BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSHUA AKERS, Claimant, vs. ARCONIC, Employer, and INDEMNITY INS. CO. OF N.A., Insurance Carrier, Defendants.	:	File No. 20700548.02 ARBITRATION DECISION Head Notes: 1100; 1108; 1800; 1801; 1802; 1803; 1803.1; 1806; 2500

STATEMENT OF THE CASE

The claimant, Joshua Akers, filed a petition for arbitration seeking workers' compensation benefits from employer Arconic and its insurer Indemnity Insurance Company of North America. M. Leanne Tyler appeared on behalf of the claimant. Troy Howell appeared on behalf of the defendants.

The matter came on for hearing on July 21, 2022, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-8, Claimant's Exhibits 1-8, and Defendants' Exhibits A-H. The exhibits were received into the record without objection.

The claimant testified on his own behalf. Heidi Krafka was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on October 7, 2022, after briefing by the parties.

STIPULATIONS

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

1. There was an employer-employee relationship at the time of the alleged injury.

2. The claimant sustained an injury, which arose out of, and in the course of, employment on March 26, 2020.

3. That, at the time of the alleged injury, the claimant's gross earnings were one thousand three hundred twenty-one and 63/100 dollars ($1,321.63) per week, and that the claimant was married, and entitled to three exemptions. Based upon the foregoing, the parties believe that the weekly compensation rate is eight hundred forty-eight and 93/100 dollars ($848.93) per week.

4. With regard to disputed medical expenses noted below:

    a. That the fees or prices charged by the providers are fair and reasonable;
    b. That the treatment was reasonable and necessary; and,
    c. Although casual connection of the expenses to a work injury cannot be stipulated, the listed expenses are at least causally connected to the medical conditions upon which the claim of injury is based.

5. That the defendants are entitled to a credit pursuant to Iowa Code section 85.38(2) for payment of sick pay/disability income in the amount of seven thousand four hundred thirty-two and 72/100 dollars ($7,432.72), which represents short-term disability benefits paid to the claimant for his right knee from April 28, 2020, to May 17, 2020, and from November 4, 2020, to February 1, 2021.

6. The costs listed in Claimant's Exhibit 5 have been paid.

The defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. Whether the alleged injury is a cause of temporary disability during a period of recovery.

2. Whether the alleged injury is a cause of permanent disability.

3. Whether the claimant is entitled to either temporary total disability, temporary partial disability, or healing period benefits from April 28, 2020, through May 17, 2020, and November 4, 2020, through February 1, 2021.

4. The extent of permanent disability, if any is awarded.

5. Whether the disability is a scheduled member disability to the right leg or an industrial disability.

6. The proper commencement date for permanent partial disability benefits, if any are awarded.

7. Whether the claimant is entitled to a reimbursement of medical expenses, as listed in Claimant's Exhibit 4.

8. With regard to the disputed medical expenses:

    a. Whether the listed expenses are causally connected to the work injury.
    b. Whether the requested expenses were authorized by the defendants.

9. Whether the claimant is entitled to reimbursement of the costs of an independent medical examination ("IME") pursuant to Iowa Code section 85.39.

10. Whether an assessment of costs is appropriate.

FINDINGS OF FACT

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

Joshua Akers, the claimant, was 48 years old at the time of the hearing. (Testimony). He resides in Blue Grass, Iowa, with his spouse, and one minor child. (Testimony).

Mr. Akers graduated high school in Northern California in 1991. (Testimony). He then served in the Navy as an airplane mechanic. (Testimony). He was honorably discharged. (Testimony). After his discharge, he attended Sierra Academy of Aeronautics to get his "A&P License." (Testimony). He then moved to Memphis, Tennessee, where he worked for Mesaba Airlines as an airplane mechanic for eight years. (Testimony). Around that time, his family moved to Iowa, so he moved to Iowa to be around his family. (Testimony). Upon moving to Iowa, Mr. Akers worked at Home Depot for a short period of time. (Testimony).

Mr. Akers has worked at Alcoa/Arconic for the last 14 years. (Testimony). He works as an industrial mechanic. (Testimony). He began in the furnace department, where he worked for 11 years. (Testimony). He then was transferred to the tooling department for a short time, before being moved to the hot line. (Testimony).

In 2005, Mr. Akers injured his right ACL while playing soccer. (Testimony). John Hoffman, M.D., performed an arthroscopic reconstruction of the right ACL and a partial medial meniscectomy on Mr. Akers' right knee in 2010 to repair this injury. (Testimony; Joint Exhibit 1:2-3). Mr. Akers was allowed to return to work pursuant to the orders of

Dr. Hoffman with no restrictions. (JE 3:21). Mr. Akers reported that he was "ready and comfortable" in returning to work. (JE 3:21).

Mr. Akers was injured on March 26, 2020, at about 2:00 a.m. or 3:00 a.m. (Testimony). At the time of his injury, he worked from 6:00 p.m. to 6:00 a.m. (Testimony). He was working under a 220-inch mill on an exit side, changing coolant lines. (Testimony). He was 12 feet below the rolls on the mill where there are horizontal pipes covered in coolant, slime, and grease. (Testimony). Mr. Akers climbed up on the pipes in order to hand coolant hoses to another mechanic. (Testimony). After finishing the task, he was coming down from the pipes and his left foot slid across the pipes. (Testimony). His right foot "impacted" and his knee quickly popped "out and in." (Testimony). He did not have immediate pain when this occurred. (Testimony).

