BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DANIEL F. WELSH,

Claimant,

vs.

BEST BUY,

Employer,

and

XL INSURANCE AMERICA, INC.,

Insurance Carrier,
Defendants.

File No. 5053417

ARBITRATION DECISION

Head Note Nos.: 1801, 1803.1

STATEMENT OF THE CASE

Claimant Daniel Welsh ("Welsh") filed a petition in arbitration on July 10, 2015, alleging he sustained an injury to his right foot resulting in an industrial disability while working for the defendant, Best Buy. Best Buy filed an answer on September 2, 2015, admitting Welsh sustained a work injury. Defendant XL Insurance America, Inc. ("XL") was later identified as the insurance carrier.

An arbitration hearing was held on August 21, 2016, in Sioux City, Iowa. Attorney Al Sturgeon represented Welsh. Welsh appeared and testified. Attorney Steven Durick represented Best Buy and XL. Amanda Hardick appeared and testified on behalf of Best Buy and XL. Exhibits 1 through 11 and A through K were admitted into the record. The record was left open through September 20, 2016, for the receipt of post-hearing briefs. At that time the record was closed.

Before the hearing the parties prepared a hearing report listing stipulations and issues to be decided. Best Buy and XL waived all affirmative defenses.

STIPULATIONS

1. An employer-employee relationship existed at the time of the alleged injury.

2. Welsh sustained an injury on December 12, 2012, which arose out of and in the course of employment.

3. The alleged injury is a cause of temporary disability during a period of recovery.

4. The alleged injury is a cause of permanent disability.

5. Temporary benefits are no longer in dispute.

6. The commencement date for permanent partial disability benefits, if any are awarded, is March 14, 2015.

7. At the time of the alleged injury, Welsh's gross earnings were $394.19 per week, he was single and entitled to one exemption, and his weekly rate is $260.37.

8. Medical benefits are no longer in dispute.

9. Prior to hearing Welsh was paid 7.5 weeks of compensation at the rate of $271.05 per week.

10. Best Buy and XL agreed to pay the filing fee and service costs.

ISSUES

1. What is the nature of Welsh's disability?

2. What is the extent of Welsh's disability?

FINDINGS OF FACT

Welsh has never been married and he lives with his mother and step-father. (Exhibit F, pages 3, 64; Transcript, p. 10) At the time of the hearing Welsh was 27. (Ex. F, p. 3; Tr., p. 10)

Welsh graduated from West High School in Sioux City, Iowa. (Ex. F, p. 3; Tr., p. 11, 64) While he was in high school Welsh was an average student. (Tr., p. 11) After high school Welsh enrolled in classes through Western Iowa Tech Community College, and he continues to take classes. (Ex. F, p. 3; Tr., pp. 11-12) Welsh has taken classes on and off since 2007. (Ex. F, p. 3) Welsh hopes to become a history teacher. (Tr., pp. 12, 65)

When he was in high school Welsh worked in his step-father's restaurant, cooking, waiting on tables, and bussing tables. (Tr., p. 13) The restaurant later closed.

In 2006, Best Buy hired Welsh after he graduated from high school. (Tr., p. 13) Welsh is a sales lead, where he spends eighty percent of his time in sales, and twenty percent of his time training and coaching other employees. (Tr., pp. 13-14)

On December 12, 2012, Welsh was working at Best Buy in the warehouse offloading trucks and breaking down or separating the products. (Tr., p. 16) When a truck pulled in, the truck was not properly aligned with the dock and Welsh could not pull the pallets. (Tr., p. 16) Something was off with the lift on the dock. (Tr., p. 17) Welsh and his coworker tried to figure out the problem and his coworker stepped on the bottom part of the lift, causing the lift to slam down, catching Welsh's right foot, and taking his foot underneath the lift. (Tr., p. 17) Welsh exclaimed, "Ow, I'm in pain" and "[g]et it off. Get it off." (Tr., p. 17) Welsh's coworker did not know what to do, so Welsh had to reach over with his hand to press the button to raise the lift and dislodge his foot. (Tr., p. 18) Welsh jumped around on his foot in pain, he sat down, and he removed his sock. (Tr., p. 18) Welsh observed his foot was discolored, dark red and purple, and was swollen two to three times its normal size. (Tr., p. 18) One of Welsh's coworkers drove him to the emergency room. (Tr., p. 18)

