BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL JOHNSON,	:	File Nos. 5068454, 5068455, 5068456
Claimant,	:	
vs.	:	
	:	ARBITRATION DECISION
WHIRLPOOL CORPORATION,	:	
Employer,	:	
Self-Insured,	:	Head Note Nos.: 1402.40, 1803, 2701
Defendant.	:	2907

STATEMENT OF THE CASE

Michael Johnson, claimant, filed three petitions for arbitration against Whirlpool Corporation, as the self-insured employer. This case came before the undersigned for an arbitration hearing on April 7, 2020. The case was scheduled for an in-person hearing to occur in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner suspended all live hearings and ordered that this hearing should occur via video conference using CourtCall. Accordingly, all parties and the court reporter appeared remotely using CourtCall.

The parties filed hearing reports in each of the arbitration files at the commencement of the hearing. On the hearing reports, the parties entered into numerous stipulations. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 3, and Defendants' Exhibits A through G.

Claimant testified on his own behalf. No other witnesses testified. The evidentiary record closed at the conclusion of the evidentiary hearing on April 7, 2020.

However, counsel for the parties requested an opportunity to file post-hearing briefs. This request was granted and both parties filed briefs simultaneously on May 1, 2020. The case was considered fully submitted to the undersigned on that date.

ISSUES

The parties completed a hearing report for each of the asserted dates of injury. In File No. 5068454 (May 1, 2016 injury date), the parties submitted the following disputed issues for resolution:

1. The extent of claimant's entitlement to permanent disability.

2. Whether costs should be assessed against either party.

In File No. 5068455 (June 1, 2017 injury date), the parties submitted the following disputed issues for resolution:

1. Whether the injury caused permanent disability.

2. The extent of claimant's entitlement to permanent disability, if any.

3. Whether claimant is entitled to alternate medical care.

4. Whether costs should be assessed against either party.

At the commencement of hearing, defendants extended a formal offer for additional medical care to be offered through Joseph A. Buckwalter, M.D. Claimant was agreeable to that offer of medical care and the undersigned entered a verbal order at the time of hearing directing defendant to provide additional medical care for claimant's left arm through Dr. Buckwalter. The parties' agreement resolved the alternate medical care dispute and no further analysis of this issue will be offered in this decision.

In File No. 5068456 (September 13, 2018 injury date), the parties submitted the following disputed issues for resolution:

1. Whether claimant's current right knee condition is causally related to and arose out of and in the course of his employment.

2. Whether the injury caused permanent disability.

3. The extent of claimant's entitlement to permanent disability, if any.

4. Whether claimant is entitled to alternate medical care, including a potential right total knee replacement sought by claimant.

FINDINGS OF FACT

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

Michael Johnson, claimant, works at Whirlpool Corporation and has worked for the employer for 19 years. Whirlpool is a large employer, manufacturing refrigerators at claimant's plant. On each of the three injury dates involved, Mr. Johnson worked in a field sealer job. The field sealer job is a physical job, which requires claimant to repair refrigerators, including finding and fixing leaks in compressor units.

On May 1, 2016, Mr. Johnson sustained his first right knee injury. When he stepped down from the line, he experienced a pulling and ripping sensation in the back of his right knee with immediate and severe knee pain. (Joint Ex. 2, page 5; Claimant's

Ex. 1, p. 8) He reported the injury and the employer accepted the injury as compensable.

Whirlpool directed claimant's medical care and authorized care through an orthopaedic surgeon, Matthew Bollier, M.D., at the University of Iowa Hospitals and Clinics. Dr. Bollier noted that claimant had no pre-existing right knee pain before the May 1, 2016 incident. He determined that claimant sustained a torn meniscus in his right knee as a result of the May 1, 2016 work injury. Dr. Bollier recommended surgical intervention. (Joint Ex. 2, p. 7)

On August 24, 2016, Dr. Bollier took claimant to surgery and performed a right knee arthroscopy, which included a partial meniscectomy. (Joint Ex. 2, p. 8) Mr. Johnson testified that he had good resolution of symptoms after the right knee arthroscopic surgery. (Claimant's testimony) Dr. Bollier declared claimant at maximum medical improvement on October 7, 2016 and opined that claimant sustained a two percent permanent functional impairment of the right leg as a result of the May 1, 2016 work injury. (Joint Ex. 2, pp. 10, 12)