He reported the injury to Arconic on March 26, 2020. (JE 3:22). He told them that he was stepping backwards off greasy pipes when his left leg slipped. (JE 3:22). He felt his right knee dislocate laterally and then go "back into position." (JE 3:22). He complained of medial weakness and was unable to pivot on the right leg without pain. (JE 3:22). Arconic provided Mr. Akers with first aid and he was to consult the plant provider for an x-ray order. (JE 3:23). He was provided some restrictions initially, which included no kneeling, straddling, or climbing ladders. (Testimony; JE 3:26). Mr. Akers was offered ibuprofen for inflammation, but he declined it. (JE 3:29). Dr. Koerner ordered a right knee x-ray. (JE 3:29). He was also offered a knee sleeve, which he indicated felt "very good." (JE 3:29).

On March 27, 2020, Mr. Akers went to Genesis Imaging Center for an x-ray of the right knee. (JE 2:18-20). The x-rays showed normal anatomic alignment of the knee with no evidence of fracture. (JE 2:20). The radiologist observed mild osteoarthritis of the medial compartment, knee joint effusion, and a previous ACL repair. (JE 2:20).

Arconic internal providers followed-up with Mr. Akers on March 30, 2020, for his continued right knee pain. (JE 3:30). Mr. Akers continued to avoid over-the-counter medications and applying ice. (JE 3:30). Mr. Akers opined that he re-tore his ACL and would "need emergency surgery." (JE 3:30). Mr. Akers did not have pain but felt as though he had weakness in his right knee when he was walking. (JE 3:30). He continued to wear a soft knee sleeve. (JE 3:30). The provider observed the claimant to walk with a steady gait and no limp. (JE 3:30). Mr. Akers was offered an appointment on March 31 and April 1, but he declined them as he was not going to come to Arconic when he was not scheduled to work. (JE 3:30). Mr. Akers was able to perform all of his routine job functions, but his preventive restrictions of no climbing ladders, no squatting, no straddling, and no climbing more than two stairs were continued. (JE 3:30).

On March 31, 2020, Mr. Akers returned to Arconic's internal providers for continued management of his right knee issues. (JE 3:30). He told them, "I know there is a tendon torn and the only thing that will fix it is surgery and they might not even be doing surgery right now." (JE 3:30). Presumably this is in reference to the COVID-19 pandemic and certain restrictions on outpatient or elective surgeries put in place during time periods of 2020. Mr. Akers still did not have pain but had weakness in his right

knee. (JE 3:30). He wore a soft knee sleeve; however, he requested the ability to wear a knee brace that he wore after his previous surgery. (JE 3:30). The provider noted that they would not order the claimant to wear the brace, but that Mr. Akers could discuss this with another provider. (JE 3:30). Mr. Akers expressed his displeasure at this decision. (JE 3:30). The provider observed the claimant to have a steady gait with no limp and full range of motion in the right knee. (JE 3:30). Again, the claimant indicated that he would not present for treatment at Arconic on days when he was not scheduled to work. (JE 3:31). His preventive restrictions were continued, and he was encouraged to work at a slower pace and request help where necessary. (JE 3:31).

Theodore Koerner, M.D., examined Mr. Akers on April 1, 2020, for his complaints of right knee pain. (JE 3:31). Dr. Koerner specializes in occupational medicine. (Defendants' Exhibit G:22). Mr. Akers had little pain, but worried about disruption of his repaired ACL. (JE 3:31). Mr. Akers could walk without pain, but certain movements caused him apprehension. (JE 3:31). Dr. Koerner performed a right knee exam and various tests which were negative. (JE 3:31). Dr. Koerner diagnosed the claimant with a work-related mild exacerbation of pre-existing osteoarthritis of the medial compartment and "[s]tatus post ACL repair." (JE 3:31). Dr. Koerner noted, "[w]ith the work-related exacerbation resolved, the case was closed." (JE 3:31). Dr. Koerner referred the claimant to his personal physician for further needs and ended any preventive restrictions. (JE 3:31). There is a subsequent April 1, 2020, note from Arconic indicating that the claimant was evaluated by Dr. Koerner, and that the case was closed. (JE 3:31). Mr. Akers insisted that his preventive restrictions should remain until his doctor could write a note to continue them. (JE 3:31). Dr. Koerner placed Mr. Akers on temporary personal restrictions until he could be seen by his personal physician. (JE 3:31).

On April 2, 2020, Mr. Akers indicated that his personal physician requested a denial letter before he could be seen for his right knee issues. (JE 3:32).

Arconic received a denial letter from their insurance adjuster on April 8, 2020. (JE 3:32).

John Hoffman, M.D. saw the claimant on April 14, 2020, for complaints of right knee weakness, instability, and mild medial pain. (JE 4:45). Dr. Hoffman is board certified in orthopedic surgery. (DE C:14). He rated his pain 2 out of 10, and he noted that it came on suddenly on March 26, 2020. (JE 4:45). Mr. Akers' symptoms were aggravated by weightbearing and changing directions. (JE 4:45). Wearing a compression wrap provided him with minimal relief. (JE 4:45). Dr. Hoffman noted that Mr. Akers saw a doctor at Arconic who reviewed x-rays and discharged him from workers' compensation care. (JE 4:45). Dr. Hoffman noted that Mr. Akers ambulated with an antalgic gait. (JE 4:45). However, later in the record, there is an indication that the claimant walked with a "normal non-antalgic heel to toe gait." (JE 4:45). He had a moderate effusion and diffuse pain along the medial joint line in his right knee. (JE 4:45). Mr. Akers also displayed reduced range of motion in the right knee due to pain and swelling. (JE 4:46). Dr. Hoffman reviewed x-rays and found that the claimant's right knee had ACL reconstruction tunnels, along with a "grade 1/2 medial compartment narrowing of the right knee." (JE 4:46). Dr. Hoffman opined that Mr. Akers had laxity in

his right knee on examination. (JE 4:46). Dr. Hoffman provided Mr. Akers with an injection to his right knee. (JE 4:46). Dr. Hoffman allowed Mr. Akers to return to full duty work on April 20, 2020. (JE 4:46). He also ordered an MRI of the right knee, and an ACL hinge brace for the claimant. (JE 4:46).