At the hospital Welsh was diagnosed with a crush injury to his right foot. (Ex. 1, p. 1) An x-ray revealed soft tissue swelling in the midfoot, but did not reveal an acute bony injury. (Ex. 1, p. 3) The treating physician prescribed pain medication and crutches, recommended Welsh elevate his leg above his heart, ice his foot, and use a compression wrap, and referred Welsh to an orthopedic surgeon the next day. (Ex. 1, pp. 1-3)

On December 13, 2012, Welsh attended an appointment with Raymond Emerson, M.D., an orthopedic surgeon. (Ex. 2, p. 1) Dr. Emerson documented that Welsh did not appear to be in pain, and noted he observed "[m]ild ecchymosis over the dorsal aspect of his right foot over the mid-to-lateral region." (Ex. 2, p. 2) Dr. Emerson assessed Welsh with a right foot contusion over the dorsolateral aspect. (Ex. 2, p. 2) Dr. Emerson instructed Welsh to keep his foot elevated and to wear a compression wrap and tall gray boot, with weight bearing as tolerated. (Ex. 2, p. 2) Dr. Emerson restricted Welsh from working, and prescribed Lortab for pain relief. (Ex. 2, p. 2)

Welsh attended a follow-up appointment with Dr. Emerson on December 20, 2012. (Ex. 2, p. 4) Dr. Emerson documented, "[h]e does have a little bit more soft tissue swelling about the dorsolateral aspect of his fore and midfoot. No skin lesions yet. He has a few small dark areas of more severe skin contusion that is not declaring itself yet. Mild soft tissue erythema secondary to irritation of blood within soft tissues." (Ex. 2, p. 5) Dr. Emerson prescribed hydrocodone-acetaminophen, and instructed Welsh to begin actively moving his foot, ankle and toes, and to take his cast on and off, with weight bearing as tolerated. (Ex. 2, p. 5)

During Welsh's appointment on January 28, 2013, Dr. Emerson noted Welsh's symptoms had gradually improved and he had some swelling toward afternoon and

evening. (Ex. 2, p. 8) Welsh rated his pain a two or three out of ten. (Ex. 2, p. 8) Dr. Emerson noted that on examination Welsh "is hypersensitive to light touch over the posterior and lateral aspects of his foot." (Ex. 2, p. 8) Dr. Emerson ordered Welsh wear a compression sock, desensitize his foot with rubbing, engage in weight bearing as tolerated, and restricted Welsh to a sit-down job only. (Ex. 2, p. 8)

On February 11, 2013, Welsh attended a follow-up appointment with Dr. Emerson. (Ex. 2, p. 9) Dr. Emerson reviewed x-rays to rule out a periosteal reaction and osteopenia. (Ex. 2, p. 9) Dr. Emerson listed an impression of status post contusion dorsolateral aspect of the right foot and hypersensitivity over the dorsum of the forefoot. (Ex., 2, p. 9) Dr. Emerson ordered physical therapy and a compression sock, and encouraged Welsh "to weightbear and try to walk in the more normal fashion." (Ex. 2, p. 9) Dr. Emerson noted, "[b]ecause of his persistent and noxious symptoms, we will have him off work for the time being." (Ex. 2, p. 9)

During Welsh's appointment on March 15, 2013, Dr. Emerson noted Welsh "has mild rubor of the mid and forefoot area of the right foot, dorsal aspect," mild swelling, and hypersensitivity as compared to his left side. (Ex. 2, p. 13) Dr. Emerson assessed Welsh with status post contusion of the right foot and "[p]robable early complex regional pain syndrome (CRPS), right foot." (Ex. 2, p. 13) Dr. Emerson ordered Welsh to continue with physical therapy and to increase his activity, prescribed gabapentin, and restricted Welsh from working. (Ex. 2, p. 13)

Welsh attended a follow-up appointment with Dr. Emerson on May 3, 2013. (Ex. 2, p. 15) Dr. Emerson noted, "[t]here are decreased areas of hypersensitivity now over the area of previously contused skin. No erythema now. No swelling. Active range of toe motion is present and without discomfort. He still has 2 areas, one over the base of the small toe metatarsal just distal to the base and also over the 3rd toe MTP joint. Noxious feeling as he touches over those 2 areas." (Ex. 2, p. 15) Dr. Emerson listed an impression of "[i]mproved signs and symptoms after contusion right foot. Less appearance and symptoms of complex regional pain syndrome." (Ex. 2, p. 15) Dr. Emerson imposed restrictions of working a half day with no standing or walking for more than thirty minutes at a time, followed by rest or sitting for "about" two hours and prescribed amitriptyline. (Ex. 2, p. 15)