Dr. Bollier advised claimant that he observed lateral cartilage degeneration and cautioned claimant that he "may have lateral knee pain in the future due to arthritis." (Joint Ex. 2, p. 10) He released claimant from his care on October 7, 2016. Mr. Johnson did not seek further treatment for his right knee between October 7, 2016 and his subsequent right knee injury at work on September 13, 2018. (Claimant's testimony; Joint Ex. 2, p. 10)

Claimant sought an independent medical evaluation, performed by John D. Kuhnlein, M.D. on October 1, 2019. (Claimant's Ex. 1) Dr. Kuhnlein concurred that the May 1, 2016 right knee injury was related to claimant's employment activities. (Claimant's Ex. 1, p. 17) Dr. Kuhnlein also concurred that claimant achieved maximum medical improvement following the 2016 right knee injury. (Claimant's Ex. 1, p. 18) Finally, Dr. Kuhnlein also concurred that the May 1, 2016 work injury caused a two percent permanent functional impairment of Mr. Johnson's right leg. (Claimant's Ex. 1, p. 18)

No other physicians have offered opinions as to the level of claimant's permanent functional impairment resulting from the May 1, 2016 work injury. Given claimant's minimal residual symptoms after the 2016 injury and his ability to return to full-duty work, the physicians' permanent impairment ratings appear consistent with claimant's actual functional loss of the right leg following the May 1, 2016 work injury. Given that Dr. Bollier and Dr. Kuhnlein concur that claimant sustained a two percent permanent functional impairment of the right leg as a result of the May 1, 2016 work injury, I accept those functional impairment ratings as accurate and find that claimant proved a two percent permanent functional loss of his right leg as a result of the May 1, 2016 work injury.

On June 1, 2017, Mr. Johnson fell while working on stairs. (Claimant's testimony) Apparently, Mr. Johnson's foot slipped and caught under a line. When he

fell, Mr. Johnson extended his left arm to catch himself and fell onto his left forearm, left hand and left knee. (Claimant's testimony; Claimant's Exhibit 1, p. 11) Mr. Johnson experienced immediate pain in his last two fingers of the left hand and in his left elbow. (Joint Ex. 4, p. 37; Claimant's Ex. 1, p. 11) Once again, Whirlpool admitted and accepted the work injury claim. Again, Whirlpool directed medical care and sent claimant to an orthopaedic surgeon, James Johns, M.D., for treatment of his left hand injury. (Joint Ex. 4)

Dr. Johns diagnosed claimant with a minimally displaced intra-articular fracture of the proximal phalanx of the left small finger. (Joint Exhibit 4, p. 37) Dr. Johns recommended conservative care, including splinting and buddy taping of the broken finger. Unfortunately, claimant continues to experience pain in his little finger and the knuckle on that finger after this fracture. He also described ongoing difficulties fully bending his small left finger. (Claimant's testimony) Claimant testified that he plays the accordion and now has difficulties playing due to the left small finger fracture. (Claimant's testimony) Dr. Johns offered no opinion about whether Mr. Johnson sustained permanent impairment as a result of the left small finger fracture.

Mr. Johnson also described ongoing tingling in his left elbow and down into the smallest two fingers on his left hand after the June 1, 2017 fall at work. (Claimant's testimony) As a result of these ongoing symptoms, claimant submitted to an EMG performed by Irving Wolfe, D.O., on October 20, 2017. The EMG testing demonstrated dysfunction at the left ulnar nerve at the elbow, which Dr. Irving indicated was "consistent with left sided Cubital Tunnel Syndrome." (Joint Ex. 5, p. 40)

Defendants ultimately authorized treatment with Joseph Chen, M.D. at the University of Iowa Hospitals and Clinics for the left elbow condition. Dr. Chen attempted conservative care and prescribed medication for neuropathic pain. He opined that his treatment and claimant's ongoing symptoms were related to his work injury. (Joint Ex. 2, p. 19) Dr. Chen recommended against surgical intervention, but noted that claimant may eventually come to surgical intervention. (Joint Ex. 2, p. 19)