Upon the order of Dr. Hoffman, Mr. Akers had an MRI of his right knee on April 16, 2020. (JE 5:63). The MRI showed a vertically oriented tear in the posterior horn of the medial meniscus. (JE 5:63). The reviewer also indicated that there may also have been a "partial meniscectomy of the medial meniscus." (JE 5:63). The MRI also revealed a suspected graft failure of the anterior cruciate ligament. (JE 5:63).

Dr. Hoffman saw Mr. Akers again on April 21, 2020. (JE 4:47-48). Mr. Akers presented in a compression wrap, complaining of instability and weakness in his right knee. (JE 4:47). He only had pain in his knee when it was pushed on, and he rated it 2 out of 10. (JE 4:47). Again, there is a discrepancy in the record, as one portion indicates that the claimant ambulated with an antalgic gait while another indicated that he walked with a normal non-antalgic heel to toe gait. (JE 4:47). Dr. Hoffman reviewed the results of the April 16, 2020, MRI. (JE 4:48). He opined that they showed the prior ACL repair and a "suspected graft failure and tear demonstrated in the posterior horn of the medial meniscus as well as bone marrow edema in the posterior medial tibial plateau." (JE 4:48). Dr. Hoffman discussed the possibility of two arthroscopic surgeries with Mr. Akers. (JE 4:48). At the appointment Dr. Hoffman scheduled an arthroscopy with medial meniscectomy. (JE 4:48).

On April 22, 2020, the claimant brought a note from Dr. Hoffman indicating that he could return to modified work on April 21, 2020. (JE 3:32). His work restrictions were to continue until his scheduled knee arthroscopy on May 6, 2020. (JE 3:32).

Arconic received a request for accommodation form on April 28, 2020, as previous restrictions were denied, as they would require removal of an essential function of Mr. Akers' job. (JE 3:32, 40). The restrictions requested included no squatting, no climbing ladders, no straddling, no climbing more than two stairs, no pivoting, no table roll access, no climbing over piping, and no stairs. (JE 3:32, 40).

On April 30, 2020, the claimant was fitted for a FullForce ACL brace at Dr. Hoffman's office. (JE 4:49). This was to alleviate right knee pain and instability. (JE 4:49).

Mr. Akers reported to Mississippi Valley Surgery Center, in Davenport, Iowa, on May 6, 2020, for an arthroscopic procedure on his right knee. (JE 6:64-65). Dr. Hoffman performed a medial meniscectomy and chronic ACL debridement. (JE 6:64). Dr. Hoffman diagnosed the claimant with a medial meniscus tear and a chronic ACL tear. (JE 6:64). Dr. Hoffman opined that the ACL was disrupted, and that this appeared "to be rather acute with tag of the anterior cruciate ligament into the anterior compartment." (JE 6:65).

On May 8, 2020, the claimant had his first physical therapy visit at Orthopaedic Specialists. (JE 7:68-69). Mr. Akers told the therapist that he had no pain at the time. (JE 7:68). He also indicated that he felt and heard a loud pop when his foot hit the

ground in the factory. (JE 7:68). Therapy was performed for Mr. Akers' right knee. (JE 7:68-69).

Mr. Akers returned to Dr. Hoffman's office on May 12, 2020, following his right knee arthroscopy. (JE 4:50). He had minimal pain, which decreased since surgery. (JE 4:50). He denied numbness or tingling in his leg. (JE 4:50). Dr. Hoffman reviewed imaging from the arthroscopy and noted that Mr. Akers had a recurrent tear of the ACL reconstruction and also an excision of the medial meniscus. (JE 4:50). Dr. Hoffman opined, "[a]t the time of the surgery it did appear that the ACL ligament was recently torn due to the work injury," and "[w]e do feel that the most recent injury was the meniscal tear and a recurrent tear of the ACL." (JE 4:50). Dr. Hoffman recommended that the claimant continue to use the ACL stabilization brace. Dr. Hoffman returned the claimant to work full duty, with no restrictions as of May 18, 2020. (JE 4:51). Dr. Hoffman also made a note in the return-to-work form that the injury was not work related. (JE 4:51).

Mr. Akers also had another physical therapy visit on May 12, 2020. (JE 7:70-71). He complained of muscle soreness but denied knee pain. (JE 7:71). He was apprehensive about putting weight on his right lower extremity due to issues with instability. (JE 7:71).

On May 15, 2020, the claimant requested a return-to-work evaluation following his right knee meniscus surgery. (JE 3:33). An evaluation was scheduled for May 19, 2020. (JE 3:33). At that visit it was noted Mr. Akers was off work due to his surgery. (JE 3:33). He denied pain but noted that his knee became "a little sore" after standing for lengthy periods. (JE 3:33). He was not required by his doctor to wear a knee brace but wore one for "peace of mind." (JE 3:33). He continued to attend physical therapy. (JE 3:33). Mr. Akers was cleared to return to work with no restrictions. (JE 3:33, 42).

