BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTOPHER CASSABAUM, Claimant, vs. KINDER MORGAN ENERGY PARTNERS, L.P., Employer, and OLD REPUBLIC INSURANCE CO., Insurance Carrier, Defendants.	File No. 19006560.02 ARBITRATION DECISION Head Notes: 1800; 1803; 2907

STATEMENT OF THE CASE

The claimant, Christopher Cassabaum, filed a petition for arbitration seeking workers' compensation benefits from employer Kinder Morgan Energy Partners, Inc. ("Kinder Morgan") and their insurer Old Republic Insurance Company. Niko Pothitakis appeared on behalf of the claimant. Stephanie Techau appeared on behalf of the defendants. The Second Injury Fund of Iowa was a party to this case, but the claimant and the Second Injury Fund resolved their disputes prior to commencement of the hearing.

The matter came on for hearing on August 22, 2023, 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-B. All of the exhibits were received into evidence without objection.

The claimant testified on his own behalf. Carin Eckhoff was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted at that time.

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. That the claimant sustained an injury to his right lower extremity, which arose out of, and in the course of employment on November 17, 2019.

3. That the alleged injury was a cause of temporary disability during a period of recovery.

4. That the alleged injury was a cause of permanent disability.

5. That the permanent disability is a scheduled member disability to the right leg.

6. That the commencement date for permanent partial disability benefits, if any are awarded, is June 1, 2022.

7. That, at the time of the work injury, the claimant's gross earnings were seven hundred fifty-seven and 00/100 dollars ($757.00) per week, that the claimant was single, and entitled to one exemption. The resulting stipulated weekly compensation rate was four hundred seventy-nine and 41/100 dollars ($479.41).

8. That, prior to the hearing, the claimant was paid 2.2 weeks of compensation at the stipulated rate of compensation.

Entitlement to temporary disability and/or healing period benefits was no longer in dispute. The defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. The extent of permanent partial disability benefits.

2. Whether the claimant is entitled to reimbursement for an independent medical evaluation ("IME") pursuant to Iowa Code section 85.39.

3. Whether the claimant is entitled to a specific taxation of costs, and the amount of those costs.

FINDINGS OF FACT

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

Christopher Cassabaum was 51 years old at the time of the hearing. (Testimony). He is a resident of Columbus Junction, Iowa. (Testimony). Mr. Cassabaum was married for two years at the time of the hearing. (Testimony).

The claimant is a high school graduate. (Testimony). He took a pipe welding class in 2000, and a three-week truck driving class in 2017. (Testimony). He had no other education or training. (Testimony).

Mr. Cassabaum started working for a farmer performing farm maintenance as an eighth grader. (Testimony). He worked for the farmer until he was 20 years old. (Testimony). He then worked at a Wal-Mart distribution center for two years where he loaded trucks. (Testimony). Following his time at Wal-Mart, Mr. Cassabaum worked for 14 years charging air coolers at Modine. (Testimony). He left Modine in 2009 for better pay at Kinze. (Testimony). At Kinze he welded until a layoff in 2015. (Testimony). He then worked in welding for another one and one-half years until moving to trucking for three months. (Testimony).

Kinder Morgan stores natural gas underground and moves natural gas through pipelines. (Testimony). In 2018, Mr. Cassabaum was hired as a temporary shift assistant. (Testimony). He worked three twelve-hour days with some overtime, and then had four days off. (Testimony). He was on call to help with whatever needed to be done. (Testimony). He was laid off for a time in the summer of 2019 due to a lack of demand. (Testimony). In September of 2019, he was rehired to the same position once demand increased. (Testimony).

On November 7, 2019, the claimant was balancing a motor when he slipped and fell. (Testimony). He landed on cement and went down with a leg injury. (Testimony). He was taken via UTV to EMS and then to the emergency room. (Testimony). He was diagnosed with a tibial plateau fracture. (Testimony).

Michael Hendricks, M.D. performed an arthroscopically-assisted open reduction internal fixation ("ORIF") of an intra-articular comminuted depressed condylar tibial plateau fracture of the right lower extremity on November 8, 2019. (Joint Exhibit 5:144-145).

Mr. Cassabaum was discharged from Great River Health Systems on November 10, 2019. (JE 5:146).

The claimant followed-up with Southeast Iowa Orthopaedics & Sports Medicine on November 18, 2019. (JE 1:1-3). Dr. Hendricks examined the claimant following his ORIF of his right knee tibial plateau fracture. (JE 1:1). Mr. Cassabaum was in an immobilizer and experienced some soreness and swelling. (JE 1:1). He rated his pain 5 out of 10 and noted that lying down worsened his pain. (JE 1:1). Dr. Hendricks recommended that Mr. Cassabaum undertake sedentary work only and start physical therapy in three to four weeks. (JE 1:3).

On December 11, 2019, Mr. Cassabaum returned to Dr. Hendricks' office for continued follow-up care. (JE 1:4-6). He complained of nagging pain that increased when his foot was down. (JE 1:4). He rated the pain 5 out of 10. (JE 1:4). He requested additional pain medications. (JE 1:4). X-rays showed no evidence of new issues with the surgically repaired knee. (JE 1:5). Dr. Hendricks allowed the claimant to return to limited, sedentary duty on December 11, 2019, with restrictions of no squatting, twisting, bending, climbing, driving, climbing ladders. (JE 1:6).

