

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RYAN RODECKER,

Claimant,

vs.

WELLS ENTERPRISE, INC.,

Employer,  
Defendant.

**FILED**  
JUN 18 2019  
WORKERS' COMPENSATION

File No. 5053261

ARBITRATION

DECISION

Headnotes: 1402.30, 1402.40, 1403.10,  
1803.1, 2501, 2907

On January 11, 2018, the claimant, Ryan Rodecker, filed a petition in arbitration against the defendant, Wells Enterprise, Inc. ("Wells"), alleging he sustained injuries to his right ankle, right foot, right leg, back, and chronic regional pain syndrome while working for Wells on March 28, 2011. Wells filed an answer on January 23, 2018, admitting Rodecker sustained an injury to his right ankle and right foot, but denying he sustained any additional injuries.

An arbitration hearing was held on April 24, 2019, in Sioux City, Iowa. Attorney Edward Keane represented Rodecker. Rodecker appeared and testified. Attorney Steven Durick represented Wells. David Alchoun appeared on behalf of Wells, but did not testify. Joint Exhibits ("JE") 1 through 12, and Exhibits A through H, and 1 through 4 were admitted into the record. The record was held open through May 31, 2019, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

Before the hearing the parties prepared a hearing report, listing stipulations and issues to be decided. Wells waived all affirmative defenses.

**STIPULATIONS**

1. An employer-employee relationship existed between Wells and Rodecker at the time of the alleged injury.
2. Wells admits Rodecker sustained a right ankle injury arising out of and in the course of his employment on March 28, 2011.
3. The alleged injury is a cause of temporary disability during a period of recovery.
4. Temporary benefits are no longer in dispute.
5. The alleged injury is a cause of permanent disability.

6. The commencement date for permanent partial disability benefits is July 7, 2017.

7. At the time of the alleged injury, Rodecker's gross earnings were \$537.00 per week, he was single and entitled to one exemption, and the parties believe the weekly rate is \$341.34.

8. Medical benefits are no longer in dispute.

9. Prior to the hearing Rodecker was paid forty weeks of compensation at the rate of \$341.34 per week.

10. Costs have been paid.

### **ISSUES**

1. What is the nature of the disability?
2. Has Rodecker sustained a scheduled member disability to his right ankle or an industrial disability?
3. What is the extent of disability?
4. Is Rodecker entitled to alternate medical care with Ryan Mulligan, M.D.?
5. Should costs be assessed against either party?

### **FINDINGS OF FACT**

Rodecker lives in Fort Worth, Texas with his girlfriend. (Transcript, pages 7, 56) At the time of the hearing he was thirty-seven. (Tr., pp. 7-8)

In 2000, Rodecker graduated from high school. (Exhibit A, p. 3; Tr., p. 8) Rodecker attended Truett McDonnell in Georgia, focusing on general studies from 2002 through 2004. (Ex. A, p. 3) From 2011 through 2014 Rodecker attended Mississippi State University where he earned a bachelor's of business marketing/PGA golf management degree in 2014. (Ex. A, p. 3; Tr., pp. 8-9) Rodecker has worked for golf courses and country clubs as a pro shop assistant, assistant golf professional, and golf professional for many years. (Ex. A, pp. 4-5; Tr., p. 10)

Wells hired Rodecker as a freezer worker in January 2011. (Ex. A, p. 7; Tr., p. 10) Rodecker was responsible for stacking ice cream from the main plant onto pallets in the freezer. (Tr., p. 10) Rodecker worked for Wells until March 30, 2011, when he was terminated. (Tr., p. 10)

On March 28, 2011, Rodecker was stacking ice cream in the freezer. (Tr., p. 12) There was a pallet between his feet, which were flared out. (Tr., p. 12) Rodecker testified,

[a] coworker had backed into me with a motorized pallet jack. I think he was new, didn't really know how to operate it. But once he crashed into me, he had difficulties removing the pallet jack off of my ankle until another employee stepped in and helped remove the pallet jack from trapping my ankle against the pallet.