Mr. Akers returned to Dr. Hoffman's office on June 11, 2020, for an additional post-surgical follow-up visit. (JE 4:52). Mr. Akers reported wearing his ACL stabilization brace "most of the time." (JE 4:52). He no longer attended physical therapy but performed his home exercise plan on a daily basis. (JE 4:52). He had 0 to 135 degrees of range of motion in his right knee. (JE 4:52). Mr. Akers complained of instability when he was not wearing his knee brace, but he did not like wearing the brace on a daily basis. (JE 4:52). Dr. Hoffman recommended an arthroscopic ACL reconstruction with a patellar tendon autograft. (JE 4:52).

On July 16, 2020, the claimant reported some pain in his left calf after stepping off to walk. (JE 3:44). He denied other problems except for his right knee. (JE 3:44).

Dr. Hoffman replied to a September 16, 2020, letter from defendants' counsel. (DE C:11-12). Dr. Hoffman agreed that the claimant had not reported any issues with his right hip or his back. (DE C:11). Dr. Hoffman also noted that he had not observed the claimant walk with any kind of altered gait or limp. (DE C:11). Dr. Hoffman wrote in by hand that Mr. Akers had occasional instability episodes but had no altered gait. (DE C:12).

On October 20, 2020, Mr. Akers returned to Dr. Hoffman's office to follow-up on his previous right knee surgery. (JE 4:53-54). Mr. Akers described increasing pain two days prior when the weather changed. (JE 4:53). He described the pain as "occasional sharp anterior right knee pain." (JE 4:53). He was set for an ACL surgery on November 4, 2020. (JE 4:53). Mr. Akers continued to work full duty. (JE 4:53). The record indicated that the claimant walked with a normal, non-antalgic heel to toe gait. (JE 4:53). He continued to have restricted range of motion due to pain and swelling. (JE 4:54). X-rays taken of the right knee appeared normal with no evidence of degenerative changes. (JE 4:54).

Mr. Akers again reported to Mississippi Valley Surgery Center, in Davenport, Iowa, on November 4, 2020, for another arthroscopic procedure on his right knee. (JE 6:66-67). Dr. Hoffman noted that he performed an anterior cruciate ligament reconstruction for a recurrent tear of the ligament. (JE 6:66).

Mr. Akers began therapy at Rock Valley Physical Therapy on November 6, 2020. (JE 8:85-87). He presented with a brace and with crutches. (JE 8:85). He rated his pain as 7 out of 10 in the area of his kneecap. (JE 8:85). "Everything" aggravated his pain. (JE 8:85).

Therapy continued on November 9, 2020, at Rock Valley Physical Therapy. (JE 8:88). Mr. Akers rated his pain 3 out of 10 and indicated that it was located under his kneecap. (JE 8:88).

On November 11, 2020, Mr. Akers presented to Rock Valley Physical Therapy for right knee physical therapy. (JE 8:84). He filled out a patient questionnaire indicating that he had stabbing and deep aching pain to his right knee. (JE 8:84). He felt that he "over did it" at his last session even though he did not experience an increase in symptoms during the session. (JE 8:89-90). He rated his pain 5 out of 10. (JE 8:89). He told the therapist that he only iced his leg two times per day. (JE 8:89). The therapist opined that Mr. Akers had decreased knee flexion during the visit, along with increased edema. (JE 8:89).

Aaron Schulze, PA-C, saw Mr. Akers on November 16, 2020, for a post-surgical monitoring visit. (JE 4:55). Mr. Akers had complaints of moderate right knee pain with numbness and tingling/shooting pains from his patella down his right leg. (JE 4:55).

Therapy also continued at Rock Valley Physical Therapy on November 16, 2020. (JE 8:91). Mr. Akers stopped sleeping with the brace on recently, which helped him sleep better. (JE 8:91). He was bearing weight fully on his crutches. (JE 8:91).

Mr. Akers had another session of therapy at Rock Valley Physical Therapy on November 20, 2020. (JE 8:92-93). He rated his pain 3 out of 10, and opined that it was worse in the morning. (JE 8:92). Mr. Akers expressed that his knee always felt "very tight," and that the more he was on his feet, the more pain he experienced. (JE 8:92).

Mr. Akers continued his therapy with Rock Valley Physical Therapy on November 23, 2020. (JE 8:94-95). He told the therapist that he had numbness along his incision site and that he had "stinging intermittent" pain which he rated 5 out of 10. (JE 8:94).

Mr. Akers reported 0 out of 10 pain in his right knee during a November 25, 2020, visit to Rock Valley Physical Therapy. (JE 8:96-97). He also had no pain in his shin. (JE 8:96). The therapist opined that Mr. Akers was progressing with therapy. (JE 8:97).

On November 30, 2020, Mr. Schulze examined Mr. Akers again following his ACL reconstruction. (JE 4:56). Mr. Akers ambulated with crutches and progressed with physical therapy. (JE 4:56). Mr. Akers wore his knee immobilizer when "out and about," but did not wear it at home. (JE 4:56). Mr. Akers was directed to stop using his crutches and then walk in the brace for one week. (JE 4:56). After that, the claimant was to stop using the brace. (JE 4:56). He also was to continue physical therapy with a planned return to work date of December 28, 2020. (JE 4:56).

