left heel pain, which came on last Thursday and had not improved. (JE 4:17). He tried icing and stretching, but had no relief. (JE 4:17). He described his pain as shooting. (JE 4:17). X-rays showed an anterior break in the cyma line, decreased calcaneal inclination angle, severe posterior calcaneal spur formation on the left more than the right. (JE 4:17). This was “quite large” compared to a 2009 x-ray. (JE 4:17). Dr. Nassif diagnosed Mr. Johnson with Achilles’ tendinitis, and recommended he immobilize the area and use Voltaren gel. (JE 4:18). Dr. Nassif also excused the claimant from work for two weeks. (JE 4:19).

Mr. Johnson returned to Dr. Nassif’s office on December 22, 2020, to follow-up on his left foot tendinitis. (JE 4:20-21). Mr. Johnson wore an aircast when walking, and applied voltaren gel to his left lower extremity. (JE 4:20). He felt 75 percent better. (JE 4:20). Dr. Nassif continued to diagnose the claimant with left Achilles’ tendinitis. (JE 4:21). He recommended that Mr. Johnson continue to immobilize his left lower extremity, and continue his use of voltaren gel. (JE 4:21). Dr. Nassif requested that the claimant return in two weeks. (JE 4:21).

On January 5, 2021, Dr. Nassif re-examined Mr. Johnson. (JE 4:22-23). Mr. Johnson indicated that he wore the aircast when walking, and used voltaren gel. (JE 4:22). He continued to have discomfort behind the left heel. (JE 4:22). Rest helped alleviate his pain. (JE 4:22). Dr. Nassif’s diagnosis of Mr. Johnson’s condition remained unchanged. (JE 4:23). He continued to recommend immobilization and application of voltaren gel. (JE 4:23). Because he had not responded to treatment, Dr. Nassif recommended that Mr. Johnson have an MRI. (JE 4:23).

Mr. Johnson had an MRI of his left ankle at RCI in Cedar Rapids, Iowa, on January 18, 2021. (JE 5:50-51). Mr. Johnson told the technologist, that he had left

ankle pain for one month with no injury. (JE 5:50). The reviewer of the MRI opined that it showed:

1. Partial-thickness Achilles tendon tear with underlying tendinopathy and adjacent retrocalcaneal bursitis.
2. Mild peroneus longus tendinopathy.
3. Mild edema within the medial and lateral bundles of the plantar fascia.
4. Medial talar dome osteochondral injury.

(JE 5:50).

Dr. Nassif saw Mr. Johnson again on January 26, 2021, in order to review an MRI of the left ankle and foot. (JE 4:24-25). Mr. Johnson still complained of discomfort in the back of his heel. (JE 4:24). He wore his aircast 85 percent of the time, and noted that if he stayed off of his foot, it felt improved. (JE 4:24). Dr. Nassif opined that the MRI demonstrated “a mild osteochondral talar dome lesion and partial tear of the TACH.” (JE 4:25). In addition to left Achilles’ tendinitis, Dr. Nassif diagnosed Mr. Johnson with a nondisplaced dome fracture of the left talus, and “[o]ther [s]pecified [i]njury [o]f [l]eft Achilles [t]endon.” (JE 4:25). Dr. Nassif continued to recommend immobilization and use of voltaren gel. (JE 4:25). Considering the results of the MRI, Dr. Nassif suggested that the claimant utilize “NWB with a roll-a-bout.” (JE 4:25).

On February 9, 2021, the claimant returned to Dr. Nassif’s office for another examination of his left ankle and foot. (JE 4:26-27). Mr. Johnson continued to wear the aircast, and tried to stay off his left lower extremity as much as possible. (JE 4:26). He also used voltaren gel. (JE 4:26). He felt that his foot was getting stronger, and he was feeling better. (JE 4:26). Dr. Nassif’s diagnoses remained unchanged from Mr. Johnson’s previous visit. (JE 4:27). He recommended that Mr. Johnson continue to immobilize his left lower extremity and use voltaren gel. (JE 4:27). Mr. Johnson had not been using the “NWB with a roll-a-bout” as Dr. Nassif previously recommended. (JE 4:27). This is the first time that the claimant mentions to Dr. Nassif that he was injured at work. (JE 4:27). The medical record states, “[h]e states he injured it at work asking me if an injury can cause achilles [*sic*] tendonitis. I confirmed it is possible that an achilles [*sic*] tendonitis/partial tear can be caused by injury.” (JE 4:27).

Mr. Johnson continued his treatment for his left foot issues with Dr. Nassif on February 23, 2021. (JE 4:28-29). Mr. Johnson told Dr. Nassif that he continued to use the aircast, and that it was “getting better;” however, Mr. Johnson complained that he still felt “pins and needles” in the back of his left ankle “every couple of days.” (JE 4:28). When the sensation occurred, it did not last long. (JE 4:28). Dr. Nassif’s diagnoses remained unchanged. (JE 4:29). He recommended that the claimant follow-up in two to three months, and continue with immobilization along with use of voltaren gel. (JE 4:29). Dr. Nassif recommended physical therapy for ionophoresis or ultrasound for the tendinitis. (JE 4:29). Dr. Nassif also continued to recommend using “NWB with roll-a-bout” but noted that the claimant was not doing so. (JE 4:29). Mr. Johnson testified

that he used the roll-a-bout while he was inside of his home, but that he did not use it otherwise because it was winter. (Testimony).