Dr. Hendricks saw Mr. Cassabaum again on January 8, 2020. (JE 1:7-9). Mr. Cassabaum used crutches and had some throbbing pain, popping, and swelling in his right knee. (JE 1:7). Climbing stairs and lying down worsened the pain. (JE 1:7). Additional x-rays showed no evidence of complications. (JE 1:8). Dr. Hendricks allowed the claimant to increase his weightbearing status over one week, then be 100 percent weightbearing with two crutches for one week, and then 100 percent weightbearing with one crutch for one week. (JE 1:9).

On February 3, 2020, Dr. Hendricks re-examined Mr. Cassabaum. (JE 1:10-12). At the time of the examination, Mr. Cassabaum was using his crutches on an occasional basis, and reported soreness, popping, and some swelling after walking. (JE 1:10). He rated his pain 4 out of 10. (JE 1:10). Another set of x-rays showed no evidence of complications or problems with the surgical repair site. (JE 1:11). Physical examination showed no evidence of instability in the knee, along with normal sensation. (JE 1:11-12). Testing also showed range of motion between 0 and 115 degrees out of 120 degrees. (JE 1:11). Dr. Hendricks recommended that the claimant continue his current work restrictions and decrease his physical therapy from three visits per week to two visits per week. (JE 1:12).

Dr. Hendricks saw Mr. Cassabaum again on February 20, 2020. (JE 1:13-15). Mr. Cassabaum told the doctor that his left leg became sore on the anterior medial area when walking. (JE 1:13). At times, his knee collapsed on him while walking. (JE 1:13). He also experienced swelling and popping while walking. (JE 1:13). He rated his pain 4 out of 10. (JE 1:13). X-rays continued to show no evidence of complications or problems. (JE 1:14). The knee showed no evidence of instability. (JE 1:14). Dr. Hendricks continued the claimant's work restrictions until he reached 100 percent, and recommended that the claimant undertake work hardening. (JE 1:15).

On March 19, 2020, Mr. Cassabaum returned to Dr. Hendricks' office. (JE 1:16-18). He reported feeling better, but continued to have stiffness and tightness when walking. (JE 1:16). He described a feeling like his leg would buckle if he walked too much. (JE 1:16). He rated his pain 5 out of 10, and found it to increase with standing, lying down, walking, and climbing stairs. (JE 1:16). X-rays showed progressive healing with no evidence of problems. (JE 1:17). Range of motion in the knee varied from 0 to 115 degrees. (JE 1:18). Dr. Hendricks advised Mr. Cassabaum to continue attending physical therapy, and renewed his work restrictions. (JE 1:18).

Mr. Cassabaum followed up with Dr. Hendricks on April 30, 2020. (JE 1:19-22). He complained of stiffness in the morning along with medial soreness in the knee. (JE 1:19). He described difficulty descending stairs, and pain which he rated 2 out of 10.

(JE 1:19). Dr. Hendricks documented that physical therapy helped Mr. Cassabaum. (JE 1:19). Dr. Hendricks also found that the claimant could lift 8 to 10 pounds with his right knee. (JE 1:19). X-rays obtained during the visit showed progressive healing with no evidence of complications. (JE 1:20). Dr. Hendricks observed no evidence of instability in the claimant's right knee. (JE 1:21). Dr. Hendricks proposed a plan of a 20-pound lifting restriction at work, and for the claimant to continue work hardening physical therapy with a goal of lifting 50 pounds. (JE 1:21).

On June 11, 2020, Mr. Cassabaum continued his care with Dr. Hendricks. (JE 1:23-26). He continued to have stiffness and described his knee as feeling loose or sore at times. (JE 1:23). He rated his pain 3 out of 10. (JE 1:23). X-rays continued to show progressive healing with no evidence of complications. (JE 1:24). Dr. Hendricks continued the 20-pound lifting restriction, and recommended that the claimant continue work hardening physical therapy. (JE 1:25).

Dr. Hendricks examined the claimant again on July 23, 2020. (JE 1:27-31). Mr. Cassabaum continued to note stiffness and popping when he flexed his knee. (JE 1:27). He also indicated pain increased at the end of a day if he "is on it too long." (JE 1:27). He rated his pain 3 out of 10. (JE 1:27). Dr. Hendricks observed that the knee made noise with motion, and that "work comp did not send him to PT." (JE 1:27). Additional x-rays were performed, which showed no issues. (JE 1:28). Dr. Hendricks again recommended work hardening, and reiterated his previous restrictions. (JE 1:29).

On September 2, 2020, Mr. Cassabaum returned to Dr. Hendricks' office for additional follow-up. (JE 1:32-34). The claimant continued to have soreness in his right knee, but noted that physical therapy was helping. (JE 1:32). He had swelling in the knee on days that he attended physical therapy. (JE 1:32). He rated his pain 3 out of 10. (JE 1:32). X-rays of the right knee showed no complications. (JE 1:33). Dr. Hendricks recommended that Mr. Cassabaum continue physical therapy to work on strengthening the right lower extremity. (JE 1:34). He also released the claimant to work with no restrictions. (JE 1:34).

Dr. Hendricks saw Mr. Cassabaum again on November 4, 2020. (JE 1:35-37). Mr. Cassabaum continued to complain of popping in his right knee, along with soreness with more use. (JE 1:35). Mr. Cassabaum reported difficulty sleeping due to pain and discomfort in his right knee. (JE 1:35). He rated his pain between 3 and 5 out of 10. (JE 1:35). X-rays continued to show no evidence of collapse or problems. (JE 1:36). Dr. Hendricks observed range of motion in the claimant's right knee. (JE 1:36). He also found no evidence of instability. (JE 1:37). Dr. Hendricks placed Mr. Cassabaum at maximum medical improvement ("MMI"), and allowed him to return to work full duty with no restrictions. (JE 1:37). He was told to return to Dr. Hendricks' office as needed. (JE 1:37).