Mr. Akers returned to Rock Valley Physical Therapy on the same date and noted that he was to discontinue use of his crutches. (JE 8:98). He again rated his pain 0 out of 10. (JE 8:98). The therapist observed that Mr. Akers' right knee flexion had improved. (JE 8:98).

On December 2, 2020, Mr. Akers continued his therapy with Rock Valley Physical Therapy. (JE 8:99-100). He denied having any pain and told the therapist that his knee was "moving more freely." (JE 8:99). Any soreness from his previous session of physical therapy resolved before the next morning. (JE 8:99).

Mr. Akers continued pain-free physical therapy during a December 4, 2020, visit. (JE 8:101-102). He presented on crutches, and told the therapist that his inner knee felt like it needed to "pop" while performing a therapeutic exercise. (JE 8:101). The therapist opined that Mr. Akers continued to progress with range of motion and stability. (JE 8:102).

On December 7, 2020, the claimant told Rock Valley Physical Therapy that he was still sore from his previous visit. (JE8:103-104). He rated his pain 4-5 out of 10. (JE 8:103). He was able to perform all of his therapeutic exercises well, according to the therapist. (JE 8:103).

By December 9, 2020, Mr. Akers reported to the therapist at Rock Valley Physical Therapy that he was "doing much better" and had no pain. (JE 8:105-106). He had some "quad fatigue" during this visit, but tolerated therapy well. (JE 8:106).

On December 15, 2020, the claimant indicated to his therapist at Rock Valley Physical Therapy that he was wearing a "DonJoy" brace at home. (JE 8:107). He felt that this provided him with increased stability and ease of movement while walking. (JE 8:107). The therapist observed that Mr. Akers continued to progress his strength and stability, and had good "AROM." (JE 8:107).

Mr. Akers told the therapist at Rock Valley Physical Therapy on December 16, 2020, that he had no pain all day, until he went out into the cold. (JE 8:108-109). Entering the cold caused his right knee pain to increase to 4 out of 10. (JE 8:108).

On December 21, 2020, Mr. Akers told the therapist at Rock Valley Physical Therapy that he had no pain and was "doing well." (JE 8:110-111). His right knee "AROM" was measured at 0 to 135 degrees. (JE 8:110). He also progressed well with

strengthening his right knee. (JE 8:111). The therapist opined that Mr. Akers may benefit from a work hardening program due to his labor-intensive position with Arconic. (JE 8:111).

Mr. Schulze saw Mr. Akers again on December 23, 2020, as a follow-up to his ACL reconstruction. (JE 4:57). Mr. Akers had minimal pain in his right knee. (JE 4:57). He requested a referral for a work hardening program. (JE 4:57). Mr. Schulze observed that Mr. Akers had "obvious quad atrophy and weakness." (JE 4:57). Mr. Schulze recommended that Mr. Akers move away from using a crutch. (JE 4:57). He also noted that his physical therapy would be moved to a new, more rigorous, therapy regimen. (JE 4:57). Mr. Schulze requested that Mr. Akers return in one month. (JE 4:57).

Mr. Akers had another round of physical therapy on December 29, 2020. (JE 7:72-73). The record indicates that Mr. Akers told the therapist that he injured his right knee while performing recreational activities. (JE 7:72). Mr. Akers complained of difficulty walking and completing "functional movements." (JE 7:72). Additional therapy was completed on December 30, 2020. (JE 7:74-75). On December 31, 2020, Mr. Akers reported a slight increase in knee soreness. (JE 7:76). He showed improved performance in therapy during a January 4, 2021, visit. (JE 7:78-79). His therapy continued through January. (JE 7:80-83).

On January 26, 2021, Mr. Schulze examined Mr. Akers again for a 12-week postoperative evaluation. (JE 4:58). Mr. Akers had no complaints of pain in his right knee. (JE 4:58). He continued to ambulate with crutches and progressed his physical therapy. (JE 4:58). Mr. Akers expressed a concern as to the bottom of his knee when he descended stairs, as he did not "get full range when applying weight to the right knee while going down stairs." (JE 4:58). Mr. Akers felt like his right knee would get stuck. (JE 4:58). Mr. Schulze found the claimant to have mild quad atrophy and weakness. (JE 4:58). Mr. Schulze noted that the claimant had been released from physical therapy, and obtained certain equipment to use as part of his home exercise program. (JE 4:58). Mr. Akers requested a return to full duty work, which Mr. Schulze noted would happen on February 1, 2021. (JE 4:58). Mr. Schulze requested that Mr. Akers return in three months. (JE 4:58).

Dr. Hoffman examined Mr. Akers again on April 27, 2021. (JE 4:59-60). Mr. Akers told the doctor that he was "doing better" but noted that his knee caused him constant pain when he climbed, arose from the ground, walked down inclines, arose from a chair, and performed other activities of daily living. (JE 4:59). He also complained of numbness in his right lateral patella and calf. (JE 4:59). He rated his pain between 0 and 3 out of 10. (JE 4:59). Dr. Hoffman provided the claimant with a cortisone injection into the right knee. (JE 4:60). Mr. Akers was to continue working full duty work, and was to return in three months. (JE 4:60).