On March 9, 2021, the claimant returned to Dr. Nassif's office to follow-up on his left ankle and foot issues. (JE 4:30-31). Mr. Johnson continued to use the aircast and attempted to stay off the foot. (JE 4:30). He told Dr. Nassif that his pain was 1 to 1.5 out of 10. (JE 4:30). Dr. Nassif's diagnoses remained unchanged. (JE 4:30). He continued to recommend immobilization and use of voltaren gel. (JE 4:31). Dr. Nassif again suggested use of an "NWB with a roll-a-bout," but noted that Mr. Johnson was not doing so. (JE 4:31). Dr. Nassif also again recommended physical therapy for ionophoresis or ultrasound of the tendinitis. (JE 4:31).

Dr. Nassif examined Mr. Johnson again on March 23, 2021, for his continued left ankle and foot issues. (JE 4:32-33). Mr. Johnson continued using the aircast, and rated his pain 1 out of 10. (JE 4:32). Dr. Nassif's diagnoses remained unchanged from previous visits. (JE 4:33). Dr. Nassif continued to recommend immobilization plus use of voltaren gel. (JE 4:33). He also continued to recommend use of an "NWB with a roll-a-bout," but noted that Mr. Johnson did not comply with this recommendation. (JE 4:33). Mr. Johnson also never attended the recommended physical therapy. (JE 4:33). Dr. Nassif's staff scheduled a physical therapy appointment for Mr. Johnson. (JE 4:33).

Dr. Nassif signed a letter from the claimant's attorney on March 24, 2021, apparently indicating his assent to the following statements:

1. You [Dr. Nassif] have diagnosed Joseph with a partial tear of his left Achilles tendon based on MRI results from January.
2. X-rays of Joseph's left foot taken on 12/10/20 [sic] compared to x-rays taken in 2009 also demonstrate a significant increase in bone spur formation at the heel.
3. The increase in bone spur formation indicates chronic tightening of the Achilles tendon.
4. A tightened Achilles tendon is more susceptible to injury and tearing than a healthy Achilles tendon.
5. Joseph did not relate to you a specific traumatic incident involving his left foot at his appointment with you on 12/10/20 [sic]. He reported a gradual onset of symptoms starting about a week before his appointment.
6. However, it would not take a tremendous amount of stress to cause a partial tear of an Achilles tendon with underlying chronic tightening.
7. Without a history involving a specific traumatic incident, it is possible that Joseph could have injured his tendon anywhere.
8. However, given the majority of Joseph's daily weightbearing activities occur at work where he spends a significant amount of time walking on concrete and getting in and out of a forklift, repeatedly stepping into the forklift with his left foot it is more likely than not the partial tear [could

- be] the result of an aggravation of Joseph's chronic condition that occurred while Joseph was performing his job activities.
9. You [Dr. Nassif] currently recommend Joseph keep his left foot in the boot you have prescribed and that he avoid any weight-bearing with his left leg. This has been your [Dr. Nassif's] recommendation since your appointment with him on 12/10/20 [sic]. [He has not been nonweightbearing coming into the office since giving that medical recommendation on 3/24/21].
 10. Once Joseph's symptoms improve, you would recommend proceeding with physical therapy with a focus on exercises that would stretch the tendon.

(JE 4:34-36). I would note that Dr. Nassif added in his own comments, which are bracketed in the above quote. Notably, he indicated that the claimant had not been nonweightbearing, per Dr. Nassif's recommendation. (JE 4:36).

Mr. Johnson began therapy on March 31, 2021, with Mercy Rehabilitation Services. (JE 6:54-57). Mr. Johnson was wearing a boot, and had left Achilles tendinitis since December. (JE 6:54). Mr. Johnson told the therapist that his pain started "around November when he tripped." (JE 6:54). The therapist observed that Mr. Johnson had "significant limitations" with ankle range of motion and strength. (JE 6:54). Mr. Johnson could ambulate short distances around his house, but would benefit from physical therapy to improve his strength and range of motion. (JE 6:54). Mr. Johnson rated his pain 1 out of 10, and 1.5 out of 10 at its worst. (JE 6:54). The therapist opined that Mr. Johnson had a good prognosis, and a good chance of success with therapy. (JE 6:56-57).

Mercy Rehabilitation Services provided a therapy progress note on April 30, 2021. (JE 6:58-61). Mr. Johnson continued to have limited range of motion and strength in his left ankle. (JE 6:58). He indicated that his ankle fatigued quickly. (JE 6:58). He rated his pain 1 out of 10. (JE 6:58). The therapist observed that the claimant lacked good push off and ankle stability. (JE 6:59). He also ambulated slowly and fatigued quickly. (JE 6:59). The therapist recommended that the claimant remove his boot as often as possible at home to mobilize his ankle. (JE 6:59). The therapist felt that the claimant would continue to benefit from therapy in order to decrease his pain and improve his function. (JE 6:60).