Recommending against surgical intervention, Dr. Chen declared maximum medical improvement on February 21, 2018. (Joint Ex. 2, p. 19) He imposed no permanent work restrictions for the left elbow and opined that claimant sustained no permanent impairment as a result of the June 1, 2017 work injury. (Joint Ex. 2, p. 20)

As noted previously, Mr. Johnson sought an independent medical evaluation, performed by Dr. Kuhnlein. Dr. Kuhnlein diagnosed claimant with a left elbow contusion, posttraumatic left cubital tunnel syndrome, a partial thickness tear of the common extensor tendon in the left elbow, and a nondisplaced intra-articular fracture of the proximal phalanx of the left small finger. (Claimant's Ex. 1, p. 17) Dr. Kuhnlein opined that the foregoing diagnoses were a result of the June 1, 2017 work injury. (Claimant's Ex. 1, p. 17)

Dr. Kuhnlein recommended further orthopaedic consultation and treatment for claimant's left elbow condition. Dr. Kuhnlein opined that claimant had not achieved

maximum medical improvement for the left hand and elbow until he obtained further orthopaedic consultation and treatment. Dr. Kuhnlein referenced the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, and identified specific permanent impairment related to Mr. Johnson's fractured small left finger and elbow injury. Specifically, Dr. Kuhnlein assigned three percent permanent impairment of the left arm related to loss of range of motion following the left finger fracture. (Claimant's Ex. 1, p. 19)

In addition, Dr. Kuhnlein identified permanent impairment related to claimant's extensor tendon tear and his cubital tunnel syndrome. Specifically, Dr. Kuhnlein identified sensory deficits due to the cubital tunnel syndrome. Using the AMA Guides, Fifth Edition, Dr. Kuhnlein identified three percent permanent impairment of the left arm as a result of the cubital tunnel syndrome symptoms. Combining the impairment for the left fractured finger and the left cubital tunnel syndrome, Dr. Kuhnlein opined that Mr. Johnson sustained permanent impairment equivalent to five percent of the left arm as a result of the June 1, 2017 work injury. (Claimant's Ex. 1, p. 19)

Although claimant requests additional medical care and defendants now offer the additional requested care, I find that Mr. Johnson sustained maximum medical improvement upon his release from care by Dr. Chen on February 21, 2018. More than two years have passed since that date with no additional care offered or provided to claimant. He testified that his symptoms have remained constant and stable since that date. It is unknown whether further medical intervention is warranted or may be helpful after the passage of more than two years. Accordingly, although defendants agree to provide additional medical care into the future, I find that Mr. Johnson achieved maximum medical improvement in February 2018 and that determination of permanent disability is ripe at the time of trial.

Considering the opinions of Dr. Chen and Dr. Kuhnlein, I accept the permanent impairment offered by Dr. Kuhnlein as applicable and accurate. Dr. Chen did not specifically reference the AMA Guides, Fifth Edition. Moreover, when Dr. Chen released claimant, he acknowledged that claimant had ongoing symptoms and opined that claimant may require surgical intervention at a later date. I also found claimant's testimony about loss of range of motion and difficulties in using his left small finger for things like playing the accordion to be credible. This loss of range of motion and loss of function belie Dr. Chen's opinion that claimant sustained no permanent impairment.

Therefore, I find it unlikely that claimant sustained no permanent functional loss and no permanent impairment as a result of the June 1, 2017 work injury. Instead, I find Dr. Kuhnlein's impairment rating to be reasonable and accurate. Specifically, I find that claimant proved a five percent permanent functional loss of his left arm as a result of the left small finger fracture and left elbow injuries on June 1, 2017.