During Welsh's June 10, 2013 appointment, Dr. Emerson noted Welsh was working four hours on his feet some days per week, and Welsh reported that after an hour or two of working he experienced pain on the dorsal lateral aspect of his forefoot. (Ex. 2, p. 19) Dr. Emerson observed Welsh had hypersensitivity over the dorsal lateral aspect of his forefoot in line with the small and fourth toe, and prescribed hydrocodone, Neurontin, and amitriptyline. (Ex. 2, pp. 19-20) Dr. Emerson listed an impression of status post right foot contusion and complex regional pain syndrome. (Ex. 2, p. 20) Dr. Emerson imposed restrictions of no standing or walking more than an hour at a time with an hour of rest, for a maximum of four hours per day. (Ex. 2, p. 20)

Welsh attended an appointment with Dr. Emerson on July 10, 2013, and reported he could tolerate standing for two hours at a time. (Ex. 2, p. 22) Dr. Emerson observed Welsh "has hypersensitivity to light touch over the lateral aspect of his forefoot and going toward the base of the third, fourth, and fifth toes distal aspect." (Ex. 2, p. 23) Dr. Emerson listed an impression of status post right foot contusion and complex regional pain syndrome. (Ex. 2, p. 23) Dr. Emerson recommended Welsh be fitted with a Jobst garment, ordered an anesthesia consult for pain management, and imposed restrictions of "two hours on and two hours off, up to six hours a day." (Ex. 2, pp. 23-24)

Welsh attended his first appointment with Todd Johnson, M.D., a pain specialist, on July 23, 2013. (Ex. 4, p. 1) Dr. Johnson noted Welsh ambulates with a limp, favoring his right foot and that he has "hypersensitivity to touch on the lateral aspect of his right foot." (Ex. 4, p. 1) Dr. Johnson documented no temperature change or decrease in hair distribution on Welsh's right foot. (Ex. 4, p. 1) Dr. Johnson assessed Welsh with peripheral neuropathy, and prescribed Lyrica and a compounding cream of Ketamine, Bupivacaine, Doxepin, gabapentin, nifedipine, and Topiramate. (Ex. 4, p. 2) Dr. Johnson opined, "I do not feel he has Complex Regional Pain Syndrome." (Ex. 4, p. 2)

During Welsh's July 24, 2013, appointment, Dr. Emerson imposed restrictions of six hour days with three days on and one day off alternating. (Ex. 2, p. 25) Dr. Emerson referred Welsh to Michael Nguyen, M.D., one of his practice partners due to his retirement. (Ex. 2, pp. 23, 25)

Welsh returned to Dr. Johnson on August 19, 2013. (Ex. 4, p. 3) Dr. Johnson refilled Welsh's compounding cream and prescribed amitriptyline and Elavil. (Ex. 4, p. 4)

On August 27, 2013, Welsh attended an appointment with Dr. Nguyen, complaining of increased pain at the end of his work day with standing, limping, and pain in his left hip from the limping. (Ex. 2, p. 27) Dr. Nguyen noted, "[g]iven his clinical signs and correlation of symptoms and history of the past several months, he is having some form of chronic pain issue likely a form of complex regional pain syndrome." (Ex. 2, p. 28) Dr. Nguyen documented Welsh had a "very obvious" imbalance in his gait. (Ex. 2, p. 28) Dr. Nguyen recommended additional physical therapy. (Ex. 2, p. 28) During his physical exam, Dr. Nguyen noted Welsh's right foot had some mild swelling, discoloration, and noxious hypersensitivity in the area of the fourth to fifth distal portions of his metatarsals. (Ex. 2, p. 30)

Welsh attended an appointment on September 16, 2013, with Nicholas Fernando, PA, from Dr. Johnson's office, complaining of sharp pain in the dorsum and lateral aspect of his right foot. (Ex. 4, p. 5) Fernando assessed Welsh with peripheral neuropathy, chronic pain syndrome, and a crush injury of the right lower limb in multiple sites. (Ex. 4, p. 6)

During his follow-up appointment with Dr. Nguyen on September 19, 2013, Welsh expressed frustration with his progress. (Ex. 2, p. 33) Dr. Nguyen noted Welsh's foot was painful, it continued to be sensitive to light touch, and Welsh's pain appeared nerve related with "some features of chronic regional pain syndrome." (Ex. 2, p. 33) Dr. Nguyen released Welsh from orthopedic care, transferred Welsh's care to the pain clinic, and imposed restrictions of working no more than three days in a row, and to allow Welsh to sit down with pain flare-ups. (Ex. 2, p. 34)