At the arrangement of claimant's counsel, Mr. Cassabaum was examined by Sunil Bansal, M.D., M.P.H., for an IME on March 5, 2021. (Claimant's Exhibit 1:1-11). Dr. Bansal is board certified in occupational medicine. (CE 1:1). Following the IME, Dr. Bansal issued a report dated June 26, 2021. (CE 1:11). Dr. Bansal began his report by outlining the medical treatment undertaken to date. (CE 1:2-6). He then recounted the

history of the claimant's injury. (CE 1:6). Mr. Cassabaum told Dr. Bansal that he had numbness in his right foot and leg, along with difficulty squatting. (CE 1:6). The claimant also could not run and used a handrail for support when using stairs. (CE 1:6). Mr. Cassabaum expressed a feeling as though his knee will give way when he used stairs. (CE 1:6).

Dr. Bansal examined the claimant and found him to have swelling and tenderness in the medial and lateral right knee. (CE 1:7). The claimant had 107 degrees of flexion in his right knee, and "no lag" in extension. (CE 1:7). He displayed 4 out of 5 strength on manual muscle testing with flexion of the right leg, and 5 out of 5 strength on manual muscle testing with extension. (CE 1:7).

Dr. Bansal opined that the claimant sustained a comminuted and displaced bicondylar depressed intra-articular fracture of the right tibial plateau that extended into the tibial spine. (CE 1:8). He also noted the claimant's surgical history. (CE 1:9). He opined that the claimant was at risk for further degeneration and the development of post-traumatic arthritis based upon his symptoms. (CE 1:9-10). Dr. Bansal used Table 17-33 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, to provide an impairment rating to the claimant. (CE 1:9). Dr. Bansal opined that the claimant's tibial plateau fracture was "most appropriately classified as a dual medial and lateral tibial plateau fracture," and thus assigned a 10 percent lower extremity impairment. (CE 1:9). Dr. Bansal also opined that, if Table 17-10 and range of motion testing was used, the claimant would be assigned a 10 percent lower extremity impairment based upon 107 degrees of knee flexion. (CE 1:9).

The doctor recommended that Mr. Cassabaum avoid high impact activities, such as running and jumping, frequent kneeling or squatting, and multiple stairs. (CE 1:9). Dr. Bansal also recommended no prolonged walking for greater than 30 minutes at a time. (CE 1:9). Dr. Bansal opined that the "likely" accelerated degeneration of the knee may require "intermittent viscosupplementation and/or steroid injections." (CE 1:10).

On May 5, 2021, the claimant returned to see Dr. Hendricks with complaints of stiffness and soreness in his right knee. (JE 1:38-41). He described the sensation as though "a thousand bees [were] stinging him at the same time." (JE 1:28). He also complained of popping and grinding in his knee. (JE 1:28). Overall, he rated the pain between 5 out of 10 and 10 out of 10, and informed Dr. Hendricks that the pain kept him awake at night. (JE 1:38). Dr. Hendricks ordered x-rays and found progressive healing with no evidence of problems in the right knee. (JE 1:39). He prescribed gabapentin and advised the claimant to return in two to three months. (JE 1:40).

Mr. Cassabaum followed-up with Dr. Hendricks on July 19, 2021. (JE 1:42-44). He continued to complain of tingling in his leg and foot. (JE 1:42). Gabapentin helped for six hours, but then sharp pain returned. (JE 1:42). Mr. Cassabaum told the doctor that he did not sleep well, and elevated his knee at night. (JE 1:42). He rated his pain 3 out of 10 at its best and 8 out of 10 at its worst. (JE 1:42). Dr. Hendricks recommended that the claimant return to his office as needed. (JE 1:44).

On October 18, 2021, the claimant saw Dr. Hendricks again for his right knee complaints. (JE 1:45-47). He noted increased problems with the knee, including pain

and tightness around the knee. (JE 1:45). Mr. Cassabaum also complained of numbness from his knee down the front of his calf into his foot. (JE 1:45). He rated his pain a constant 4 out of 10, with 8 out of 10 at its worst. (JE 1:45). Mr. Cassabaum described his pain as stabbing, achy, sharp, and dull; however, Dr. Hendricks noted that the symptoms were "vague and difficult to describe." (JE 1:45). X-rays taken during this visit were normal. (JE 1:46-47). Knee range of motion was between 0 and 110 degrees, and there was no evidence of instability. (JE 1:47). Dr. Hendricks recommended that they schedule the removal of the hardware in Mr. Cassabaum's right knee. (JE 1:47).

Mr. Cassabaum returned to Dr. Hendricks' office on November 11, 2021. (JE 1:48-50). His previously scheduled surgery was cancelled due to cellulitis. (JE 1:48). He told Dr. Hendricks that he experienced sharp pain under his kneecap when he turned his leg the wrong way. (JE 1:48). He rated his pain 3 out of 10 on a constant basis, but 7 out of 10 at its worst. (JE 1:48). Dr. Hendricks recommended that the claimant continue antibiotics and not reschedule surgery until scratches on the claimant's leg are healed. (JE 1:50).

On November 18, 2021, the claimant followed up with Dr. Hendricks. (JE 1:51-53). His leg scratches improved following use of antibiotics. (JE 1:51). His pain ratings remained unchanged. (JE 1:51). Dr. Hendricks rescheduled the hardware removal surgery, and refilled antibiotic prescriptions. (JE 1:53).