Mr. Akers returned to Dr. Hoffman's office on August 10, 2021, for continued post-surgical follow-up care. (JE 4:61-62). Mr. Akers told Dr. Hoffman that the previous cortisone injection provided him with no relief. (JE 4:61). He continued to have constant sharp, stabbing pain above his right knee. (JE 4:61). Things like climbing

ladders, getting up, walking up inclines, and any other activity of daily living aggravated his pain. (JE 4:61). He rated his pain 1 out of 10. (JE 4:61). X-rays done of the right knee showed mild medial compartment joint space narrowing bilaterally with ACL hardware in the femoral notch and proximal tibia. (JE 4:62). Dr. Hoffman provided Mr. Akers with another cortisone injection, and measured him for a medial compartment unloader brace. (JE 4:62).

Richard Kreiter, M.D., of Orthopedic Care, performed an IME on the claimant on June 8, 2022. (Claimant's Exhibit 1:1-3). Subsequent to the examination, he issued a report of his findings. (CE 1:1-3). Dr. Kreiter has worked in the orthopedic field since 1976. (CE 3:7). He is board certified in orthopedic surgery. (CE 3:7). Dr. Kreiter reviewed the claimant's relevant medical records and examined the claimant. (CE 1:1-3). Upon examination, Dr. Kreiter found Mr. Akers to have tenderness along his medial joint line in his right knee. (CE 1:3). He also had a range of motion from 0 degrees to 120 degrees. (CE 1:3). Dr. Kreiter also found the claimant to have a positive inhibition and apprehension test. (CE 1:3). Mr. Akers told Dr. Kreiter that he felt as though he "plateaued" about one year prior to the examination. (CE 1:3). He complained of a constant dull ache, and a feeling of tightness that increased with pivoting. (CE 1:3). Mr. Akers also told Dr. Kreiter that weather caused changes in his pain. (CE 1:3). Mr. Akers told Dr. Kreiter that he did not perform his home exercise plan at the time of his examination. (CE 1:3). Dr. Kreiter listed his impressions and/or diagnoses of the claimant as follows: "[c]hronic right knee pain, with moderate ACL and patellar instability and patellofemoral chondromalacia, status post right knee arthroscopy with medial meniscectomy and ACL debridement, and ACL reconstruction with autologous patellar tendon autograft." (CE 1:3).

Based upon his examination and review of the records, Dr. Kreiter opined that the claimant's injuries were "consistent with injuries sustained on March 26, 2020." (CE 1:1). He also opined that the March 26, 2020, event "accelerated the pre-existing, otherwise asymptomatic knee pathology, eventually leading" to the two subsequent surgeries performed by Dr. Hoffman. (CE 1:1). Dr. Kreiter found the claimant to have ACL laxity after his surgical repair, along with patellar instability. (CE 1:1). Based on this, Dr. Kreiter used Table 17-33 on page 546 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, to provide the claimant with a 7 percent permanent impairment rating due to patellar instability with residual pain. (CE 1:1). This equated to a 3 percent whole person impairment. (CE 1:1). Along with this, Dr. Kreiter opined that the claimant had moderate instability as noted by "positive drawer sign and effusion," which provided the claimant with a 17 percent lower extremity impairment. (CE 1:1). This equated to a 7 percent whole person impairment. (CE 1:1). Dr. Kreiter opined that both of the whole person impairments equated to a 10 percent whole person impairment. (CE 1:1). Dr. Kreiter did not opine what the total lower extremity impairment would amount to when considering both impairment ratings. (CE 1:1).

Dr. Kreiter provided the following permanent restrictions: "limited kneeling, squatting and stair/ladder climbing." (CE 1:1). He also recommended that Mr. Akers should utilize knee braces and avoid walking on uneven surfaces where possible. (CE

1:1). Dr. Kreiter also opined that the claimant should not jump or run. (CE 1:1). Dr. Kreiter recommended conservative care to strengthen muscle groups in the right knee. (CE 1:1). Dr. Kreiter opined that the claimant should seek vocational rehabilitation so that Mr. Akers could find less physically demanding work. (CE 1:1).

He was provided an axial brace at one time so that his leg would not twist or move. (Testimony). However, he could not wear that at work because it does not allow his leg to bend beyond 90 degrees. (Testimony). He wore the brace whenever he was not at work. (Testimony).

Mr. Akers previously rode motorcycles. (Testimony). After his work injury, he has not ridden his motorcycle because he cannot. (Testimony). He also does not run or play sports. (Testimony). He has had to "dramatically" decrease his physical activities. (Testimony).

At the time of the hearing, Mr. Akers was working at Arconic. (Testimony). He testified that he had constant stabbing pain in his knee. (Testimony). He further testified that it hurt to climb stairs and to walk. (Testimony). He has difficulty walking on uneven surfaces. (Testimony). He walked with a limp, as well. (Testimony). He could get into a squatting position, but experienced difficulty rising from that position. (Testimony).

CONCLUSIONS OF LAW

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

Causation

Before beginning any analysis of the other issues, I must first examine whether the claimant's injury arose out of and in the course of his employment with Arconic. The claimant contends that he lost his footing on a pipe covered by a slippery substance, and that he hyper-extended his right knee upon landing on the floor causing a re-tearing of his anterior cruciate ligament (hereinafter "ACL") and a tear to his medial meniscus. The defendants allege that the claimant's right knee issues were not caused by his work at Arconic.

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

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

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

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

While a claimant is not entitled to compensation for the results of a preexisting 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). 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).

In 2005, the claimant injured his right knee during a soccer match. At that time, he tore his ACL and another ligament in his right knee. He testified that he fell to the ground and had pain; however, he was able to limp off the field. In 2010, the claimant had his right ACL repaired by Dr. Hoffman.