Welsh attended an appointment with Fernando on October 11, 2013. (Ex. 4, p. 8) Fernando documented, "[e]xam of the right foot in comparison to his left shows slight reddish discoloration with dark blotchy discoloration to the dorsum of his right foot and slight changes in his hair with some moderate amount of edema present." (Ex 4, p. 9) Fernando recommended Welsh be scheduled for a lumbar sympathetic plexus block followed by stimulation therapy and adjusted Welsh's compounding cream. (Ex. 4, p. 9)

Welsh returned to Dr. Johnson on November 4, 2013, for a right lumbar sympathetic plexus block to rule out complex regional pain syndrome. (Ex. 4, p. 11) Following the procedure Welsh reported his pain had improved thirty-five to forty percent. (Ex. 4, p. 12)

During his follow-up appointment on November 18, 2013, Welsh reported a ten percent reduction in his pain. (Exs. 4, p. 15; A, p. 1) Dr. Johnson assessed Welsh with peripheral neuropathy and recommended another sympathetic plexus block. (Exs. 4, p. 14; A, p. 2) Dr. Johnson administered the block on November 25, 2013. (Ex. 4, p. 18) Following the block Welsh reported his pre-existing pain was relieved fifty percent or better. (Ex. 4, p. 19)

During his appointment on January 3, 2014, Dr. Johnson noted Welsh had received minimal and short-term relief from the blocks he had received and he reported he received the greatest relief from the compounding cream and Lyrica. (Ex. 4, p. 20) Dr. Johnson assessed Welsh with peripheral neuropathy and referred Welsh to Esther Benedetti, M.D., at the University of Iowa Hospitals and Clinics ("UIHC") for a second opinion. (Ex. 4, p. 21)

Dr. Benedetti examined Welsh on January 22, 2014. (Ex. 9, p. 1) Dr. Benedetti assessed Welsh with chronic right foot pain following a crush injury. (Ex. 9, p. 3) Dr. Benedetti recommended magnetic resonance imaging of the right foot, a triple phase bone scan, rigorous physical therapy, pain psychology, Mobic, Cymbalta, gabapentin, and Tramadol. (Ex. 9, pp. 3-4)

On February 7, 2014, Welsh attended an appointment with Dr. Johnson. (Ex. 4, p. 22) Dr. Johnson noted Dr. Benedetti had recommended magnetic resonance imaging, Mobic, Cymbalta, Tramadol, gabapentin, aggressive physical therapy, and

psychology support. (Ex. 4, p. 22) Dr. Johnson assessed Welsh with peripheral neuropathy and proceeded with Dr. Benedetti's recommendations. (Ex. 4, p. 23)

Welsh received magnetic resonance imaging of his right foot and a bone scan on February 19, 2014. (Exs. 6, pp. 1-3; B, pp. 1-4) The reviewing radiologist listed an impression of a "[p]artial tear plantar plate first digit MTP joint" and a negative three phase bone scan. (Exs. 6, pp. 1-2; B, pp. 1-2) The radiologist noted that during the bone scan he observed "[n]o focal lesions or abnormal uptake. Specifically no lesions seen in the feet. No specific evidence for reflex sympathetic dystrophy." (Exs. 6, p. 2; B, p. 1)

During his appointment on March 7, 2014, Welsh reported less inflammation in his foot with Mobic and Cymbalta and that his mood had improved. (Ex. 4, p. 24) Dr. Johnson noted Welsh was ambulating with a cane and favoring his right foot. (Ex. 4, p. 24) Johnson assessed Welsh with chronic pain syndrome and noted he would be starting psychoanalysis and biofeedback. (Ex. 4, p. 25)

Welsh attended an appointment with Scott Cox, LISW, on March 20, 2014. (Ex. 8, p. 5) Cox assessed Welsh with an adjustment disorder with anxiety and a depressed mood. (Ex. 8, p. 5) Cox recommended eight sessions of brief solution-focused therapy and identified goals of returning to school while working, to develop informal supports, and to address the spiritual crisis he was experiencing because of his injury. (Ex. 8, pp. 5-6) Welsh received individual counseling on March 26, 2014, April 2, 2014, April 9, 2014, April 16, 2016, and April 23, 2014. (Ex. 8, pp. 7-16)

Welsh had received treatment for anxiety and depression many years before his work injury. (Tr., pp. 36, 61-63; Ex. D, pp. 3, 5-8) Welsh testified his anxiety has become worse since his injury, and small things and big events will set it off. (Tr., p. 37) Welsh has not received any permanent work restrictions for his psychological conditions. (Tr., p. 64)