Dr. Hendricks performed a hardware removal surgery on November 23, 2021. (JE 5:147-148).

Dr. Hendricks saw Mr. Cassabaum on November 30, 2021, for a one-week follow-up of his leg hardware removal. (JE 1:54). The wound was healing well with no sign of infection. (JE 1:54).

On December 7, 2021, Dr. Hendricks again visited with Mr. Cassabaum following his hardware removal. (JE 1:55-57). Again, there were no signs of infection. (JE 1:55). Dr. Hendricks recommended that Mr. Cassabaum continue to remain off of work. (JE 1:57).

Mr. Cassabaum saw Dr. Hendricks again on December 27, 2021. (JE 1:58-60). Mr. Cassabaum felt better, but had increased pain at night after being on his feet during the day. (JE 1:58). He continued to feel popping and grinding in his right knee. (JE 1:58). Dr. Hendricks found Mr. Cassabaum to ambulate with one crutch. (JE 1:58). His pain remained at a constant 3 out of 10 with it being 7 out of 10 at its worst. (JE 1:58). Additional x-rays showed a successful hardware removal. (JE 1:59). Dr. Hendricks discharged the claimant from using a crutch and recommended physical therapy. (JE 1:60). Dr. Hendricks also allowed the claimant to perform sedentary work. (JE 1:60).

The claimant began therapy at Rock Valley Physical Therapy on January 6, 2022. (JE 3:111-113). Mr. Cassabaum reported that his pain worsened in his right knee with increased use. (JE 3:111). He also noted pain at night and difficulty with sleep. (JE 3:111). The claimant had slight gait compensation and reduced stance time on his right leg. (JE 3:112). Therapy was performed. (JE 3:111-113).

On January 24, 2022, the claimant returned to Dr. Hendricks' office. (JE 1:61-65). He rated his pain 2 out of 10 on a constant basis. (JE 1:61). His knee was doing "ok," but when he was on his feet for longer periods of time, he had increased pain. (JE 1:61). He also continued to have popping and grinding. (JE 1:61). X-rays were performed which showed no problems outside of "[m]oderate osteoarthritic changes noted." (JE 1:63). Dr. Hendricks allowed Mr. Cassabaum to use an inversion table and recommended that he continue physical therapy. (JE 1:63).

Therapy continued on February 10, 2022, during which time the claimant reported icing after the last visit due to soreness. (JE 3:114-116). Mr. Cassabaum displayed continued ability to increase the intensity of the therapy provided. (JE 3:115). There was some discomfort noted, but he was encouraged to begin normal recreational activities. (JE 3:115). Mr. Cassabaum expressed fear that his recreational activities were not covered by his workers' compensation, so he set out to self-limit himself on these items. (JE 3:115).

On February 15, 2022, the claimant had another therapy visit. (JE 3:117). He noted being "out and about this weekend." (JE 3:117). Some exercises were discontinued due to difficulties. (JE 3:117).

Mr. Cassabaum had another therapy session on February 22, 2022, wherein he reported some swelling over the weekend. (JE 3:118-120). He attempted to perform some exercise, but required verbal cues on several items. (JE 3:118). He also refused to perform certain exercises due to self-limitation. (JE 3:119). He had an antalgic gait which the therapist noted dissipated whenever they discussed his daily life. (JE 3:119). Mr. Cassabaum told the therapist that he was uncomfortable performing stair exercises at home. (JE 3:119).

On February 24, 2022, the claimant had another physical therapy session, during which he reported no significant change. (JE 3:121-122). Mr. Cassabaum could perform certain exercises while discussing fishing, but displayed difficulty if there was silence. (JE 3:121).

Dr. Hendricks saw Mr. Cassabaum again on March 7, 2022, with continued complaints of grinding and popping. (JE 1:66-68). He also had soreness and swelling after performing physical therapy. (JE 1:66). Dr. Hendricks recommended the claimant continue taking ibuprofen and gabapentin. (JE 1:67). X-rays continued to be normal, and Dr. Hendricks observed "[g]ood preservation of joint space tricompartmentally." (JE 1:67). Dr. Hendricks recommended that the claimant perform his home exercise plan, including riding a bike and strengthening his quadriceps and hamstrings. (JE 1:68). Dr. Hendricks also recommended that Mr. Cassabaum continue physical therapy with no squats, no stair climbing, no lunges, and no deep knee bends. (JE 1:68).

On March 8, 2022, the claimant had another physical therapy session. (JE 3:123-126). Mr. Cassabaum told the therapist that he had a "long list of things he can't [*sic*] do," which the doctor would send over. (JE 3:123). Mr. Cassabaum further told the therapist that he ordered his own goniometer and asked for training on how to use it so that he could measure how far his knee bent. (JE 3:123). The therapist measured knee flexion on a stair and found both the left and right knee to have 125 degrees of flexion.

(JE 3:124). Upon being informed of this, Mr. Cassabaum insisted that his knee did not bend that far, and demanded a remeasurement of the right knee. (JE 3:124). On the second measurement, the right knee bent to 132 degrees. (JE 3:124). Mr. Cassabaum then set out to prove that the right knee did not bend as far as the left. (JE 3:124). When he sat down on a table, the left knee showed 121 degrees of flexion while the right knee showed 92 degrees of flexion. (JE 3:124). The therapist observed that the claimant struggled with full body exercises. (JE 3:124-125). The therapist felt that the knee met the range of motion goals, and noted that the "Lower Extremity Functional Scale" indicated that Mr. Cassabaum was performing worse than when he started therapy, while the claimant performed increased intensity exercises when compared to the initial visit. (JE 3:125).