On June 1, 2021, the claimant had another session of therapy. (JE 6:62). Mr. Johnson noted that his heel only hurt occasionally. (JE 6:62). His chief complaint was left lower extremity weakness. (JE 6:62).

During therapy on June 3, 2021, the claimant reported tenderness in his left heel. (JE 6:64). He reported that his left leg continued to feel weak and stiff. (JE 6:64).

On August 5, 2021, Mr. Johnson returned to Dr. Nassif's office. (JE 4:37-38). Mr. Johnson told Dr. Nassif that his foot was still "weak, but getting there." (JE 4:37).

He continued to complain of stiffness and pain to the lateral of the “TACH” and thigh above his left knee. (JE 4:37). Dr. Nassif continued to recommend immobilization and voltaren gel. (JE 4:38). He also continued to suggest use of a “NWB with roll-a-bout,” but noted that the claimant had not been using one and presented to his visit wearing a tennis shoe. (JE 4:38). He recently completed physical therapy, which Dr. Nassif noted was first recommended on March 9, 2021; however, the claimant did not attend until after Dr. Nassif’s staff scheduled him an appointment on March 31, 2021. (JE 4:38). Dr. Nassif recommended a comparison MRI of the left lower extremity, as Mr. Johnson continued to have symptoms. (JE 4:38).

Mr. Johnson had another MRI of his left ankle on August 30, 2021. (JE 5:52-53). The history noted by the technologist was that this was a follow-up to Mr. Johnson’s Achilles tear, and that his pain was improving. (JE 5:52). The impression from the MRI was:

1. MRI of the left ankle: Mild residual heterogeneity of the distal Achilles tendon compatible with sequela of previously seen tear on 1/18/2021 MRI. This tear is no longer present however. Previously seen retrocalcaneal bursitis has also resolved, with only a minimal amount of physiologic range fluid seen in the deep retrocalcaneal bursa on today’s study. Minimal overlying subcutaneous edema posteriorly has significantly decreased as well. No significant thickening of the Achilles tendon to suggest any significant degree of tendinosis.
2. Note is made of previously described “osteochondral injury” of the medial talar dome. These focal changes were actually seen within the lateral talar dome on the prior study. On today’s study, there is focal articular chondral loss in this region which is at least partial thickness. However, the findings within the subchondral bone have improved, with only very minimal/subtle marrow edema present. The subchondral bone plate appears intact. Findings are felt likely degenerative in nature as opposed to an osteochondral injury per se.
3. Mild degenerative changes of the calcaneocuboid articulation are unchanged.

(JE 5:53).

Dr. Nassif saw Mr. Johnson again on September 9, 2021. (JE 4:39-40). Mr. Johnson continued to complain of stiffness and pain to the lateral of the TACH and thigh above his left knee. (JE 4:39). Dr. Nassif reviewed an MRI, and noted “[h]is MRI demonstrated a mild osteochondral talar dome lesion is [sic] now thought to not be acute or an osteochondral lesion, but a minimal DJD and partial tear of the TACH is now resolved.” (JE 4:40). Dr. Nassif observed that Mr. Johnson still reported subjective pain, but had “no pain objectively except for the POP posterior-superior left calcaneus.” (JE 4:40). Dr. Nassif suggested to Mr. Johnson that he return to Mercy Physical Therapy for more aggressive therapy. (JE 4:40).

On October 25, 2021, Mr. Johnson returned to Dr. Nassif's office for his left lower extremity issues. (JE 4:41-42). Mr. Johnson complained that his "endurance" was "not quite there." (JE 4:41). He also complained of "some weakness" with range of motion. (JE 4:41). Dr. Nassif agreed with Mercy Physical Therapy that Mr. Johnson should gradually resume activity and work. (JE 4:42). Dr. Nassif recommended that Mr. Johnson work 2 hours per day for one week, then 4 hours per day for a second week, then 6 hours per day for the third week, and 4 hours per day for a fourth week. (JE 4:42). When he was not working, Dr. Nassif advised Mr. Johnson to walk to build strength and endurance. (JE 4:42). Dr. Nassif requested that Mr. Johnson return in six weeks. (JE 4:42).

Dr. Nassif filled out a check box form, dated November 4, 2021. (JE 4:43-44). It is unclear who provided him with this form, but it appears to be defendants' counsel. Dr. Nassif agreed that he treated Mr. Johnson with regard to left Achilles' tendinitis. (JE 4:43). He agreed that he first saw Mr. Johnson on December 10, 2020, at which time Mr. Johnson told him that his left ankle began hurting "approximately one week before that appointment." (JE 4:43). He agreed that he did not document that Mr. Johnson's Achilles' tendon began hurting after a specific acute incident or injury. (JE 4:43). Dr. Nassif agreed further that it was his common practice to ask a patient whether their pain began after an acute injury, and had Mr. Johnson mentioned this, he would have documented the injury in his records. (JE 4:44). Dr. Nassif agreed that x-rays conducted showed severe spur formation behind his left heel. (JE 4:44). Dr. Nassif concluded that he could not conclude within a reasonable degree of medical certainty that Mr. Johnson's left ankle condition was caused by or substantially aggravated by a work injury, or by his work in general. (JE 4:44). Dr. Nassif added, "could be or not," with regard to his objective findings. (JE 4:44).