On April 7, 2014, Welsh attended an appointment with Dr. Johnson. (Ex. 4, p. 26) Dr. Johnson noted that Welsh's bone scan was negative, and magnetic resonance imaging had revealed a mild tear at the first metatarsal phalangeal joint. (Ex. 4, p. 26) Dr. Johnson documented Welsh "originally underwent lumbar sympathetic plexus blocks without benefit. He has since this time been seen by Dr. Benedetti at Iowa City who agrees he does not have Complex Regional Pain Syndrome but has peripheral neuropathy" and noted Welsh's bone scan was within normal limits. (Ex. 4, p. 26) Dr. Johnson assessed Welsh with peripheral neuropathy, and refilled his prescriptions. (Ex. 4, p. 27)

Welsh attended a follow-up appointment with Dr. Benedetti on April 25, 2014. (Ex. 9, p. 5) Dr. Benedetti noted Welsh's bone scan was negative and assessed Welsh with chronic right foot pain following a crush injury, and a partial tear of the plantar plate

of the first digit MTP. (Ex. 9, pp. 7-8) Dr. Benedetti recommended Welsh be referred to an orthopedic foot specialist to determine if something surgical could be done. (Ex. 9, pp. 7-8) Dr. Benedetti did not diagnose or assess Welsh with complex regional pain syndrome. (Ex. 9)

Welsh attended an evaluation with Timothy Fitzgibbons, M.D., who specializes in foot and ankle orthopedics, on July 8, 2014. (Ex. 3) Dr. Fitzgibbons examined Welsh and his medical records. (Ex. 3) Dr. Fitzgibbons diagnosed Welsh with: (1) a "[h]istory of a severe crush injury to the dorsum of the right foot extending from the 3rd, 4th and 5th tarsometatarsal joints and obliquely across the foot to the top of the 1st MTP joint;" (2) "post-crush injury dystrophic symptoms;" and (3) "a plantar plate tear of the right great toe MTP joint" that is asymptomatic. (Ex. 3, pp. 2-3) Dr. Fitzgibbons agreed Welsh should continue with his restrictions and use of compression stockings, and recommended Welsh receive additional physical therapy and an extra-depth work shoe with a soft thick Plastizote inlay, so he could use his extremity. (Ex. 3, pp. 2-3)

The claims manager for the defendants sent Dr. Benedetti a letter posing questions following Welsh's consultation with Dr. Fitzgibbons. (Ex. 9, p. 9) Dr. Benedetti responded she agreed with Dr. Fitzgibbons's recommendations Welsh continue with physical therapy, use support stockings, and receive new shoes with custom inlays, noting, "I would encourage continued PT for 4-6 more months and then home exercises." (Ex. 9, p. 9) Dr. Benedetti opined that Welsh should continue to use his TENS unit "[a]s long as he feels necessary," and that he would not benefit from additional blocks. (Ex. 9, p. 9) Dr. Benedetti noted that Welsh should "[c]ontinue current meds (maximize doses). Continue PT and comply with psychology recommendation for CBT, biofeedback." (Ex. 9, p. 10)

During Welsh's appointment with Dr. Johnson on December 15, 2014, Dr. Johnson noted that Welsh was benefitting from the TENS unit, physical therapy, and an orthotic shoe and socks. (Ex. 4, p. 32) Dr. Johnson assessed Welsh with chronic pain syndrome. (Ex. 4, p. 33)

On March 13, 2015, Dr. Johnson examined Welsh and determined Welsh had reached maximum medical improvement. (Ex. 4, p. 34) Dr. Johnson assessed Welsh with chronic pain syndrome. (Ex. 4, p. 35) During his treatment of Welsh, Dr. Johnson listed "reflex sympathetic dystrophy" and "chronic pain syndrome" as active problems. (Ex. 4) Dr. Johnson assessed Welsh with reflex sympathetic dystrophy on November 4, 2013. (Ex. 4, p. 12) Dr. Johnson did not assess Welsh with reflex sympathetic dystrophy after he provided Welsh with additional treatment. (Ex. 4) Dr. Johnson noted Welsh will need to continue with his medication, attend periodic visits with him three times per year, wear support socks, use a cane as needed, and recommended Welsh be referred to Douglas Martin, M.D., for an impairment rating. (Ex. 4, pp. 34-35) Dr. Johnson deferred to Dr. Martin on work restrictions. (Ex. 4, p. 35)