The third injury involved occurred on September 13, 2018. On that date, Mr. Johnson tripped and fell over some stacked doors at Whirlpool. He explained that it was a narrow walkway where he tripped and fell. When he fell, claimant struck his right knee, hip and right side. Once again, the employer acknowledged and accepted this

injury claim and directed claimant back to Dr. Bollier for treatment. (Claimant's testimony)

Dr. Bollier recommended against any surgical treatment and attempted conservative care, including an injection in claimant's right knee. Mr. Johnson testified that the right knee injection improved symptoms for a short period of time. Unfortunately, claimant's symptoms returned and Dr. Bollier did not have further definitive treatment, other than a right total knee replacement to offer. (Claimant's testimony; Joint Ex. 2, p. 24)

After evaluating claimant, Dr. Bollier noted that claimant had a "re-aggravation of his right knee while at work in August [2018]." (Joint Ex. 2, p. 24) Dr. Bollier's office note also indicates, "the arthritis flare is related to the work injury. However, the need for arthroplasty down the road is related to his preexisting degenerative knee condition." (Joint Ex. 2, p. 24)

During a follow-up evaluation on January 14, 2019, Dr. Bollier noted that claimant had advanced osteoarthritis but noted that Mr. Johnson's "right knee pain was made worse by his reported work incident." (Joint Ex. 2, p. 28) Dr. Bollier noted no further treatment options, other than referral to a joint replacement specialist. Dr. Bollier noted that degenerative changes were present during his arthroscopic surgery on claimant's right knee in 2016. (Joint Ex. 2, p. 24) In an addendum to that office note, entered on February 4, 2019, Dr. Bollier opined that claimant was at maximum medical improvement for the arthritis flare, which occurred in the September 13, 2018 injury. (Joint Ex. 2, p. 29) He again recommended referral to a joint specialist.

Defense counsel sent correspondence to Dr. Bollier, which Dr. Bollier responded to on March 23, 2020. In response to those inquiries, Dr. Bollier opined that claimant's right knee arthritis is not causally related and/or aggravated by his work duties or work injuries at Whirlpool. Dr. Bollier also opined that claimant's work injuries at Whirlpool were not a significant or substantial contributing factor in claimant's need for a right total knee replacement. (Joint Ex. 7, p. 43)

Dr. Kuhnlein also addressed the September 13, 2018 right knee injury in his independent medical evaluation report. Dr. Kuhnlein diagnosed claimant with an aggravation of his pre-existing right knee degenerative joint disease as a result of the September 2018 fall. (Claimant's 1, p. 17) He opined, "As a direct result of this September 13, 2018, work-related incident, Mr. Johnson materially aggravated the pre-existing degenerative disease in the right knee." (Claimant's Ex. 1, p. 17)

Interestingly, Dr. Kuhnlein acknowledges:

> Dr. Bollier is correct when he states that the need for total knee arthroplasty would be related to the pre-existing degenerative knee condition, but this degenerative knee condition was materially aggravated by these injuries and would be related to the work injury and so the need

> for the total knee arthroplasty would also be related to these two injuries in that fashion.

(Claimant's Ex. 1, p. 18)

Dr. Kuhnlein also noted that claimant recovered fairly well after the 2016 work injury. He noted that claimant had some ongoing problems with crawling and kneeling after that work injury, but Mr. Johnson was able to work full duty after released in October 7, 2016 until his September 13, 2018 right knee injury occurred. (Claimant's Ex. 1, p. 17) As noted previously, claimant testified that he had no right knee symptoms prior to the 2016 work injury and that he did fairly well symptomatically after the 2016 right knee surgery until the September 2018 work injury.

Dr. Kuhnlein opined that claimant achieved maximum medical improvement on January 14, 2019. However, he also noted that it was likely claimant would require total right knee replacement in the future, which he attributed as aggravations to the two work injuries in 2016 and 2018. Dr. Kuhnlein also opined that claimant sustained significant loss of range of motion, specifically extension, which resulted in a 20 percent permanent impairment of the right lower extremity. (Claimant's Ex. 1, p. 18)

When comparing the causation opinions of Dr. Bollier and Dr. Kuhnlein on the issue of claimant's osteoarthritis in his right knee, I note that Dr. Bollier is an orthopaedic surgeon and that he had the chance to observe claimant's right knee intra-operatively in 2016 and again evaluate claimant after the 2018 injury. Dr. Bollier had multiple opportunities to evaluate claimant over an extended period of time, which gives him a unique opportunity to assess claimant's condition and lends credibility to his opinions.