On December 13, 2021, Dr. Nassif saw Mr. Johnson again for his left Achilles' issues. (JE 4:45-46). Mr. Johnson continued to complain of endurance issues, and told Dr. Nassif that he needed "a couple more weeks at 8 hour shifts," because he had stiffness in his heel at the end of his shifts. (JE 4:45). Mr. Johnson questioned Dr. Nassif as to why he was not writing anything down when he was talking to the doctor. (JE 4:45). Mr. Johnson's physical therapy ended. (JE 4:46). Dr. Nassif suggested that Mr. Johnson work 8 hours per day for two weeks, 10 hours per day for two additional weeks, then 6 hours per day for a third week, and then 12 hours per day for two weeks. (JE 4:46). Dr. Nassif requested that the claimant return in six weeks. (JE 4:46).

Per Dr. Nassif's request, Mr. Johnson returned for an examination on February 7, 2022. (JE 4:47-48). Mr. Johnson explained that he was "feeling 'OK'", and was working 10-hour shifts. (JE 4:47). Mr. Johnson wished to stay on those shifts for another two weeks before he increased to 12 hours per day. (JE 4:47). After 10 hours of work, Mr. Johnson noted "some discomfort." (JE 4:47). Dr. Nassif agreed that Mr. Johnson should be working 10 hours per day for two weeks, and then should progress to 12 hours per day. (JE 4:48). Dr. Nassif dismissed Mr. Johnson from his care and noted that Mr. Johnson should follow-up as needed. (JE 4:48). Dr. Nassif issued a work

excuse indicating that Mr. Johnson should work 10 hours per day for the remainder of February, and in March, he could return to normal working hours. (JE 4:49).

Charles D. Mooney, M.D., M.P.H., C.I.M.E., performed an IME at the request of the defendants, and issued a report on April 7, 2022. (Defendants' Exhibit C:6-9). Dr. Mooney is board certified in occupational medicine. (DE C:6). Dr. Mooney began his report by reviewing the claimant's pertinent medical records. (DE C:6). Mr. Johnson then recounted his fall at work, and his reporting of the incident to his supervisor. (DE C:7). Mr. Johnson told Dr. Mooney that he had left heel pain that came on "sometime later, the exact date of which he is unsure." (DE C:7). Mr. Johnson felt overall well, but continued to have stiffness in his left ankle and pain in his left heel. (DE C:7). At times, his pain felt like pins and needles. (DE C:7). His pain worsened after his 12-hour shift, and is aggravated by standing and prolonged pressing down on the foot pedals of the forklift. (DE C:7). He took Tylenol once or twice per week. (DE C:7). Mr. Johnson also complained of occasional aching in his left kneecap after he got out of his walking boot, "which has gotten progressively better..." (DE C:7). He told Dr. Mooney that he was previously treated for bilateral lower extremity neuropathy with gabapentin. (DE C:7). At the time of his IME, he still occasionally took gabapentin. (DE C:7). He rated his pain zero out of 10 at its worst, and noted that it only had a mild impact on his activities of daily living. (DE C:7).

Mr. Johnson testified that Dr. Mooney did not observe him walking. (Testimony). He did perform some range of motion testing. (Testimony).

Dr. Mooney opined that Mr. Johnson has an 88th percentile score with "minimal lower extremity dysfunction" based upon the "Lower Extremity Functional Scale." (DE C:8). Dr. Mooney did not observe Mr. Johnson to have any gait abnormality. (DE C:8). Mr. Johnson displayed normal range of motion in his knees. (DE C:8). His range of motion in the left ankle showed dorsiflexion of 8 degrees, plantarflexion of 30 degrees, inversion of 25 degrees and eversion of 15 degrees. (DE C:8). His right ankle showed dorsiflexion of 17 degrees, plantarflexion of 35 degrees, inversion of 25 degrees, and eversion of 15 degrees. (DE C:8). Dr. Mooney observed that Mr. Johnson had excellent hallucis strength, and could demonstrate 5 out of 5 motor strength in his bilateral ankles. (DE C:8). He could heel walk and toe walk without difficulty. (DE C:8). He displayed no tenderness around either ankle. (DE C:8).

Dr. Mooney opined that the claimant had medical record evidence of a partial tear of the left Achilles tendon that was treated conservatively with good overall results. (DE C:8). Based upon Table 17-11 in the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Mooney noted that since the claimant's ankle extension was less than 10 degrees, he had a 7 percent impairment of his lower extremity. (DE C:9). Dr. Mooney continued, "[i]t is my opinion that no other impairments are evident or related to his Achilles tendon tear or treatment." (DE C:9). Dr. Mooney concluded that Mr. Johnson achieved MMI on March 1, 2022, which was his release from care and return to unrestricted duty. (DE C:9).