The claimant had a clinical review performed by Jennifer Sze, R.N., of MedRisk on March 11, 2022. (JE 2:109-110). She recommended that Mr. Cassabaum have eight additional physical therapy visits over four weeks with a reassessment of his care at that time. (JE 2:109). She reviewed a progress note indicating that the claimant had 125 degrees of left knee flexion on a stair, along with 125 degrees of right knee flexion. (JE 2:109). The progress note also stated that both of the knees bent an equal distance based upon their measurement. (JE 2:109-110). This is in contrast to the claimant's statement that the knee did not bend as far and resulted in a second measurement. (JE 2:110). The second measurement resulted in 132 degrees of flexion. (JE 2:110). According to Ms. Sze, the treatment provided to the claimant to date was appropriate. (JE 2:110).

On April 18, 2022, the claimant returned to Dr. Hendricks' office for continued follow-up care. (JE 1:69-73). Mr. Cassabaum told Dr. Hendricks that his leg was getting better, though it still popped and swelled on occasion. (JE 1:69). He was performing a home exercise plan, and had not begun physical therapy. (JE 1:69). Mr. Cassabaum felt that he improved better doing his own exercises, as therapy was "too rough with him." (JE 1:69). He rated his pain 2 out of 10 on a constant basis, and 8 out of 10 after physical therapy. (JE 1:69). X-rays were performed again and showed no problems or complications. (JE 1:71). The doctor maintained the current work restrictions, and recommended that the claimant restart physical therapy. (JE 1:71).

The claimant had another initial therapy evaluation at Rock Valley Physical Therapy on April 25, 2022. (JE 3:127-129). He told the therapist that his knee was swollen, and that he thought it would be that way for the rest of his life. (JE 3:127). He also complained of tingling in both of his feet all the time. (JE 3:127). He walked a lot, which he thought caused his knee to swell. (JE 3:127).

Mr. Cassabaum followed up with Dr. Hendricks again on June 1, 2022. (JE 1:74-77). He continued to have swelling, stiffness, grinding, and popping in his knee. (JE 1:74). At the time of the appointment, he performed physical therapy twice per week, and took gabapentin and ibuprofen as needed. (JE 1:74). He rated his pain 3 out of 10 on a constant basis, and 7 out of 10 at its worst after physical therapy. (JE 1:74). His pain was worse at night. (JE 1:74). New x-rays showed no evidence of collapse, but a slight decrease in the medial joint space. (JE 1:75). Dr. Hendricks allowed the claimant to return to work full duty with no restrictions. (JE 1:76).

Mr. Cassabaum also had a therapy session on June 1, 2022. (JE 3:130-131). He reported stiffness in his knee in the morning. (JE 3:130). He displayed 121 degrees of flexion in his right knee. (JE 3:130).

On July 11, 2022, Dr. Hendricks examined Mr. Cassabaum again. (JE 1:78-81). Mr. Cassabaum still complained of grinding, popping, swelling and pain after a full day of activity. (JE 1:78). Pain interrupted his sleep, insofar as he only got about three hours of sleep per night. (JE 1:78). He elevated his leg in an attempt to help alleviate the pain, and expressed a preference for home physical therapy. (JE 1:78, 80). He rated his pain 3 out of 10 on a constant basis, and 8 out of 10 after a day of activity. (JE 1:78). Additional x-rays showed no evidence of problems. (JE 1:80). Dr. Hendricks recommended that the claimant take ibuprofen and return in two months. (JE 1:80).

Michael Maharry, M.D., examined Mr. Cassabaum at the University of Iowa on July 26, 2022. (JE 4:132-135). The claimant wanted to get his diabetes "back under control," and also control his hypertension. (JE 4:132). Dr. Maharry opined that the claimant's diabetes was poorly controlled. (JE 4:134-135).

On August 29, 2022, Dr. Bansal issued another opinion based upon a review of updated medical records. (CE 2:12-16). He concluded that the new information did not alter his opinions. (CE 2:16).

The claimant saw Dr. Hendricks for continued follow-up care on September 12, 2022. (JE 1:82-85). He reported increased pain since taking ibuprofen, and also continued to have swelling after being on his feet. (JE 1:82). Pain kept him awake at night, and at times also woke him from his slumber. (JE 1:82). He continued to elevate his leg and perform home exercises. (JE 1:82). He rated his pain 4 out of 10 on a constant basis and 8 out of 10 at its worst. (JE 1:82). Mr. Cassabaum's knee popped with weight bearing. (JE 1:84). New x-rays showed no evidence of collapse of the fracture, nor any complications. (JE 1:84). Dr. Hendricks conducted a physical examination of the claimant's knee, and found no abnormalities on inspection, and slight pain at the hardware removal site. (JE 1:84). He found range of motion from 0 to 120 degrees without crepitation. (JE 1:84). There was crepitation with motion when the knee was weight bearing. (JE 1:84). There was no evidence of instability, and a number of tests administered were negative. (JE 1:84). Dr. Hendricks did not do a strength test on the knee. (JE 1:84). Dr. Hendricks told the claimant to discontinue ibuprofen, and prescribed Voltaren gel several times per day. (JE 1:84).