On the other hand, I find Dr. Bollier's opinions to be somewhat confusing and potentially contradictory or inconsistent. For instance, Dr. Bollier notes in his January 14, 2019 note, "His pain was worse after the work injury and the injury did aggravate his underlying arthritis." (Joint Ex. 2, p. 28) In that January 14, 2019 note, Dr. Bollier notes ongoing symptoms and indicates that the "Acute pain of right knee" diagnosis he offered was "related to worker's compensation claim." (Joint Ex. 2, p. 28) Then, in his February 4, 2019 addendum to the same medical note, Dr. Bollier indicates that claimant was at maximum medical improvement for his "arthritis flare" and that claimant should see a joint replacement specialist "outside of workman's [sic] compensation." (Joint Ex. 2, p. 29)

Dr. Bollier appears to have evaluated claimant twice after the September 2018 injury. He diagnosed acute right knee pain as a result of the September 2018 injury. Then, without further treatment, time, or resolution of symptoms, declared that claimant was at maximum medical improvement in an addendum note after the second visit. Claimant's symptoms never appeared to resolve to a pre-September 2018 level. Rather, it appears that claimant experienced a significant and acute increase in right knee symptoms after the September 13, 2018 work injury.

I accept claimant's testimony and the medical records that indicate claimant had no right knee symptoms or problems prior to the May 1, 2016 right knee injury. I also find that claimant had a good recovery from the 2016 knee surgery and that he was able to work full duty between 2016 and the September 13, 2018 right knee injury without any significant symptoms. There was no treatment between Dr. Bollier's release after the 2016 surgery and the September 13, 2018 injury.

After the September 13, 2018 work injury, Mr. Johnson experienced a significant and acute increase in his right knee symptoms. An injection provided some temporary relief of symptoms but claimant has experienced constant and increased right knee symptoms since the September 2018 work injury. Only after the September 2018 work injury were recommendations made by medical professionals to immediately consider referral to a joint replacement specialist.

I find no basis in claimant's testimony or in these medical records to believe that claimant would or should have become symptomatic in his right knee in September 2018 but for the occurrence of the second right knee work injury. While Dr. Bollier predicted future symptoms would occur when he released claimant after the 2016 knee injury, there was no reason to believe that claimant's osteoarthritis would result in constant symptoms and the need for right knee replacement at this stage of his life without the occurrence of the 2018 knee injury. In other words, it is likely that claimant would have required a right knee replacement at some point in his life. However, the September 13, 2018 work injury aggravated and likely accelerated the need for the right total knee replacement. I accept Dr. Kuhnlein's causation opinion as most convincing and credible in this record.

Having accepted Dr. Kuhnlein's causation opinion and found that the September 2018 injury accelerated or aggravated the underlying osteoarthritis in claimant's right knee and the need for a knee replacement, I also accept Dr. Kuhnlein's permanent impairment rating as accurate. Therefore, I find that claimant has proven he sustained a 20 percent permanent functional loss of the right leg as a result of the September 13, 2018 work injury at Whirlpool.

CONCLUSIONS OF LAW

The first injury at issue is a right knee injury occurring on May 1, 2016 (File No. 5068454). This injury was admitted and the significant issue for me to decide is the extent of claimant's entitlement to permanent disability. (Hearing Report) As the party seeking permanent disability, Mr. Johnson bears the burden to establish permanent disability and the amount of his entitlement to permanent disability benefits. Iowa R. App. P. 6.14(6).

Having noted that two physicians rendered permanent impairment ratings for the May 1, 2016 right knee injury and having noted that those physicians concurred in their impairment ratings, I found that claimant proved a two percent permanent functional loss of the right leg as a result of the May 1, 2016 work injury.

Under the Iowa Workers' Compensation Act applicable in 2016, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). For injuries occurring prior to a 2017 statutory change, the fact finder is required to consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

With respect to the May 1, 2016 right knee injury, I considered both the medical and lay evidence offered and found claimant proved a two percent permanent functional loss. The Iowa legislature established a 220-week schedule for leg injuries. Iowa Code section 85.34(2)(o) (2016). Claimant is entitled to an award of permanent partial disability benefits equivalent to the proportional loss of her leg. Iowa Code section 85.34(2)(v) (2016); Blizek v. Eagle Signal Company, 164 N.W.2d 84 (Iowa 1969). Two percent of 220 weeks equals 4.4 weeks. Claimant is; therefore, entitled to an award of 4.4 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(o), (v) (2016).