On April 14, 2022, Farid Manshadi, M.D., F.A.A.P.M&R, examined the claimant for purposes of an IME. (CE 1:11-16). This IME was arranged by claimant's counsel. Dr. Manshadi issued a report based upon his findings on May 2, 2022. (CE 1:11-16). Dr. Manshadi specializes in physiatry, which includes: spinal cord injuries, cerebrovascular accidents, amputee rehabilitation, industrial rehabilitation, chronic pain management, electrodiagnostic medicine, acupuncture, and Medtronic pump management. (CE 1:19). He is a fellow in the American Academy of Physical Medicine and Rehabilitation, and a member of the American Academy of Pain Management. (CE 1:19).

Mr. Johnson testified that Dr. Manshadi examined Mr. Johnson's range of motion and watched him walk. (Testimony). Dr. Manshadi told Mr. Johnson that he walked with a limp. (Testimony). Mr. Johnson testified that he had not noticed a limp before. (Testimony). He also testified that he noticed weakness in his left knee around the time of his appointment with Dr. Manshadi. (Testimony). Dr. Manshadi also performed range of motion testing on Mr. Johnson's right hand. (Testimony).

Dr. Manshadi began his report by discussing the claimant's work history. (CE 1:11-12). Dr. Manshadi opined that Mr. Johnson's medical history was significant for gout in his left foot in 1999, left heel bone spurs in 2009, and right heel bone spurs in 2014 and 2017. (CE 1:11). Mr. Johnson told Dr. Manshadi that he continued to have pain and physical limitations from his left ankle. (CE 1:14). These occur when he works with the forklift, as he has to use pedals and walk across the factory's concrete floor. (CE 1:14). Mr. Johnson also complained of issues with his left knee, which he attributed to "prolonged use of an immobilization boot." (CE 1:14). He also noted pain and physical limitation related to his right-hand injury. (CE 1:14).

Dr. Manshadi measured various ranges of motion in the right fingers. (CE 1:14-15). Dr. Manshadi also measured range of motion in the claimant's left ankle using a goniometer. (CE 1:15). He found that the claimant had -10 degrees of left ankle dorsiflexion, 30 degrees of left ankle plantar flexion, 32 degrees of left ankle inversion, and 23 degrees of left ankle eversion. (CE 1:15). He compared this to the right side, where the claimant displayed normal eversion and inversion, +5 degrees of right ankle dorsiflexion, and 42 degrees of right ankle plantar flexion. (CE 1:15). His bilateral ankle strength was 5 out of 5. (CE 1:15). Dr. Manshadi observed tenderness to palpation over the claimant's left Achilles tendon insertion. (CE 1:15).

Dr. Manshadi continued, "it is my opinion that he has right-sided hand pain involving the right 3rd [sic] and 4th [sic] digits where at one point he had issues with triggering." (CE 1:15). He continued by providing an impairment rating as it related to the claimant's right hand. (CE 1:15). He also provided proposed permanent restrictions related to the right-hand issues. (CE 1:15).

Dr. Manshadi moved on to an opinion as it related to Mr. Johnson's left lower extremity. (CE 1:16). He opined that Mr. Johnson's work activities at International Paper were "a substantial contributing factor causing tear of the left Achilles tendon."

(CE 1:16). He continued, “[i]t is well documented in the records that Mr. Johnson did take a fall on 11/10/2020 [sic] and further, it is my opinion that his work activities over the years have caused significant spur formation in the left ankle.” (CE 1:16). Dr. Manshadi cited the worsening of the spurs between 2009 and 2020 as further evidence of his opinion being correct. (CE 1:16). Dr. Manshadi noted that the fall in November of 2020 “probably aggravated further the Achilles tendon on the left side, causing a partial tear of the Achilles tendon.” (CE 1:16).

Dr. Manshadi recommended no further treatment for the left ankle. (CE 1:16). He recommended further evaluation for the claimant’s left knee, as Mr. Johnson reported left knee pain from wearing his immobilizer. (CE 1:16). His left knee was not yet at MMI according to Dr. Manshadi; however, his left ankle was. (CE 1:16). He recommended permanent restrictions including avoiding any activity which required constant stepping up and down stairs, or “any activity which requires repetitious flexion and extension of the left ankle.” (CE 1:16). Dr. Manshadi used the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 17-11 and Table 17-12, to provide the claimant with an impairment rating of 7 percent of the left lower extremity. (CE 1:16).

Mr. Johnson testified that he was off work until October 25, 2021. (Testimony). At that time, he began working two hours per week. (CE 6:52). He then worked his way up by working four, six, eight, and ten hours per week, progressively. (CE 6:52). By early March of 2022, Mr. Johnson returned to a normal 12-hour shift. (CE 6:52).

Mr. Johnson alleges that he injured his middle finger in 1996, when it was crushed in some rollers. (Testimony). He had some shots for it at the time, and a doctor recommended surgery; however, Mr. Johnson declined the surgery. (Testimony). The injections helped him. (Testimony).