On October 3, 2022, Dr. Hendricks wrote a letter to an individual with Broadspire. (JE 1:86). The letter was in response to correspondence about the claimant. (JE 1:86). Dr. Hendricks outlined the claimant's injury and subsequent course of treatment, including placing the claimant at MMI as of July 11, 2022. (JE 1:86). Dr. Hendricks noted that Mr. Cassabaum had decreased sensation along the lateral aspect of the right leg, which the doctor opined was "consistent with a deficiency or injury to the sural nerve." (JE 1:86). Dr. Hendricks then provided an impairment rating pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (JE 1:86). Dr. Hendricks used Table 17-37 on page 552 of the Guides to provide a 1 percent lower extremity impairment. (JE 1:86).

Dr. Hendricks saw Mr. Cassabaum again on October 6, 2022, for continued care. (JE 1:87-90). The claimant continued to complain of pain at night, along with swelling after being on his feet. (JE 1:87). He performed his home exercises and continued to take gabapentin; however, he did not begin using Voltaren gel "due to the list of side effects." (JE 1:87). He rated his pain 4 out of 10 on a constant basis, and 8 out of 10 at its worst at night. (JE 1:87). Dr. Hendricks indicated that a cortisone injection "may shed some light" on the source of the claimant's pain. (JE 1:89). Additional x-rays were performed, but only mild post-traumatic arthritis was seen. (JE 1:89).

Mr. Cassabaum saw Dr. Maharry again on October 27, 2022. (JE 4:136-141). He outlined concerns about his diabetes and erectile dysfunction. (JE 4:136). Since his previous visit, he noted numbness and "zapping pains" in his bilateral feet. (JE 4:136). Dr. Maharry noted that the claimant's A1C was still elevated, and advised the claimant to continue taking metformin. (JE 4:140).

On November 7, 2022, Dr. Hendricks administered a cortisone injection to the claimant's right knee. (JE 1:91-94). Mr. Cassabaum told the doctor that he still had pain and swelling in his knee depending upon what he did during the day. (JE 1:91). His pain sometimes kept him awake at night. (JE 1:91). He continued to take gabapentin. (JE 1:91). He rated his pain 4 out of 10 on a constant basis and 8 out of 10 at night. (JE 1:91).

Mr. Cassabaum returned to Dr. Hendricks' office on December 28, 2022. (JE 1:95-97). He told the doctor that the injection made his knee feel more stable, but that it did not alleviate any pain or weakness. (JE 1:95). Any positive result from the injection wore off after a few weeks. (JE 1:95). The record states, "…the injection helped until he climbed into his attic." (JE 1:97). He also told the doctor that he could not work due to his pain. (JE 1:95). He continued performing a home exercise program and taking gabapentin, but noted that it was not helping his pain at night. (JE 1:95). Dr. Hendricks increased the dosage of gabapentin, and allowed the claimant to continue full duty work. (JE 1:97).

On February 9, 2023, Dr. Hendricks examined Mr. Cassabaum again. (JE 1:98-101). Mr. Cassabaum still had swelling, popping, grinding, and pain in his knee. (JE 1:98). His pain worsened at night. (JE 1:98). He had weakness ascending stairs. (JE 1:98). He rated his pain 3 out of 10 on a constant basis and 8 out of 10 at night. (JE 1:98). Mr. Cassabaum indicated that cold weather reduced his pain. (JE 1:100). X-rays of the right knee showed osteoarthritic changes. (JE 1:100). Range of motion was shown to be 0 to 115/118 degrees without crepitation. (JE 1:100). Dr. Hendricks increased the claimant's gabapentin dosage, and again prescribed Voltaren gel. (JE 1:100).

Dr. Hendricks saw the claimant again on May 17, 2023, for continued right knee follow-up. (JE 1:102-108). The claimant reported doing "about the same as the last visit." (JE 1:102). Mr. Cassabaum reported increased pain at the end of the day. (JE 1:102). The increased dosage of gabapentin did not provide noticeable relief. (JE 1:102). He walked daily to work out his knee, but found electric shock-like pain in the evening. (JE 1:102). He only slept two hours per night due to his pain. (JE 1:102). He

rated his pain 4 out of 10 on a constant basis and 8 out of 10 at night. (JE 1:102). Dr. Hendricks noted that Mr. Cassabaum complained of tingling, and inquired as to whether cutting the nerves below the knee would help take the pain away. (JE 1:104). Dr. Hendricks offered a referral to a pain clinic or a neurologist, but noted that some of the pain could be diabetic neuropathy. (JE 1:104). X-rays again showed osteoarthritic changes. (JE 1:104). Dr. Hendricks allowed the claimant to work within his current restrictions, and recommended that he increase his ibuprofen dose. (JE 1:104). He tapered the gabapentin dose until it was discontinued and prescribed Lyrica. (JE 1:104-108).

The claimant called UIHC Hospital and spoke to a nurse on May 26, 2023. (JE 4:143). He complained of pain in his right leg. (JE 4:143). He was told to be seen at an urgent care due to a concern of a blood clot, but he declined due to cost concerns. (JE 4:143).

Dr. Hendricks again examined Mr. Cassabaum on July 19, 2023. (CE 8:34-37). Mr. Cassabaum again reported feeling no improvement, and that his knee was still sore, swollen, and popped. (CE 8:34). He continued to have numbness and tingling, and told Dr. Hendricks that Lyrica did not help him. (CE 8:34). He felt that his sleep worsened, as well. (CE 8:34). He rated his pain 4 out of 10 on a constant basis and 8 out of 10 at night. (CE 8:34). X-rays showed slightly decreased medial joint space, lateral tibial sclerosis, and no other issues. (CE 8:36). Mr. Cassabaum showed between 0 and 115 to 118 degrees of motion without crepitation. (CE 8:36). Dr. Hendricks provided the claimant with another prescription for Lyrica and recommended he return in three months. (CE 8:36).