(Tr., p. 12) Rodecker reported his right ankle was trapped against the pallet, causing a crush injury. (Tr., pp. 13-14) Rodecker testified he had severe pain and fell to the ground when his coworker removed the pallet jack. (Tr., p. 14)

Rodecker was transported to the Floyd Valley Hospital where he was examined and received an x-ray. (JE 1, p. 1; Tr., p. 14) Rodecker was discharged with a brace and crutches and instructed to follow up with a physician in the morning. (JE 1, p. 2; Tr., p. 14) Rodecker was released to return to work the next night. (Tr., p. 14)

Wells provided treatment for Rodecker with Douglas Martin, M.D., an occupational medicine physician with CNOS, in Dakota Dunes, South Dakota. (Tr., p. 15) Rodecker reported Dr. Martin restricted him from driving and operating machinery and when he returned to work at Wells he had a difficult time concentrating and he was in "absolute pain" that was severe. (Tr., p. 15) After a few hours of work Wells released Rodecker for the day and he went home. (Tr., p. 15)

Rodecker sought care from his family physician and his family physician restricted him from working for five days. (Tr., p. 16) Rodecker testified he took the note to Wells and he again had a hard time concentrating at work because of his pain, and he was terminated. (Tr., p. 16)

Rodecker continued to receive treatment with Dr. Martin. On August 4, 2011, Rodecker underwent right ankle magnetic resonance imaging ordered by Dr. Martin. (JE 2, p. 1) The reviewing radiologist listed an impression of an anterior talofibular and calcaneofibular ligament strain, and a slightly depressed OCD lesion of the medial talar dome. (JE 2, p. 1)

Rodecker moved to Mississippi to enroll in college to resume his career in golf. (Tr., pp. 16, 18-19) Rodecker planned to obtain a certificate and a PGA card with his training. (Tr., p. 19) While in college Rodecker worked in the golf industry. (Ex. A) After moving to Mississippi, Rodecker received medical treatment from Allen Butler, M.D., an authorized treating orthopedic surgeon in Starkville, Mississippi. (Tr., p. 17; JE 3, p. 1)

On November 11, 2011, Dr. Butler performed a right ankle arthroscopy with synovectomy and chondroplasty on Rodecker. (JE 3, p. 1) Dr. Butler listed a postoperative diagnosis of right ankle pain with chondral defect. (JE 3, p. 1)

Rodecker underwent a functional capacity evaluation with Chad Barker, a certified athletic trainer with Tupelo Physical Therapy on March 30, 2012. (JE 4) Barker found Rodecker could lift floor to waist, waist to eye level, unilateral carry, and bilateral carry up to sixty pounds, sit and stand constantly, perform elevated and lowered work and standing on a constant basis, and had no limitations in his ability to perform lowered work and sitting or reclining reach, and the ability to walk, stand, climb stairs and squat repetitively on a constant basis. (JE 4, p. 2) Barker found Rodecker could perform work at the heavy level on a full-time basis. (JE 4, p. 2) Chad Barker also issued an impairment rating using the AMA Guides 6th Edition.

On April 10, 2012, Dr. Butler reviewed Rodecker's functional capacity evaluation results. (JE 5) Dr. Butler opined Rodecker had reached maximum medical improvement, assigned a three percent whole person impairment rating, and imposed no work restrictions. (JE 5, p. 2)

Rodecker attended an appointment with Chad Altmeyer, M.D., an authorized treating orthopedic surgeon in Columbus, Mississippi, complaining of right ankle pain. (JE 6, p. 1; Tr., pp. 19-20) Dr. Altmeyer assessed Rodecker with a failed chondroplasty from a previous ankle scope and recommended Rodecker receive magnetic resonance imaging and a computerized tomography scan of his ankle. (JE 6, p. 1) Dr. Altmeyer continued to treat Rodecker. (Tr., pp. 20-22)

On January 8, 2013, Dr. Altmeyer performed an open reduction and internal fixation of the talus of the talar body fracture with osteochondral autograft plug, medial malleolar osteotomy, and lateral release of the knee with harvest of the plugs from the knee. (JE 6, p. 2) Dr. Altmeyer listed a postoperative diagnosis of several medial osteochondritis dissecans of the talus, which has failed previous arthroscopic microfracture, now with cystic lesion in the talus, and fracture of the talus. (JE 6, p. 2)