In File No. 5068455, the parties stipulate to alternate medical care. However, there remain disputes about whether the June 1, 2017 work injury caused permanent disability and, if so, the extent of claimant’s entitlement to permanent disability benefits.

Once again, claimant bears the burden to establish that the June 1, 2017 work injury caused permanent disability and to prove the extent of his entitlement to permanent disability benefits, if any. Iowa R. App. P. 6.14(6). Given the release from treatment, length of time since the last treatment, and the consistency of symptoms since that date, I found that Mr. Johnson reached maximum medical improvement even though he may require additional treatment in the future. Having accepted the medical opinions of Dr. Kuhnlein as the most credible and convincing in this evidentiary record on the issues pertaining to the June 1, 2017 work injury, I found that claimant proved he sustained permanent disability and that he proved a five percent permanent functional loss of the left arm as a result of a fractured small finger and a left elbow injury at work on June 1, 2017.

Similar to the 2016 knee injury, the left arm injuries occurred before a statutory change that took effect July 1, 2017. The Iowa legislature established a 250-week schedule for arm injuries. Iowa Code section 85.34(2)(m) (2016). Therefore, I conclude that claimant is entitled to an award of 12.5 weeks of permanent partial disability benefits for the June 1, 2017 work injury. Iowa Code section 85.34(2)(m), (v) (2016); Blizek v. Eagle Signal Company, 164 N.W.2d 84 (Iowa 1969).

The third injury, occurring on September 13, 2018, involves an admitted injury but a denial by defendants that claimant's osteoarthritis in his right knee arose out of and in the course of his employment or that the potential future need for a right total knee replacement is causally related to the September 13, 2018 work injury.

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

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

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

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

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

In this case, there was competing causation opinions from Dr. Bollier and Dr. Kuhnlein. Having found the causation opinions of Dr. Kuhnlein to be the most credible and convincing in this evidentiary record, I conclude that claimant carried his burden of proof to establish that the September 13, 2018 work injury caused a material and substantial aggravation, acceleration, worsening, or lighting up of the underlying and pre-existing degenerative arthritis in his right knee. As such, I conclude that claimant proved his ongoing right knee condition arose out of and in the course of his employment as a result of the September 13, 2018 work injury.

This conclusion requires me to determine whether claimant proved permanent disability resulting from the September 13, 2018 work injury and, if so, the extent of claimant's entitlement to permanent disability benefits. Having accepted Dr. Kuhnlein's opinion that claimant sustained a 20 percent permanent impairment as a result of the right knee aggravation, I conclude that claimant proved by a preponderance of the evidence that he sustained permanent disability in some amount.

As noted previously, the Iowa legislature enacted statutory changes that became effective July 1, 2017. As part of those statutory changes, the legislature changed how scheduled member injuries are evaluated and the amount of permanent disability awarded. Specifically, the legislature amended the former statutory provisions to provide:

> In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34(2)(x) (2017).

Having accepted Dr. Kuhnlein's permanent impairment rating (20 percent of the right lower extremity) as accurate, I conclude that claimant proved a 20 percent permanent functional loss of the right leg as a result of the September 13, 2018 work injury.

Leg injuries continue to be compensable on a 220-week schedule after the 2017 statutory changes. Iowa Code section 85.34(2)(p). Accordingly, I conclude that claimant proved entitlement to 44 weeks of permanent partial disability benefits as a

result of the September 13, 2018 work injury. Iowa Code section 85.34(2)(p), (w) (2017); Blizek v. Eagle Signal Company, 164 N.W.2d 84 (Iowa 1969).

Mr. Johnson also requests an order for alternate medical care. Specifically, claimant seeks an order authorizing a right total knee replacement. Defendants denied this request, asserting that claimant's current and ongoing right knee symptoms and condition are not causally related to the September 13, 2018 work injury. For the reasons outlined above, I concluded that claimant proved his ongoing right knee condition and need for treatment is causally related to the September 13, 2018 right knee injury are compensable.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

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

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

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27; Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner, 78 (Review-Reopening 1975).