An MRI of the right knee performed on August 4, 2023, as ordered by Dr. Maharry showed truncation of the lateral meniscus anterior horn, "which may represent posttraumatic or postoperative change." (CE 9:38-39). The MRI also showed "[o]ld postoperative changes of [a] prior tibial plateau fracture repair." (CE 9:39).

During his follow-up care, Mr. Cassabaum complained that he had popping in his knee. (Testimony). He indicated that the treating doctor either wouldn't answer his questions or would blame his issues on his ligament. (Testimony). It became clear from his testimony that Mr. Cassabaum was displeased with the treatment, and/or bedside manner of Dr. Hendricks. (Testimony). He felt like Dr. Hendricks did not provide him with treatment that helped him improve. (Testimony).

Mr. Cassabaum continued to have swelling on the inside of his knee with activity. (Testimony). This swelling then precipitates nerve pain in his leg. (Testimony). He did not feel that he recovered from the injury. (Testimony).

His second surgery did not help alleviate his pain. (Testimony). He was given prescriptions. (Testimony).

Cortisone injections helped for about one week before his pain returned to its baseline. (Testimony).

Mr. Cassabaum recalled that Dr. Bansal measured his range of motion in his leg, while Dr. Hendricks did not. (Testimony).

Mr. Cassabaum has not returned to work since his injury. (Testimony). His position with Kinder Morgan ended, and he testified that they never called him back. (Testimony).

Mr. Cassabaum testified that he had constant pain at the time of the hearing that he rated between 5 and 8 out of 10. (Testimony). He testified to difficulty performing tasks at home, and difficulty sleeping. (Testimony). He also expressed disappointment in being off of work. (Testimony). Lifting or other work caused his knee to swell. (Testimony). However, he acknowledged that there is no medical documentation of the swelling. (Testimony). If he was on his feet for thirty minutes, he would need to rest for two hours. (Testimony). As of the hearing, he was taking Lyrica and ibuprofen to alleviate his pain. (Testimony).

Of note, Mr. Cassabaum is a type 2 diabetic. (Testimony). His diabetes is controlled with medication. (Testimony). He is attempting a fitness program including walking and stretching. (Testimony). He also fractured his left ankle in 1995. (Testimony).

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).

Permanent Impairment

The parties stipulated that the injury was a cause of permanent disability to the right lower extremity. The parties indicated that there is a dispute over the extent of permanent disability.

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.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). 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).

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

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

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

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994).

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

I also am limited by Iowa Code section 85.34(2)(x) to using only the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, to evaluate the claimant's permanent functional disability.

The parties stipulated that the claimant's work injury caused a permanent impairment to the right lower extremity. Iowa Code section 85.34(2)(p) provides that compensation for permanent impairment to the lower extremity is based upon 220 weeks.

The claimant sustained an intra-articular comminuted depressed condylar tibial plateau fracture. As a result of this fracture, the claimant had a surgical repair performed by Dr. Hendricks. The claimant had quite a lengthy course of post-surgical recovery and treatment. He continued to complain of pain despite undergoing physical therapy. Eventually, he had a second surgery to remove the hardware previously placed in his right lower extremity. He had another lengthy course of post-surgical

recovery, including additional physical therapy. At the time of the hearing, the claimant continued to complain of pain and weakness in his right knee.

There are certain elements of the physical therapy notes that cause me to question the claimant's credibility. Namely, the physical therapy notes indicate that, when distracted, the claimant performed much better in therapy. Additionally, the claimant purchased his own goniometer to perform range of motion measurements in his right knee. When the therapist performed certain measurements, the claimant vehemently disputed their validity. The claimant then demanded that the measurements be taken in a certain way, which yielded worse results from a functional standpoint. The physical therapist has no reason to be biased in their measurements.

The claimant also had poorly controlled diabetes. By the time of the hearing, the claimant had his diabetes under control. However, it is well known and generally accepted in the medical community that diabetes can lengthen the time of recovery from an injury, and can also cause nerve damage if not managed properly. This is briefly mentioned in at least one medical record.

There are two medical opinions in this case regarding the claimant's right lower extremity issues. Dr. Bansal, the claimant's hand-selected IME physician, provided an opinion on the claimant's permanent impairment following an examination on March 5, 2021. Dr. Bansal opined that the claimant had 107 degrees of flexion in the right knee, along with 4 out of 5 strength on manual muscle testing with flexion of the right leg. Dr. Bansal then used Table 17-33 of the Guides to classify the claimant's fracture as a "dual medial and lateral tibial plateau fracture," which resulted in a 10 percent lower extremity impairment. Alternatively, Dr. Bansal suggested that using range of motion measurements and Table 17-10 of the Guides resulted in a 10 percent lower extremity impairment based upon the 107 degrees of knee flexion.

Dr. Bansal performed a record review and issued another opinion letter dated August 29, 2022. Of note, Dr. Bansal did not perform any re-examination of the claimant. Dr. Bansal did not change any of his prior opinions based upon his review of the medical records as of August 29, 2022.

On October 3, 2022, Dr. Hendricks, the claimant's treating physician, used Table 17-37 on page 552 of the Guides as the basis for his 1 percent right lower extremity impairment rating.

Dr. Hendricks was the claimant's treating physician. While Dr. Bansal performed an IME, his IME was performed prior to the removal of the right knee hardware in November of 2021. He did not perform any measurements of the claimant's range of motion subsequent to his right knee hardware removal.