Rodecker testified he continued to treat with Dr. Altmeyer and he received sixteen months of physical therapy. (Tr., p. 23) Rodecker reported his right leg was smaller than his left leg and during physical therapy he received rehabilitation for his right ankle and entire leg to build his strength and range of motion. (Tr., p. 24) Rodecker testified at hearing his right leg has not returned to the same size as his left leg even with physical therapy and reported a physical therapist measured his calves, and his right calf was three-quarters of an inch smaller than his left calf. (Tr., p. 25) Rodecker reported he favors his left leg when walking and standing. (Tr., p. 25)

On November 12, 2014, Rodecker underwent a functional capacity evaluation with Allen Thompson, an athletic trainer. (JE 7) Thompson found Rodecker could lift below waist fifty pounds at the start of the test and thirty pounds at the end of the test, lift above waist thirty pounds, two handed carry thirty pounds forty feet, and single carry

thirty pounds forty feet, and could frequently sit, stand, perform overhead work while standing, perform lowered work while standing, sustain squatting and kneeling, climb stairs, repetitively squat, walk, and balance on level surfaces, and that he should avoid balancing on uneven surfaces. (JE 7, pp. 2-3) Thompson opined Rodecker could perform medium level work. (JE 7, pp. -23)

Rodecker attended a follow-up appointment with Dr. Altmyer on December 15, 2014, following a functional capacity evaluation. (JE 6, p. 4) Dr. Altmyer documented

[w]e never want him to do any type of climbing or inclined work on unlevelled ground. He is standing only 10 hours at a time. I think his pain is with any type of activity that puts stress to the ankle joint. He is to stay working in a squatted position and kneeling position with extended period of time. From his future medical he definitely possibly requires future injections, future knee arthroscopies and possible ankle fusion as he ages into his 50s and 60s. I do not [perceive] that in the near future. Impairment rating to the loss of motion, calf atrophy would be 10% of right lower extremity.

(JE 6, p. 4)

In January 2015, GolfTec Houston Galleria hired Rodecker as a PGA teaching professional. (Ex. A, p. 6; Tr., p. 27) Rodecker provided indoor and outdoor golf lessons to customers, and playing lessons with customers on the golf course. (Tr., p. 27) Rodecker worked on commission. (Ex. A, p. 6)

In May 2015 Rodecker also commenced employment with Card Diva, working on commission. (Ex. A, p. 6) Rodecker continued to work for Card Diva at the time of the hearing.

Richard Levy, M.D., an orthopedic surgeon in Texas, conducted an independent medical examination for Rodecker on May 18, 2015. (JE 8) Dr. Levy examined Rodecker and reviewed his medical records. (JE 8) On examination Dr. Levy noted Rodecker had a one centimeter calf atrophy on the right compared to the left, crepitation with flexion and extension, and ankle ROM, as follows:

	Right	Left	Normal
Dorsiflexion	0	10	20
Plantarflexion	50	60	40
Inversion	20	40	30
Eversion	20	20	20

(JE 8, p. 3) Dr. Levy diagnosed Rodecker with osteochondral fracture of talus, right ankle, and noted his prognosis is poor, noting:

[h]e already is developing posttraumatic arthritis and has continued to have chronic pain in the ankle. There is evidence of loose debris in the

ankle joint on most recent CAT scan. He has required intermittent injections and will likely require future surgery to include either an ankle arthroplasty or fusion. A referral to an orthopedic foot and ankle specialist will be required for future treatment.