Welsh attended an independent medical examination with Douglas Martin, M.D., on May 19, 2015. (Ex. 10, p. 1) Dr. Martin reviewed Welsh's medical records and examined Welsh. (Ex. 10, p. 1) Dr. Martin opined Welsh "does not have a sympathetically mediated pain issue. I would not place the label of Complex Regional Pain Syndrome upon him." (Ex. 10, p. 6) Dr. Martin noted that Welsh's "foot situation and his hypersensitivity issues, they roughly follow the distribution superficially of the superficial peroneal nerve. I wonder if perhaps that is part and parcel here of what is going on." (Ex. 10, p. 6) Dr. Martin assessed Welsh with a history of a right mid foot crush injury and right foot chronic pain. (Ex. 10, p. 6)

Dr. Martin found Welsh had reached maximum medical improvement, and using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Martin opined,

> Given the individual factors here, there are several different methodologies that could be considered, one of which is range of motion, one of which is the diagnostic approach, and one of which is the strength approach. However, when one consults these areas, one quickly finds that the gentleman does not have any parameters that would allow any impairment rating in these methodologies other than 0 percent.
>
> In my opinion, what we are left with is to consider the hypersensitivity pain syndrome akin to a peripheral nerve injury, as suggested within the context of the description in Section 17.2.1 that begins on page 550. As I have indicated, this gentleman's hypersensitivity pain response roughly correlates to the superficial peroneal nerve distribution area, as is depicted within Figure 17-8 on page 551. Consulting Table 15-37 on page 552, there is a dysesthetic impairment rating possibility for the superficial peroneal nerve, and I believe that the 5 percent foot or 2 percent lower extremity impairment rating would be appropriate for that gentleman's situation. I would give the gentleman the largest degree of value here, simply because of the impact that it has with respect to his activities of daily living. Typically, lower extremity dysesthetic issues are more problematic, from an activities of daily living impact, than upper extremity issues are.
>
> There are no parameters within the Fifth Edition of the AMA Guides that would allow any additional impairment rating above and beyond that value.

(Ex. 10, p. 8) Dr. Martin did not impose any permanent restrictions on Welsh's activity. (Ex. 10, p. 9)

Counsel for Best Buy and XL sent Dr. Nguyen a letter on December 28, 2015, informing him that Drs. Johnson and Benedetti had opined Welsh does not suffer from

chronic regional pain syndrome, and asked Dr. Nguyen to confirm he would defer to Drs. Johnson and Benedetti on whether Welsh suffers from "chronic regional pain syndrome." (Ex. 2, p. 35) Dr. Nguyen signed the letter agreeing he would defer to Drs. Johnson and Benedetti. (Ex. 2, pp. 35-36) Dr. Nguyen also agreed he did not believe Welsh had sustained a permanent injury to his hip. (Ex. 2, p. 35)

On January 21, 2016, Cox responded to a letter from counsel for Best Buy and XL, agreeing Welsh had not received a permanent psychological injury and that Welsh does not have any permanent restrictions. (Ex. 8, p. 2)

Sunil Bansal, M.D., performed an independent medical examination of Welsh on January 29, 2016. (Ex. 11, p. 1) Dr. Bansal reviewed Welsh's medical records and examined him. (Ex. 11, pp, 1-8) Dr. Bansal did not note any temperature or color changes in Welsh's right foot, but noted allodynia over and swelling of the dorsum of the foot. (Ex. 11, pp. 10-11) Dr. Bansal diagnosed Welsh with a status post right foot crush injury, with sequelae of complex regional pain syndrome, and placed Welsh at maximum medical improvement on July 8, 2014, the date of his consult with Dr. Fitzgibbons. (Ex. 11, pp. 11-12)

Dr. Bansal opined he agreed with Dr. Emerson that Welsh suffers from complex regional pain syndrome using the Budapest criteria:

1. Continuing pain, which is disproportionate to any inciting event.

   yes

2. Must report at least one symptom in *three of the four* following categories:
   1. *Sensory*: reports of hyperesthesia and/or allodynia.

      yes

   2. *Vasomotor*: reports of temperature asymmetry and/or skin color change and/or skin color asymmetry.

      yes

   3. *Sudomotor/edema*: reports of edema and/or sweating changes and/or sweating asymmetry.

      no

   4. *Motor/trophic*: reports of decreased range of motion and/or motor dysfunction (weakness, tremor, dystonia) and/or trophic changes (hair, nail, skin).

yes

3. Must display at least one sign at time of evaluation in *two or more* of the following categories:
    1. *Sensory*: evidence of hyperalgesia (to pinprick) and/or allodynia (to light touch and/or deep somatic pressure and/or joint movement).