Table 17-33 of the Guides does not provide for an impairment rating of a "dual medial and lateral tibial plateau fracture." It provides for a rating based upon either an undisplaced or displaced plateau fracture. See Guides, Table 17-33, page 546. There are also ratings for supracondylar or intercondylar fractures. Id. Like the rating for the plateau fracture, these are also broken down only between undisplaced or displaced. Id. Dr. Bansal's rating based upon this section of the Guides does not seem to comport

with the rating method used by the Guides. Therefore, I reject Dr. Bansal's opinion based upon Table 17-33.

Dr. Bansal also used Table17-10 of the Guides, and measurements of 107 degrees to arrive at a 10 percent lower extremity impairment. This comports with the measurements laid out in the Guides; however, it does not comport with the evidence. Dr. Hendricks' records along with records from physical therapy indicate that the claimant consistently had range of motion that exceeded 107 degrees. For example, on March 8, 2022, the physical therapist measured the claimant's flexion in the right knee and found him to have 125 degrees of flexion. This was measured a second time after Mr. Cassabaum's objection, and he was found to have 132 degrees of flexion in the right knee. Mr. Cassabaum then sat down on a table and showed 92 degrees of flexion. There is no indication that this was done from a supine position, as required by Figure 17-4 of the Guides.

During a June 1, 2022, physical therapy session, the claimant demonstrated 121 degrees of flexion in his right knee. In September of 2022, Dr. Hendricks found the claimant to have 0 to 120 degrees of range of motion without crepitation. In February of 2023, Dr. Hendricks found the claimant to have between 115 and 118 degrees of range of motion.

Considering my concerns about the claimant's credibility and effort, as noted above, I am concerned about the range of motion and his performance during Dr. Bansal's IME. As noted by the physical therapist, Mr. Cassabaum seemed to go out of his way to prove that his range of motion was worse than those measured by the physical therapist. Additionally, The range of motion measurements that occurred subsequently to those performed by Dr. Bansal show considerable differences. Therefore, I do not find Dr. Bansal's opinion on this issue to be persuasive.

Next, I turn to the opinions of Dr. Hendricks. Dr. Hendricks based his opinions on Table 17-37 of the Guides. As noted in the medical records, there was discussion of an issue with the claimant's sural nerve. This appears to be based upon the numbness and tingling experienced by the claimant. Dr. Hendricks felt that the claimant had a 1 percent impairment based upon these sural nerve issues. Unfortunately, it appears that Dr. Hendricks did not properly read Table 17-37, as it provides either a 0 percent, 2 percent, or 5 percent impairment rating, based upon either a motor impairment, sensory impairment, or dysesthesia, respectively. While I cannot substitute my impairment rating for that of the treating physician, it appears that the doctor transposed what should be a 2 percent lower extremity impairment based upon a sensory issue with the sural nerve. Again, this is not a substitution of my judgment; it is merely correcting the transposition of the physician based upon the language in the Guides.

The transposition of these numbers in Dr. Hendricks' opinions is not fatal to their persuasiveness. Dr. Hendricks was the claimant's treating physician. While the claimant had issues with his bedside manner, there is no indication that the treatment provided was improper. As noted above, the range of motion measurements by Dr. Hendricks and the physical therapist all indicate normal range of motion in the right

knee. Dr. Hendricks also found no evidence of instability. His diagnosis, as it related to permanent impairment, was based upon a sensory issue with the sural nerve.

All of the medical providers' opinions and impairment ratings have issues from a credibility standpoint. However, I find the opinions of Dr. Hendricks to be the most persuasive. Therefore, the claimant is entitled to a 2 percent impairment to the right lower extremity. The result is 4.4 weeks of compensation at the stipulated rate commencing on June 1, 2022 (.02 x 220 weeks = 4.4 weeks).

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 appears to be seeking reimbursement for an impairment rating letter provided by Dr. Hendricks. There is no provision of an impairment rating prior to Dr. Hendricks' letter by a doctor selected by the defendants. Therefore, the elements of Iowa Code section 85.39(2) have not been triggered, and I decline to require the defendants to reimburse the claimant for this expense.

Costs

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

Pursuant to the holding in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (noting additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App., September 27, 2019).

The claimant requests reimbursement of two filing fees of one hundred and 30/100 dollars ($100.30) each. In my discretion, I award the claimant one filing fee for one hundred and 30/100 dollars ($100.30).

The claimant also includes a one thousand two hundred and 00/100 dollars ($1,200.00) invoice for an impairment rating provided by Dr. Hendricks. Dr. Hendricks' invoice indicates that it is for an impairment rating letter. This is a physician's report, and not the costs of the examination. In my discretion, I award the claimant the costs of the impairment rating letter.

ORDER

THEREFORE, IT IS ORDERED:

That the defendants shall pay the claimant 4.4 weeks of permanent partial disability benefits at the stipulated rate of four hundred seventy-nine and 41/100 dollars ($479.41), commencing on June 1, 2022.

That the defendants are entitled to a credit of 2.2 weeks of permanent partial disability benefits, as stipulated.

That the defendants shall reimburse the claimant one thousand three hundred and 30/100 dollars ($1,300.30) for costs incurred.

That the defendants shall pay accrued weekly benefits in a lump sum together with interest. All interest on past due weekly compensation benefits shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

That 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 ___11th___ day of October, 2023.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nicholas Pothitakis (via WCES)

Stephanie Techau (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.