(JE 8, p. 3) Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides 5th Edition"), Dr. Levy found using Table 17-33, Rodecker qualifies for a twenty percent lower extremity impairment for an intra-articular fracture with displacement of the ankle, recommended restrictions of avoiding carrying over thirty pounds, and no running or jumping, and opined Rodecker's impairment and restrictions are necessary solely from the effects of the March 28, 2011 work injury. (JE 8, p. 3)

Rodecker was referred to William McGarvey, M.D., an orthopedic surgeon in Texas, by one of his customers. (JE 9, p. 3; Tr., p. 28) Wells authorized treatment for Rodecker with Dr. McGarvey. (Tr., p. 28)

On March 8, 2015, Rodecker underwent an anteromedial ankle arthroplasty and deltoid ligament advancement with Dr. McGarvey. (JE 9, p. 3) Dr. McGarvey listed a postoperative diagnosis of right ankle medial impingement. (JE 9, p. 3) Several months later, on September 8, 2015, Rodecker underwent an arthroscopic decompression of the medial ankle with removal of hardware with Dr. McGarvey. (JE 9, p. 1) Dr. McGarvey listed a postoperative diagnosis of ankle impingement, right ankle and symptomatic hardware, right ankle. (JE 9, p. 1)

Rodecker left GolfTec in April 2016, sixteen months after his hiring, reporting it was challenging for him to sit and teach for fifty hours per week inside while also providing outdoor playing lessons. (Tr., pp. 37-38, 43-44) Rodecker relayed it was challenging for him to walk on uneven surfaces on the golf course, walking on inclines, and standing. (Tr., pp. 43-46) Rodecker reported he is a right-handed golfer, which requires him to roll and turn his right ankle, and when he is playing golf he experiences shooting pain. (Tr., pp. 45-46) Rodecker estimated he spent approximately ten percent of his time sitting in a golf cart, and the rest of the time he was on his feet while working for GolfTec. (Tr., pp. 47-48)

Rodecker moved back to the Sioux City area to be closer to his family. (Tr., p. 37) On March 15, 2017, Rodecker attended an appointment with Michael Nguyen, M.D., an authorized treating sports medicine physician with CNOS, complaining of right ankle pain. (JE 2, p. 3) Dr. Nguyen examined Rodecker, ordered additional x-rays, assessed him with right ankle posttraumatic osteoarthritis, noted Rodecker would be a candidate for an ankle replacement, but given his young age, recommended injections, and performed a right ankle injection. (JE 2, p. 5) The injection did not provide any significant relief, so Dr. Nguyen referred Rodecker to a foot and ankle specialist. (JE 2, pp. 7-8)

On April 19, 2017, Rodecker attended an appointment with David Rettedal, D.P.M., a podiatrist with CNOS, complaining of right ankle pain with ambulation and activities. (JE 2, p. 9) Dr. Rettedal assessed Rodecker with likely osteochondral defects of the right ankle joint, deltoid ligament pathology of the right ankle joint, and chronic pain in the right ankle with a history of multiple right ankle surgeries, and recommended lower extremity magnetic resonance imaging. (JE 2, pp. 10-11)

Rodecker underwent right ankle magnetic resonance imaging on April 26, 2017. (JE 2, p. 12) Dr. Rettedal reviewed the imaging, found the osteochondral graft appeared to incorporate very well to the medial talar dome, "there is 1 small osteochondral defect just anterior to where the OATS procedure was performed," with some subchondral edema, and some mild joint effusion with no other obvious pathology. (JE 2, p. 13) Dr. Rettedal assessed Rodecker with a right ankle osteochondral defect, right ankle synovitis, and chronic pain of the right ankle joint with a history of multiple surgeries. (JE 2, p. 13) Dr. Rettedal discussed performing an arthroscopic debridement of the right ankle with microfracture of the small osteochondral defect and placement of BioCartilage allograft into the osteochondral defect, and Rodecker stated he wanted to proceed with surgery. (JE 2, p. 13)

On May 4, 2017, Dr. Rettedal, performed an "[e]xtensive arthroscopic debridement of right ankle joint, . . . [m]icrofracture of osteochondral defect with use of BioCartilage allograft, right ankle joint," and he applied a posterior splint. (JE 10, p. 1) Dr. Rettedal listed a post-operative diagnosis of osteochondral defect, synovitis, pain, and extensive surgical history of the right ankle. (JE 10, p. 1)