Based upon my observations of the claimant at the hearing, I found him to be a credible historian of the facts of the case. He testified, again credibly, that early in the morning of March 26, 2020, he was working on some pipes. As he stepped down from the pipes, his left foot began to slide across a slippery pipe. His right foot then impacted on the surface, and he felt his knee pop "out and in" laterally. He noted that he did not have immediate pain when this happened. With no medical evidence to support their opinion, the defendants argue in their post-hearing brief that the lack of pain is an indicator that the injury did not occur at the time that the claimant's right foot impacted the surface. They further point to anecdotal evidence of observing similar injuries in athletes, which result in grimacing or screams of pain by the athletes when their injury occurs, as evidence that the claimant was not injured in the course and scope of his employment with Arconic. I find this particular argument to be lacking in evidence in the record. There is also no objective medical evidence in the record to indicate that the claimant would be expected to feel pain upon tearing his ACL.

Mr. Akers finished his shift on March 26, 2020, and returned the next night around 6:00 p.m. for his next shift. At that time, he reported the incident to Arconic and was examined by Arconic's in-house medical providers, including Dr. Koerner. A right knee x-ray was then taken on March 27, 2020, which showed normal anatomic alignment, mild osteoarthritis of the medial compartment, the previous ACL repair, and knee joint effusion. Effusion is a medical term for fluid escaping from anatomical vessels by rupture or exudation. See Merriam-Webster (Online), https://www.merriam-webster.com/dictionary/effusion#medicalDictionary (last viewed October 25, 2022).

The claimant continued to follow-up with Arconic's internal providers. Several days after the alleged incident, Mr. Akers opined that he re-tore his ACL and felt as though he would require surgery for a repair. He did not have pain at that time, but complained of weakness in his right knee as he walked. He ambulated with a steady gait and no limp. He was given protective restrictions at that time.

On April 1, 2020, Dr. Koerner, an occupational medicine doctor and family physician, opined that Mr. Akers sustained a mild exacerbation of his pre-existing osteoarthritis and was "[s]tatus post ACL repair." He opined that this was resolved, and closed Mr. Akers' case. Dr. Koerner referred Mr. Akers to his personal physician for any other needs and kept the preventive restrictions in place until the claimant could be seen by his personal physician. Mr. Akers then requested a denial letter, as his personal physician refused to see him if the case was being managed as a workers' compensation case. A denial letter was then issued on April 8, 2020.

While I am not a medical doctor, I find it odd that Dr. Koerner based his opinions on an x-ray and did not order advanced imaging studies like an MRI when considering

Mr. Akers' history of a previously repaired ACL and complaints. Dr. Koerner also did not elaborate in the records as to why an MRI was not necessary in this case.

Since Arconic denied Mr. Akers' claim, he made an appointment with Dr. Hoffman. Dr. Hoffman, a board certified orthopedic surgeon, previously treated the claimant for his 2010 ACL reconstruction. During his first visit with the claimant, Dr. Hoffman ordered an MRI of the right knee. Dr. Hoffman also observed that Mr. Akers had laxity in his right knee upon examination. Per Dr. Hoffman's orders, Mr. Akers had an MRI on April 16, 2020. The radiologist reviewing the MRI opined that Mr. Akers had a vertically oriented tear in the posterior horn of his medial right meniscus, and a suspected graft failure of the ACL. Dr. Hoffman reviewed the results of the MRI and agreed with the results, also noting that Mr. Akers had bone marrow edema in the posterior medial tibial plateau. At that time, Dr. Hoffman ordered a brace and discussed two surgeries with Mr. Akers.

The first surgery occurred on May 6, 2020, wherein Dr. Hoffman arthroscopically performed a medial meniscectomy and chronic ACL debridement. While Dr. Hoffman diagnosed the claimant with a medial meniscus tear and a chronic ACL tear, he observed that the disruption of the claimant's right ACL was "rather acute with tag of the anterior cruciate ligament into the anterior compartment." Mr. Akers had some physical therapy following the surgery. Dr. Hoffman allowed the claimant to return to work on May 18, 2020, without restrictions. There is a note around this time that the injury was not work related; however, it seems reasonable that this was due to the previously requested denial letter that Mr. Akers received in April of 2020.

Mr. Akers had a return to work evaluation following his right knee meniscus surgery on May 19, 2020. Mr. Akers denied pain, but had soreness after standing for lengthy periods of time. He also wore a knee brace for "peace of mind." He was cleared to return to work by Arconic with no restrictions.

The claimant continued his care with Dr. Hoffman in June of 2020, with continued complaints of knee instability. By September of 2020, Dr. Hoffman wrote in a check-box letter to defendants' counsel that the claimant did not walk with an altered gait despite his occasional episodes of instability. Additional x-rays performed in October of 2020, showed no additional degenerative changes to the right knee.

On November 4, 2020, Dr. Hoffman performed an arthroscopic ACL reconstruction of a recurrent ACL tear on Mr. Akers. Subsequent to this, Mr. Akers attended a number of physical therapy visits. He had some decreased knee flexion during his therapy. He eventually complained of no pain in his right knee, but then would have episodic pain. There is a physical therapy note indicating that the claimant told a physical therapist that he injured his knee while performing recreational activities. This is only noted once in any of the records, and Mr. Akers testified that he was unsure as to why the note indicated as much. The defendants attempt to use this record in their posthearing briefing to discredit Mr. Akers' testimony. Again, I found Mr. Akers, a veteran, who was honorably discharged from service in the United States Navy, to be a credible witness.