In 2015, he also injured his right ring finger. (Testimony). He went to a doctor to treat his hand. (Testimony). He also returned to see a doctor for his middle finger in September of 2020. (Testimony).

At the time of the hearing, he testified that his left leg had weakness. (Testimony). The weakness was located near his knee and in his leg. (Testimony). “Every now and then,” Mr. Johnson had issues with his left ankle. (Testimony). These issues include stiffness. (Testimony).

He testified that he could still do his job, but had some difficulty with his ankle stiffening up. (Testimony). At times, his knee will buckle when he walks. (Testimony). He has trouble with his right hand when he works. (Testimony). It stiffens up and “sends a penetration” through his fingers. (Testimony). He wears a sleeve on his fingers to avoid them stiffening when he works. (Testimony). He takes Tylenol for his right hand and his left ankle to prevent swelling. (Testimony). Mr. Johnson testified in his deposition that he did not have any work restrictions related to his ankle.

(Testimony). He also testified that he did not need any restrictions for his left ankle. (Testimony).

Mr. Johnson testified that he receives a “vacation check” every year. (Testimony). This vacation check is dependent on the hours the employee worked the year prior. (Testimony). The amount of years worked are also considered in calculating the “vacation check.” (Testimony).

Mr. Johnson used to mow his lawn with a push mower. (Testimony). However, now his son and a friend mow his lawn for him. (Testimony). His wife also enjoyed rearranging furniture in their house, which he used to do for her. (Testimony). He is no longer able to do this due to decreased strength in his right hand. (Testimony). Now, his son or daughter move furniture around. (Testimony).

In his current condition, Mr. Johnson opined that he could not perform the corrugator stacker position anymore, as it requires “too much gripping” for his hands. (Testimony). He also would have issues with standing, as he did not think he could be on his feet for an entire shift. (Testimony). He also could not do the corner post machine job, the “United” job, or the “flexo machine” job anymore, due to repetitive gripping and being on his feet all day. (Testimony).

He was able to continue his work as a baler operator. (Testimony).

Besides a fall mentioned later in this decision, Mr. Johnson also believed that the above-mentioned repetitious movements, such as pressing on the forklift brake and clutch, and moving back and forth on the forklift caused issues with his left foot. (CE 6:53). This appears to be an attempt to claim a cumulative injury. Which is interesting, as Mr. Johnson answered an interrogatory by indicating that an interrogatory related to claimant asserting a cumulative injury was “[n]ot applicable.” (DE A:3).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.904(3).

Causation

To receive workers’ compensation benefits, an injured employee must prove, by a preponderance of the evidence, that the employee’s injuries arose out of, and in the course of the employee’s employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). 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. Id. An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler

Elec. v. Willis, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held that an injury occurs “in the course of employment” when:

it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer’s business and injuries received on the employer’s premises, provided that the employee’s presence must ordinarily be required at the place of the injury, or, if not so required, employee’s departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

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 medical causation is “essentially within the domain of expert testimony.” Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must “weigh the evidence and measure the credibility of witnesses.” Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert’s education, experience, training, and practice, and “all other factors which bear upon the weight and value” of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to

be compensable, it is well established that a cause is “proximate” when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers’ compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

A personal injury contemplated by the workers’ compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part of all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or unusual occurrence. Injuries which result from cumulative trauma are compensable. However, increased disability from a prior injury, even if brought about by further work, does not constitute a new injury. St. Luke’s Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by Iowa Code 85A is specifically excluded from the definition of personal injury. Iowa Code 85.61(4)(b); Iowa Code 85A.8; Iowa Code 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant’s employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact-based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the facts may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent. The statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

The claimant contends that he tripped on November 10, 2020, and that this caused him to suffer a partial-thickness Achilles tendon tear with underlying tendinopathy and bursitis. The claimant contends that his chronically tightened Achilles tendon made him more susceptible to injury. He further contends that because most of his work activities put stress on his ankle, “it is more likely than not that [his] work activities were a substantial factor in causing his injury.” The claimant also argues that Dr. Manshadi and Dr. Nassif’s opinions are consistent in that they attribute causation of Mr. Johnson’s left ankle injury to his work activities. Mr. Johnson concludes by arguing

that it is likely a combination of a bone spur formation in his left heel along with a chronic tightening of his left Achilles tendon that made him more susceptible to injury.

The defendants contend that the claimant's left leg injury was not caused by his work activities. They note that the claimant is not claiming a chronic injury, as evidenced by his discovery responses, rather he alleges that he suffered an acute rupture of his Achilles tendon.

It is undisputed that the claimant fell at work on November 10, 2020. The claimant testified that he tripped over a shaft and fell. He testified that his supervisor and several others witnessed the fall. Immediately after his fall, he told his supervisor to document that the incident occurred. Mr. Johnson did not recall twisting his ankle, falling awkwardly on his left ankle, or hitting his left ankle during his fall. He did not feel pain at the time of his fall. He did not request medical treatment immediately after his fall, nor did he feel pain in his left ankle when he fell.