Rodecker attended a follow-up appointment with Dr. Rettedal on May 12, 2017. (JE 2, p. 16) Dr. Rettedal prescribed a CAM boot and physical therapy and restricted Rodecker from working. (JE 2, pp. 17, 19) Rodecker attended additional appointments with Dr. Rettedal, reporting his right ankle had improved, but also reporting problems with plantar fasciitis, and noting he had been able to play golf recently. (JE 2, pp. 21-23) Rodecker expressed that he wanted to return to work and Dr. Rettedal released him to full duty. (JE 2, pp. 23, 25) Wells' third party-administrator inquired from Dr. Rettedal "[i]f applicable, what percentage of impairment is assessed to Mr. Rodecker's right ankle, in addition to the previous 17% Lower extremity Impairment, according to the AMA Guides (5th Edition)?" (JE 2, p. 25) Dr. Rettedal responded "no additional perm. above." (JE 2, p. 25) Dr. Rettedal did not state whether he agreed Rodecker had sustained a seventeen percent permanent impairment, or what criteria he used in the AMA Guides to make his determination. (JE 2, p. 25)

Sunil Bansal, M.D., an occupational medicine physician, performed an independent medical examination for Rodecker on October 31, 2017. (JE 11) Dr. Bansal reviewed Rodecker's medical records and examined him. (JE 11) Dr. Bansal diagnosed Rodecker with a right foot and ankle impact injury, osteochondral lesion of the medial dome of the talus, and painful orthopedic hardware in the right ankle, traumatic arthritis, chronic regional pain syndrome, and sacroiliitis. (JE 11, pp. 20-21) Dr. Bansal opined the crush injury resulted in Rodecker's need to undergo five

surgeries, caused him to develop chronic regional pain syndrome using the Budapest criteria, and caused him to develop sacroiliitis from an antalgic gait. (JE 11, pp. 21-23) Rodecker testified Dr. Bansal was the first person to mention chronic regional pain syndrome to him. (Tr., p. 32)

Using the AMA Guides, Dr. Bansal assigned a twelve percent whole person impairment for Rodecker's right lower extremity and a three percent whole person impairment for his back. (JE 11, pp. 23-24) Dr. Bansal recommended permanent restrictions of no lifting over twenty pounds occasionally, and ten pounds frequently, no prolonged standing or walking greater than thirty minutes at a time, and to avoid multiple steps, stairs, ladders, and uneven terrain. (JE 11, p. 24)

Pursuant to an inquiry from counsel for Wells, Dr. Rettedal responded to a check-the-box letter on June 15, 2018. (JE 2, p. 27) Dr. Rettedal agreed he never identified any symptoms or criteria consistent with Rodecker meeting a diagnosis of complex regional pain syndrome, that he did not believe Rodecker has complex regional pain syndrome as a result of the work injury, he did not document Rodecker had an altered gait or back pain in his records, and he could not state within a reasonable degree of medical certainty that the back and/or hip pain Rodecker is currently experiencing is a result of his right ankle injury. (JE 2, p. 27)

At the time of the hearing Rodecker was working for Card Diva as an independent contractor. (Tr., p. 53) Card Diva is a wholesale credit card processing company that works on referral only. (Tr., p. 53) Rodecker reported he sits, drives, walks, and stands for work, but there is a lot less standing and walking than golf. (Tr., p. 54)

Card Diva issued a letter on September 5, 2018, reporting Rodecker is an independent contractor for Card Diva, receiving commissions, and over the past twelve months his average monthly income was \$215.94. (Ex. 1, p. 70) Tim Pozananiak, PGA with GolfTec prepared an undated letter stating Rodecker worked in Houston, which is the second highest producing center in GolfTec's 190 centers, and that Rodecker's "potential income earnings for a 12-month period to be anywhere between \$68,000-\$82,000, including teaching bonuses, center ladder quarterly bonuses, and equipment sales. With the average PGA professional making around \$73,000 per year." (Ex. 2, p. 71)