In this case, Mr. Johnson has proven that his current right knee condition and need for medical treatment is related to the September 2018 work injury. Both Dr. Bollier and Dr. Kuhnlein concur that claimant needs to be referred to a joint replacement specialist for evaluation. Claimant goes further and asks this agency to order a right

knee replacement be authorized and performed as part of his claim for alternate medical care.

The undersigned is not a medical specialist and is not in a position to determine whether a total knee replacement is currently necessary, or whether alternative treatments (such as synvisc injections, physical therapy, etc.) exist that could prolong or prevent a total right knee replacement. The recommendations made by Dr. Bollier and Dr. Kuhnlein were referral to a joint replacement specialist. I conclude that claimant has proven entitlement to ongoing and future medical care for his right knee. Specifically, I conclude that claimant has proven entitlement to evaluation and treatment with a knee replacement specialist.

Treatment options and recommendations should be established and determined by that joint replacement specialist after evaluating claimant. Therefore, I conclude claimant is entitled to an order for alternate medical care requiring defendant to provide an evaluation and treatment with a joint replacement specialist. However, I decline to provide an order granting a right total knee replacement at his time.

Claimant also seeks assessment of his costs in each of the three files. Costs are assessed at the discretion of the agency. Iowa Code section 86.40. Claimant has prevailed in each of these files, though defendants arguably prevail in File No. 5068454 since claimant recovers nothing above what has already been voluntarily paid. Regardless, claimant has received additional weekly benefits as well as alternate medical care in two of these claims. I conclude that it is appropriate to assess claimant's costs in some amount.

Mr. Johnson seeks assessment of his filing fee ($100.00). This is appropriate and reasonable pursuant to 876 IAC 4.33(7). He also seeks assessment of his service fee ($6.80). Again, this is a reasonable request and is assessed pursuant to 876 IAC 4.33(3). Finally, Mr. Johnson seeks assessment of the cost of obtaining his deposition transcript ($64.40). Defendant introduced claimant's deposition transcript as an exhibit. Therefore, I conclude it is reasonable to award the cost of the transcript to claimant pursuant to 876 IAC 4.33(2).

ORDER

THEREFORE, IT IS ORDERED:

In File No. 5068454:

Defendant shall pay claimant four point four (4.4) weeks of permanent partial disability benefits commencing on October 7, 2016.

All weekly benefits shall be payable at the stipulated weekly rate of five hundred seventy-two and 21/100 dollars ($572.21) per week.

Defendant is entitled to the stipulated credit against this award.

The employer and insurance carrier shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

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

In File No. 5068455:

Defendant shall pay claimant twelve point five (12.5) weeks of permanent partial disability benefits commencing on June 1, 2017.

All weekly benefits shall be payable at the stipulated weekly rate of five hundred ninety-one and 26/100 dollars ($591.26) per week.

The employer and insurance carrier shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendant shall provide the stipulated alternate medical care with Dr. Buckwalter.

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

In File No. 5068456:

Defendant shall pay claimant forty-four (44) weeks of permanent partial disability benefits commencing on September 13, 2018.

All weekly benefits shall be paid at the rate of five hundred seventy-three and 35/100 dollars ($573.35) per week.

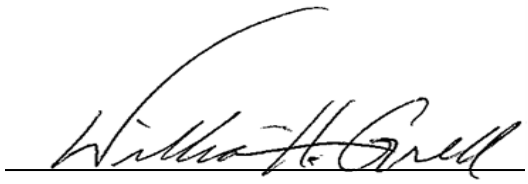
Defendant shall pay accrued weekly benefits in a lump sum together with interest payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent, as required by Iowa Code section 85.30.

Defendant shall authorize a knee joint replacement specialist to evaluate and treat claimant’s right knee.

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

Defendant shall reimburse claimant's costs in the amount of one hundred seventy-one and 20/100 dollars ($171.20).

Signed and filed this __18th__ day of May, 2020.



WILLIAM H. GRELL
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Steven Durick (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.