Mr. Johnson worked as a baler operator at the time of the incident. For 80 percent of his day, he operated a forklift. There are two pedals that he used with his left foot in order to operate the forklift. His job as a baler operator required him to be on his feet about 20 percent of the day. He also entered and exited his forklift on many occasions in order to perform his job.

It was not until around December 3, 2020, almost a month later, that he alleges he began to feel pain in his left ankle. He testified specifically that his pain started happening when he was pressing on the clutch and the brake on his forklift. Accordingly, he presented to Dr. Nassif's office for evaluation on December 10, 2020. Mr. Johnson previously treated with Dr. Nassif, and was satisfied with his care in the past. Dr. Nassif is a podiatrist. When the claimant met with Dr. Nassif, he told him that he had left heel pain which came on about one week prior. He did not mention a specific traumatic incident to Dr. Nassif during his first visit. Dr. Nassif diagnosed the claimant with Achilles tendinitis. He recommended that Mr. Johnson immobilize his left foot. Eventually, he ordered an MRI for Mr. Johnson. The MRI revealed a nondisplaced dome fracture of the left talus along with Achilles tendinitis.

Curiously, on February 9, 2021, the claimant finally told Dr. Nassif that he injured his left foot at work. He asked Dr. Nassif if an injury could cause Achilles tendinitis. Dr. Nassif noted in his medical record, "I confirmed it is possible that an Achilles tendonitis/partial tear can be caused by injury." It is important to note that Dr. Nassif does not take a position as to whether or not the claimant's work caused his injury.

The claimant's counsel wrote a letter to Dr. Nassif. Dr. Nassif signed his name at the bottom indicating that he agreed with 10 statements. Among these statements, include that Mr. Johnson had a significant increase in bone spur formation at the heel in December of 2020, and that bone spur formation indicated a chronic tightening of the Achilles tendon. Dr. Nassif also agreed that a tightened Achilles tendon was more susceptible to tearing and injury. Dr. Nassif continued by agreeing that Mr. Johnson

“could have injured his tendon anywhere.” Claimant’s counsel then endeavored to have Dr. Nassif opine as to causation of Mr. Johnson’s left foot injury by including the statement:

However, given the majority of Joseph’s daily weightbearing activities occur at work where he spends a significant amount of time walking on concrete and getting in and out of a forklift, repeatedly stepping into the forklift with his left foot it is more likely than not the partial tear the result of an aggravation of Joseph’s chronic condition that occurred while Joseph was performing his job activities.

(JE 4:35). However, Dr. Nassif added his own written portion to this statement. Namely, he modified the quote with the bracketed portion below:

However, given the majority of Joseph’s daily weightbearing activities occur at work where he spends a significant amount of time walking on concrete and getting in and out of a forklift, repeatedly stepping into the forklift with his left foot it is more likely than not the partial tear [could be] the result of an aggravation of Joseph’s chronic condition that occurred while Joseph was performing his job activities.

(JE 4:36). This inclusion of “could be” substantially changes Dr. Nassif’s opinion.

Dr. Nassif responded to a check-box type letter from defendants’ counsel in November of 2021. Dr. Nassif agreed that he did not document Mr. Johnson’s injury as a specific acute incident or injury because Mr. Johnson did not report it to him as such. Dr. Nassif also agreed that it was his common practice to ask a patient whether or not their pain stemmed from an acute injury. Dr. Nassif then agrees with the following statement:

Based on my objective findings regarding Mr. Johnson’s condition, I am unable to conclude within a reasonable degree of medical certainty that Mr. Johnson’s left ankle condition was caused by or substantially aggravated by an injury occurring at his work, or was caused by or substantially aggravated by his work in general.

(JE 4:44). Dr. Nassif then added in a handwritten note to change the statement to the following:

Based on my objective findings regarding Mr. Johnson’s condition, I am unable to conclude within a reasonable degree of medical certainty that Mr. Johnson’s left ankle condition was caused by or substantially aggravated by an injury occurring at his work, or was caused by or substantially [could be or not] aggravated by his work in general.

(JE 4:44). As before, the inclusion of “could be or not,” substantially changes Dr. Nassif’s opinion.

The defendants sent the claimant to Dr. Mooney for an IME. Dr. Mooney presented no opinion as to the causation of the claimant's left foot injury. He only provided an impairment rating to the left lower extremity.