Rodecker testified over the years the pain in his right ankle and foot has become "drastically" worse. (Tr., p. 31) Rodecker testified at hearing his right leg from the calf down feels like it is on fire at times and at other times it feels like someone poured a cold bucket of water on his ankle. (Tr., pp. 32-33) Rodecker reported it tingles at night, and his condition wakes him up. (Tr., pp. 33-34) Rodecker relayed the color of his ankle varies from dark brown to deep blue, depending on his activity level and what he is wearing. (Tr., pp. 34-35) Rodecker reported his right lower extremity feels numb, tingles, and it "feels like it almost falls asleep." (Tr., p. 36) Rodecker testified he can tolerate standing for ten minutes at a time or less, and then he has to get off his right



foot. (Tr., p. 57) Rodecker struggles to walk up hills, and on uneven surfaces due to pain, and he has problems with balance when climbing stairs or steps. (Tr., pp. 57-59)

Since his work injury Rodecker has been unable to swim because of the kicking action, and he cannot tolerate hunting because of the walking required. (Tr., pp. 60-61) He also struggles with dressing because of his balance issues with his right foot, so he puts on his pants while sitting on the edge of the bed before pulling them up. (Tr., p. 61) Rodecker relayed he cannot go up and down a ladder because he is afraid he would fall. (Tr., p. 63)

Rodecker testified he has low back pain “[e]very once in a while” and noted he has “shooting pain is where it goes all the way up the leg, it kind of goes into the pelvis and into the lower back, but it’s not – it’s not every day.” (Tr., p. 63) Dr. Bansal’s report indicates Rodecker complained of frequent back pain. (JE 11, p. 17) During cross-examination Rodecker explained his back pain has changed over the years, noting he could not get out of bed one morning. (Tr., pp. 66-67) Rodecker agreed none of the medical records from Drs. Butler, Altmyer, Levy, McGarvey, Nguyen, or Rettedal document he complained of back pain or problems or mention chronic regional pain syndrome. (Tr., pp. 71-80) Rodecker also admitted Dr. Taki’s report from February 20, 2019, documents Rodecker was “negative for back pain,” and does not mention chronic regional pain syndrome. (Tr., pp. 83-84; Ex. 12, pp. 1-3)

## CONCLUSIONS OF LAW

### I. Applicable Law

This case involves several issues including nature and extent of disability, alternate medical care, costs, and interest under Iowa Code sections 85.27, 85.34, 86.40, and 535.3. In March 2017, the legislature enacted changes (hereinafter “Act”) relating to workers’ compensation in Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code section 85.34 applies to injuries occurring on or after the effective date of the Act. This case involves a work injury occurring before July 1, 2017, therefore, the changes to Iowa Code section 85.34 do not apply to this case. The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant’s Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is 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.

### II. Nature of the Injury

To receive workers' compensation benefits, an injured employee must prove, by a preponderance of the evidence, the employee's injuries arose out of and in the course of the employee's employment with the employer. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (Iowa 1995). An injury arises out of employment when a causal relationship exists between the employment and the injury. Quaker Oats v. Ciha, 552 N.W.2d 143, 151 (Iowa 1996). The injury must be a rational consequence of a hazard connected with the employment, and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000). The Iowa Supreme Court has held, an injury occurs "in the course of employment" when:

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

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (quoting Bushing v. Iowa Ry. & Light Co., 208 Iowa 1010, 1018, 226 N.W. 719, 723 (1929)).

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 cause does not need to be the only cause, "[i]t only needs to be one cause." Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

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 deputy 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).

It is well-established in workers’ compensation that “if a claimant had a preexisting condition or disability, aggravated, accelerated, worsened, or ‘lighted up’ by an injury which arose out of and in the course of employment resulting in a disability found to exist,” the claimant is entitled to compensation. Iowa Dep’t of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

a disease which under any rational work is likely to progress so as to finally disable an employee does not become a “personal injury” under our Workmen’s Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

The parties agree Rodecker sustained a permanent impairment to his right ankle caused by the March 2011 work injury. Rodecker also avers he sustained permanent impairments to his low back, sacroiliitis, and chronic regional pain syndrome caused by the work injury. Wells disputes Rodecker sustained temporary or permanent impairments to his low back and complex regional pain syndrome caused by the work injury.

Rodecker has been treated by several physicians in multiple locations in Mississippi, Texas, and Iowa specializing in orthopedic surgery, sports medicine, and podiatry for his right ankle condition. He also requested and received an independent medical examination from Dr. Levy, an orthopedic surgeon. Dr. Bansal, an occupational medicine physician who conducted a second independent medical examination for Rodecker is the only physician who has diagnosed Rodecker with chronic regional pain syndrome or complex regional pain syndrome, and with sacroiliitis. I do not find his opinion persuasive.