        yes

    2. *Vasomotor*: evidence of temperature asymmetry and/or skin color changes and/or asymmetry.

        no

    3. *Sudomotor/edema*: evidence of edema and/or sweating changes and/or sweating asymmetry.

        yes

    4. *Motor/trophic*: evidence of decreased range of motion and/or motor dysfunction (weakness, tremor, dystonia) and/or trophic changes (hair, nail, skin).

        yes

4. There is no other diagnosis that better explains the signs and symptoms.

    Correct

(Ex. 11, pp. 13-14) Dr. Bansal also noted that the international medical community has come together and adopted the Harden criteria for evaluating complex regional pain syndrome, and "[t]he extension of this adoption reaches the most recent edition of the AMA Guides to the Evaluation of Permanent Impairment, Sixth Edition. Therefore, the Harden Criteria are utilized for the diagnosis of CRPS."[1] (Ex. 11, p. 15)

Using Table 13-15 of the AMA Guides, Dr. Bansal opined Welsh's "functional limitations are best defined by the criteria set forth for Class 1 impairments, as well as

[1] The Division of Workers' Compensation has not expressly adopted the AMA Guides 6th Edition. Rule 876 Iowa Administrative Code 2.4 (noting the AMA Guides 5th Edition have been adopted as a guide for determining permanent partial disabilities under Iowa Code section 85.34(2)(a)-(s), but noting the rule does not preclude the use of other medical opinions or other material evidence for the purpose of establishing the degree of permanent disability the claimant would be entitled to would be more or less than indicated in the AMA Guides 5th Edition)

some from Class 2. He has difficulty walking on inclined surfaces. He also has difficulty if surfaces are not level. Therefore, he is assigned a **9% whole person impairment**. This is a stand-alone impairment, and accounts for any other impairment of the foot." (Ex. 11, p. 14) Dr. Bansal imposed restrictions of standing and walking as tolerated, to avoid standing and walking more than one hour at a time with his cane, avoid multiple steps, stairs, or ladders, and to avoid uneven terrain. (Ex. 11, p. 14)

Welsh testified that since his injury his social life has changed. (Tr., p. 37) Welsh reported that he always has dull pain, but his pain with activity goes as high as eight or nine. (Tr., p. 38) Welsh is less physically active. Welsh testified before his work injury he used to mow and rake the lawn and weed the flower garden at his parents' home because he enjoyed working outdoors. (Tr., p. 41) Since his injury Welsh is unable to perform yardwork and can only help wheel the garbage can from the side to the front of the house. (Tr., pp. 40-41)

Welsh reported that during his tenure at Best Buy he has performed a variety of jobs. (Tr., p. 38) Welsh testified the warehouse position he was performing at the time of his injury requires heavy lifting and moving back and forth, which he does not believe he could do. (Tr., pp. 38-39) Welsh testified he would not be able to return to work in a restaurant because it involved a lot of walking back and forth and carrying plates. (Tr., p. 39) Since the work injury Welsh has received a promotion to computer lead and a raise. (Tr., pp. 57-58)

CONCLUSIONS OF LAW

I. Nature of the Injury

Welsh sustained a crush injury to his foot while working for Best Buy on December 12, 2012. (Ex. 1, p. 1; Tr., pp. 16-17) The parties dispute whether Welsh sustained complex regional pain syndrome as a sequela of the crush injury.

An injury to one part of the body can later cause an injury to another. Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16-17 (Iowa 1993) (holding a psychological condition can be caused or aggravated by a scheduled injury). The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997).

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).

Dr. Emerson, Welsh's initial treating orthopedic surgeon, believed Welsh may be suffering from complex regional pain syndrome and referred Welsh to Dr. Johnson, a pain specialist. (Ex. 2, pp. 20-23) During his appointment on November 4, 2013, Dr. Johnson assessed Welsh with reflex sympathetic dystrophy. (Ex. 4, p. 12) Dr. Johnson later administered blocks and determined Welsh did not suffer from complex regional pain syndrome. (Exs. 4, pp. 14, 18-21; A, p. 2) Dr. Johnson referred Welsh to Dr. Benedetti, a pain specialist at the UIHC, for a second opinion. (Ex. 4, p. 21) Dr. Benedetti recommended a bone scan and magnetic resonance imaging be conducted. (Ex. 9, pp. 3-4)