Claimant's counsel sent Mr. Johnson to an IME with Dr. Manshadi. Dr. Manshadi is a physiatrist, and notes that physiatry specializes in: spinal cord injuries, cerebrovascular accidents, amputee rehabilitation, industrial rehabilitation, chronic pain management, electrodiagnostic medicine, acupuncture, and Medtronic pump management. (CE 1:11). In preparation for the IME, claimant's counsel wrote a letter outlining the alleged injuries to Dr. Manshadi. In their letter, claimant's counsel noted, "Joseph experienced discomfort in his left ankle region but continued to work for his employer following the event." (CE 1:4). Claimant's counsel continued, "[o]n approximately December 3, 2020, Joseph's left ankle pain heightened. His condition progressively worsened while he performed his job duties..." (CE 1:4). Dr. Manshadi then repeated in his report, "[a]t that time Mr. Johnson experienced some discomfort in his left ankle region, but continued to work for his employer following the event." (CE 1:13). Based upon this information, Dr. Manshadi opined that "Mr. Johnson's work activities at International Paper were a substantial contributing factor causing tear of the left Achilles tendon." (CE 1:16). Dr. Manshadi concluded that Mr. Johnson's "work activities over the years have caused significant spur formation in the left ankle," and that the x-rays showing increased spur formation between 2009 and 2020 support this. (CE 1:16). Dr. Manshadi indicated that the fall of November 10, 2020, "probably aggravated further the Achilles tendon" causing a partial tear. (CE 1:16).

The question of causation essentially comes down to whether the opinion of Dr. Nassif or the opinion of Dr. Manshadi is more persuasive. Dr. Manshadi's opinions appear to be somewhat based off of a flawed premise. Namely, the introductory letter from claimant's counsel, and the IME report of Dr. Manshadi indicate that the claimant experienced pain immediately following his fall. This contradicts the information in the record. Also, Dr. Manshadi's statement that the fall "aggravated further" the Achilles tendon contradicts evidence that the claimant was not having left ankle issues immediately prior to his fall. Finally, Dr. Manshadi specializes in physiatry. This is not podiatry, or even orthopedics. Based upon the foregoing, and the evidence in the record, I do not find Dr. Manshadi's opinions to be persuasive.

I find the opinions of Dr. Nassif to be more persuasive. The claimant chose Dr. Nassif to provide him with treatment for his left foot complaints. The claimant was comfortable with Dr. Nassif, as he provided him with treatment for previous foot issues. Dr. Nassif is a podiatrist. Podiatry is "the medical care and treatment of the human foot." Podiatry, Merriam-Webster.com, (last visited August 24, 2022). Dr. Nassif's records are thorough and make no mention of the claimant's fall or a potential work injury until several months after the claimant began treatment.

Dr. Nassif had the opportunity on two occasions to relate the claimant's condition to his work at International Paper. Both times, Dr. Nassif altered paragraphs written by claimant's and defendants' counsel to indicate that Mr. Johnson's left ankle injury "could

be” or “could be or not” related to his work with International Paper. This indicates that the causal connection is merely possible, not probable. When taken into consideration with the fact that the claimant had no pain immediately after his fall, did not twist his left ankle, and did not develop pain until several weeks after the fall, I find that the claimant has not proven by a preponderance of the evidence that his left lower extremity injury was caused by his work activities. He also did not prove that his work activities aggravated or lit up a pre-existing condition. He did not prove by a preponderance of the evidence that his injuries arose out of, and in the course of his employment with International Paper.

It is unclear from the post-hearing briefing or the evidence whether or not the claimant is asserting that he sustained a cumulative injury. If the claimant is attempting to assert this, although in an unclear way, I do not find sufficient evidence that the claimant sustained a cumulative injury. Additionally, the claimant responded to an interrogatory from the defendants. The interrogatory asked:

INTERROGATORY NO. 9: If you contend that the injury identified in your Petition was a “cumulative injury,” please set forth the following:

- (a) A specific description of each type of repetitive or continual or frequent activity which you contend forms a part of the cumulative trauma.
- (b) The frequency of each activity identified in subparagraph (a) above. Please describe each activity in terms of the number of times per hour, day, week, etc. or in terms of the amount of time that activity was performed.
- (c) The amount of weight that was lifted or moved in association with each activity listed in subparagraph (a) above.
- (d) The names of all witnesses with knowledge of the activities that you have described in this answer to interrogatory.

ANSWER:

Not applicable.

(DE A:3). The claimant himself admits with this discovery response that he did not sustain a cumulative injury or trauma.

IME Reimbursement Pursuant to Iowa Code section 85.39

Iowa Code 85.39(2) states:

If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent

examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Iowa Code section 85.39(2).

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. The 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). An opinion finding a lack of causation is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021).

The claimant seeks reimbursement for an IME performed by Dr. Manshadi. I previously found that the claimant's injuries are not compensable. Therefore, the claimant is not entitled to recover the costs of Dr. Manshadi's IME based upon the language of Iowa Code section 85.39(2).

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 7. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code section 86.40. 876 Iowa Administrative Code 4.33(6) provides:

[c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

The claimant requests reimbursement for a number of costs, totaling two thousand four hundred eighty-nine and 75/100 dollars (\$2,489.75). I decline to award the claimant costs.

Remaining Issues

Because it was determined that the claimant's injuries did not arise out of and in the course of his employment with International Paper, the remaining issues are moot.

ORDER

THEREFORE, IT IS ORDERED:

That the claimant shall take nothing.

That the defendant shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 Iowa Administrative Code 3.1(2) and 876 Iowa Administrative Code 11.7.

Signed and filed this 27th day of September, 2022.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew Giller (via WCES)

John Cutler (via WCES)

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