Dr. Bansal noted in his report during an appointment on June 28, 2016, Dr. McGarvey documented Rodecker’s ankle was doing “beautifully” following surgery and he “has a little tenderness in his lateral hip and low back, but his ankle is as good as it has been in a long time.” (JE 11, p. 13) Dr. McGarvey’s medical record was not produced by the parties at hearing. There is no mention in Rodecker’s treatment records of ongoing problems with his hip, low back, or complex regional pain syndrome.

As discussed above, none of Rodecker's treating physicians have diagnosed him with complex regional pain syndrome or sacroiliitis. His treatment records are void that he mentioned or complained of back pain or complex regional pain syndrome. (Tr., pp. 71-80) Rodecker also admitted Dr. Taki's report from February 20, 2019, shortly before the hearing documents Rodecker was "negative for back pain," and does not mention chronic regional pain syndrome. (Tr., pp. 83-84; Ex. 12, pp. 1-3)

Dr. Bansal diagnosed Rodecker with "chronic regional pain syndrome" at page 21 of his report. In reaching his conclusion, he used the "Budapest Criteria," which he states is consistent with the Sixth Edition of the AMA Guides. The Division of Workers' Compensation has adopted the Fifth Edition of the AMA Guides. 876 IAC 2.4. The Division of Workers' Compensation has not adopted the "Budapest Criteria" or the Sixth Edition of the Guides for evaluating alleged complex regional pain syndrome. Table 16-16 at page 496 of the AMA Guides provides objective criteria for determining whether an individual meets a diagnosis of complex regional pain syndrome, as follows:

**Local clinical signs**

Vasomotor changes:

Skin color: mottled or cyanotic

Skin temperature: cool

Edema

Sudomotor changes:

Skin dry or overly moist

Trophic changes:

Skin texture: smooth, nonelastic

Soft tissue atrophy: especially in fingertips

Joint stiffness and decreased passive motion

Nail changes: blemished, curved, talonlike

Hair growth changes: fall out, longer, finer

**Radiographic signs**

Radiographs: trophic bone changes, osteoporosis

Bone scan: findings consistent with CRPS

**Interpretation**

≥ 8 Probable CRPS

< 8 No CRPS

The AMA Guides provide "[a]t least eight of these findings must be present concurrently for a diagnosis of CRPS. Signs are objective evidence of disease perceptible to the examiner, as opposed to symptoms, which are subjective sensations of the individual." AMA Guides, page 496. No physician has applied the objective criteria from the AMA Guides 5th Edition to Rodecker. Rodecker has not met his burden he sustained chronic

regional pain syndrome, complex regional pain syndrome. Likewise, no physician has diagnosed Rodecker with sacroiliitis caused by the work injury, other than Dr. Bansal. Dr. Bansal's report is flawed and his opinion is not credible. Rodecker has not established he sustained sacroiliitis caused by the work injury.

### III. Extent of Disability

As discussed above, I found Rodecker established he sustained a permanent impairment to his right ankle only. 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.

The anatomical situs of a permanent impairment determines whether the disability is compensated as a scheduled member disability or industrial disability. Iowa Code § 85.34(2); Holstein Elec. v. Bryfogle, 756 N.W.2d 812, 815-16 (Iowa 2008) (wrist injury is compensated as an injury to the arm); Lauhoff Grain v. McIntosh, 395 N.W.2d 834, 837-40 (Iowa 1986) (an injury to the hip joint is compensated as an injury to the body as a whole). The proximal point of a joint is used to classify the nature of the injury. Holstein Elec., 756 N.W.2d at 816. Rodecker's right ankle disability is a disability of the right leg. Spaulding v. Care Initiatives, Inc., File No. 5055147 (Arb. Dec. 29, 2017); Mettler v. The Waldinger Co., File No. 5017312 (Arb. Sept. 23, 2008). The schedule provides a maximum of 220 weeks of compensation for an injury to a leg. Iowa Code § 85.34(2)(o).