Welsh received the imaging and bone scan on February 19, 2014. (Exs. 6, pp. 1-3; B, pp. 1-4) The reviewing radiologist listed an impression of a "[p]artial tear plantar plate first digit MTP joint" and a negative three phase bone scan. (Exs. 6, pp. 1-2; B, pp. 1-2) The radiologist noted that during the bone scan he observed "[n]o focal lesions or abnormal uptake. Specifically no lesions seen in the feet. No specific evidence for reflex sympathetic dystrophy." (Exs. 6, p. 2; B, p. 1) After receiving the testing results, Drs. Benedetti and Johnson did not assess or diagnose Welsh with complex regional pain syndrome." (Exs. 5; 9) Dr. Nguyen, the orthopedic surgeon who assumed Welsh's care following Dr. Emerson's retirement, opined he would defer to Drs. Johnson and Benedetti on whether Welsh suffers from "chronic regional pain syndrome. (Ex. 2, pp. 35-36) Dr. Martin did not diagnose Welsh with complex regional pain syndrome. (Ex. 10) Dr. Bansal is the only physician who has diagnosed Welsh with sequela complex regional pain syndrome. (Ex. 11, pp. 11-12)

I find the opinions of Drs. Johnson, Benedetti, and Martin more persuasive than the opinion of Dr. Bansal. Dr. Johnson treated Welsh over the course of many months, and Dr. Benedetti also treated Welsh and recommended additional diagnostic testing to rule out complex regional pain syndrome. The testing did not support a finding Welsh has complex regional pain syndrome. (Exs. 6, p. 2; B, p. 1) Dr. Bansal examined Welsh on one occasion, for an independent medical examination. Treatment and objective testing do not support Welsh has sustained sequela complex regional pain syndrome. Dr. Bansal's opinion does not explain or distinguish the objective testing results, which do not support Welsh has complex regional pain syndrome. I believe Welsh experiences pain in his right foot, but he has not established he sustained sequela complex regional pain syndrome.

Welsh also alleges he sustained mental health and hip sequelae injuries. Dr. Bansal did not find Welsh sustained permanent hip or mental health sequelae injuries. (Ex. 11) Cox, who provided counseling to Welsh, also opined he did not treat Welsh for a permanent injury or issue any permanent restrictions. (Ex. 8, p. 2) The record does not support Welsh sustained permanent mental health or hip sequelae injuries.

II. Permanent Partial Disability

Permanent partial disabilities are divided into scheduled and unscheduled losses. Iowa Code § 85.34(2). If the claimant's injury is listed in the specific losses found in Iowa Code section 85.34(2)(a)-(t), the injury is a scheduled injury and is compensated by the number of weeks provided for the injury in the statute. Second Injury Fund v. Bergeson, 526 N.W.2d 543, 547 (Iowa 1995). "The compensation allowed for a scheduled injury 'is definitely fixed according to the loss of use of the particular member.'" Id. (quoting Graves v. Eagle Iron Works, 331 N.W.2d 116, 118 (Iowa 1983)). If the claimant's injury is not listed in the specific losses in the statute, compensation is paid in relation to 500 weeks as the disability bears to the body as a whole. Id.; Iowa Code § 85.34(2)(u). "Functional disability is used to determine a specific scheduled disability; industrial disability is used to determine an unscheduled injury." Bergeson, 526 N.W.2d at 547.

Welsh sustained an injury to his right foot. A loss of a foot is a scheduled loss. Iowa Code § 85.34(2)(n). The schedule provides a maximum award of 150 weeks of compensation. Iowa Code § 85.34(2)(n). Scheduled injuries are not compensated in relation to earning capacity. Sherman v. Pella Corp., 576 N.W.2d 312, 320 (Iowa 1998); Honeywell v. Allen Drilling Co., 506 N.W.2d 434, 437 (Iowa 1993).

Dr. Bansal assigned a permanent impairment rating of nine percent to the whole person based on a diagnosis of complex regional pain syndrome. (Ex. 11, pp. 11-14) Dr. Bansal opined, "[t]his is a stand-alone impairment, and accounts for any other impairment of the foot." (Ex. 11, p. 14) Dr. Martin is the only physician who provided a permanent impairment rating based on the scheduled member only, and his rating is five percent. Welsh is entitled to 7.5 weeks of permanent partial disability benefits.

ORDER

IT IS THEREFORE ORDERED, that:

Defendants shall pay the claimant seven point five (7.5) weeks of permanent partial disability benefits, commencing on March 14, 2015, at the rate of two hundred sixty and 37/100 dollars ($260.37).

Defendants are entitled to a credit for benefits previously paid.

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

Signed and filed this 2nd day of December, 2016.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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