Four physicians have provided or adopted impairment ratings in this case, Dr. Butler, a treating orthopedic surgeon who adopted the impairment rating determined by Barker, a certified athletic trainer using the AMA Guides 6th Edition, Dr. Levy, an orthopedic surgeon retained by Rodecker to conduct an independent medical examination only, Dr. Bansal, an occupational medicine physician who conducted a second independent medical examination for Rodecker, and Dr. Rettedal, a treating podiatrist. (JE 2; JE 4; JE 5; JE 8; JE 11) I do not find Dr. Butler's opinion persuasive, since he adopted an opinion made under the AMA Guides 6th Edition, which is not approved for use by this agency.

Dr. Bansal assigned a whole person impairment of twelve percent to Rodecker for his right ankle injury for chronic pain again using criteria that has not been adopted

by this agency. (JE 11, p. 23) For the reasons stated above on causation, I do not find his opinion persuasive.

Dr. Levy assigned Rodecker a twenty percent lower extremity impairment for his ankle injury after examining Rodecker on one occasion in 2015. (JE 8, p. 3) In 2017, Dr. Rettedal, a podiatrist, treated Rodecker and performed his last surgery. In a short response letter to Wells' third-party administrator, Dr. Rettedal did not assign any additional impairment to Rodecker. (JE 2, p. 25) Dr. Rettedal's opinion does not provide whether Dr. Rettedal agreed with an earlier, unproduced rating of seventeen percent. (JE 2, p. 25) His opinion does not provide what criteria he used, if any, in the AMA Guides 5th Edition in evaluating Rodecker. (JE 2, p. 25) For these reasons I find Dr. Levy's opinion more persuasive. I did not receive information that would persuade me to deviate from the schedule. Therefore, under the schedule, Rodecker is entitled to forty-four weeks of permanent partial disability benefits at the stipulated rate of \$341.34 per week, commencing on the stipulated commencement date of July 7, 2017.

#### **IV. Alternate Medical Care**

Under Iowa Code section 85.27 (2011), an employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under Iowa Code chapters 85 and 85A. The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id.

"The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id.

The employee bears the burden of proving the care authorized by the employer is unreasonable. R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 196 (Iowa 2003). "The employer's obligation under the statute turns on the question of reasonable necessity, not desirability." Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995). The care authorized by the employer is unreasonable if it is ineffective, inferior, or less extensive than the care requested by the employee. Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433, 437 (Iowa 1997). The determination of whether care is reasonable is a question of fact. Long, 528 N.W.2d at 123.

Rodecker requested Wells authorize Ryan Mulligan, M.D., an orthopedic surgeon in Texas, as his treating physician. (Ex. 4) Wells has provided care to Rodecker with multiple providers in multiple locations. There was no evidence presented at hearing

Wells abandoned Rodecker's care, or has acted unreasonably in the provision of care to Rodecker. Wells retains the right to direct Rodecker's care, including the right to choose the provider of the care.

**V. Costs**

Rodecker seeks to recover the cost of the \$100.00 filing fee. Iowa Code section 86.40, provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 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, (8) costs of persons reviewing health service disputes.

Using my discretion I award Rodecker the \$100.00 filing fee.

**ORDER**

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay the claimant forty-four (44) weeks of permanent partial disability benefits at the stipulated weekly rate of three hundred forty-one and 34/100 dollars (\$341.34), commencing on the stipulated commencement date of July 7, 2017.

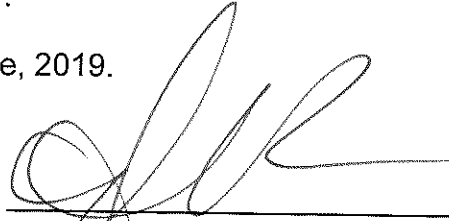
Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable 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. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

Defendant shall receive a credit for all benefits paid to date.

Defendant shall reimburse the claimant one hundred and 00/100 dollars (\$100.00) for the filing fee.

Defendant 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 18<sup>th</sup> day of June, 2019.



HEATHER L. PALMER  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

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HLP/sam

**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.