Dr. Hoffman's office released Mr. Akers to return to work on February 1, 2021, on a full duty basis. After this time, the claimant had some additional care with Dr. Hoffman's office, including two cortisone injections in an effort to relieve his pain.

Eventually, Dr. Kreiter examined the claimant for the purpose of an IME. Dr. Kreiter is board certified in orthopedic surgery, and has worked in the orthopedic field since 1976. He found Mr. Akers to have some tenderness along the medial joint line in his right knee. Mr. Akers also complained that his pain was a constant dull ache, and that he had tightness in his right knee that increased when he pivoted. He also noted that weather caused his pain level to fluctuate. Dr. Kreiter reviewed pertinent medical records. The defendants allege that Dr. Kreiter may have lacked the particular physical therapy record referenced above which mentions a recreational injury. Based upon the claimant's credible testimony, I find the omission of this record from Dr. Kreiter's review to be irrelevant. There was one other minor discrepancy with Dr. Kreiter's record review, namely that the claimant did not have pain immediately following the incident; however, the claimant has consistently testified to the same. It is unclear where Dr. Kreiter received this information; however, I do not find it relevant considering a number of other factors to be discussed herein.

Dr. Kreiter opined that the claimant's injuries were "consistent with injuries sustained on March 26, 2020" while working at Arconic. He also opined that the claimant's injuries "accelerated the pre-existing, otherwise asymptomatic knee pathology," which eventually led to the subsequent surgeries.

The defendants argue that there are deficiencies in the opinions of Dr. Kreiter. They also point to one record from Dr. Hoffman that indicates that the claimant's right knee injury was not work related. The claimant points to Dr. Kreiter's opinions and the findings of Dr. Hoffman to support their position that the claimant's injuries arose out of and in the course of his employment with Arconic.

Dr. Hoffman and Dr. Kreiter are board certified orthopedic surgeons. Dr. Koerner practices in occupational and family medicine, and does not appear to be board certified. Dr. Kreiter has been engaged in an orthopedic practice since 1976. Dr. Hoffman is also quite active in the orthopedic field. Dr. Kreiter explicitly opined that the claimant's right knee injury was caused by his employment with Arconic. While Dr. Hoffman did not explicitly opine as to causation of the claimant's injury, his records from the arthroscopic procedures are illuminating. The defendants argue that Dr. Hoffman's use of the word "chronic" indicates that the ACL tear could not have occurred on March 26, 2020; however, the record indicates that Dr. Hoffman observed that the ACL was disrupted and appeared "to be rather acute with tag of the anterior cruciate ligament into the anterior compartment." The fact that the ACL disruption appeared to be acute from the surgical findings, when combined with Dr. Kreiter's opinions and the claimant's credible testimony, lead me to the conclusion that the claimant's injury of March 26, 2020, arose out of, and in the course of, his employment with Arconic. A knee injury such as that suffered by the claimant is a rational consequence of his employment with Arconic, and the injury occurred while he was working. I also conclude that the knee injury was a cause of temporary disability, and permanent disability to the claimant's right knee based upon the foregoing analysis.

Temporary Disability

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefits depends on whether or not the employee has a permanent disability. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury.

Iowa Code 85.33(1) provides

> ...the employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment substantially similar to the first employment in which the employee was engaged at the time of injury, whichever occurs first.

Temporary total disability benefits cease when the employee returns to work, or is medically capable of returning to substantially similar employment.

Iowa Code 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until: (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or, (3) the worker has achieved maximum medical recovery. The first of the three items to occur ends a healing period. See Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012); Evenson v. Winnebago Indus., Inc., 881 N.W.2d 360 (Iowa 2016); Crabtree v. Tri-City Elec. Co., File No. 5059572 (App., Mar. 20, 2020). The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986). Compensation for permanent partial disability shall begin at the termination of the healing period. Id.

In this matter, the claimant alleges two periods to which he is entitled temporary disability benefits. I previously determined that the injury of March 26, 2020, was a cause of temporary and permanent disability. Therefore, the claimant is entitled to healing period benefits. As noted above, healing period benefits can be interrupted or intermittent. There are two healing periods as a result of the claimant's work injury. The first healing period runs from April 28, 2020, to May 17, 2020. This is from the time that the claimant requested an accommodation from Arconic for certain restrictions based upon Dr. Hoffman's recommendations. These restrictions included no squatting, no climbing ladders, no straddling, no climbing more than two stairs, no pivoting, no table roll access, no climbing over piping, and no stairs. The request was denied by

Arconic. While Mr. Akers returned to work following his first surgery, he still planned on having a second surgery on his right knee with Dr. Hoffman.

The second healing period runs from November 4, 2020, through February 1, 2021. This runs from the time that Mr. Akers had his ACL reconstruction surgery to the time that Dr. Hoffman released him to return to work full duty with Arconic.

During the time periods in question, the parties stipulated that Mr. Akers was paid four hundred seventy-three and 00/100 dollars ($473.00) per week in short-term disability benefits. The parties agree that this was paid over 15.714 weeks, and totals seven thousand four hundred thirty-two and 72/100 dollars ($7,432.72).

Iowa Code section 85.38(2)(a) provides that the employer is entitled to a credit for payments made pursuant to short-term disability benefits. The amounts credited are deducted from payments that would have been made under Iowa Code chapter 85. See Iowa Code section 85.38(2)(a). There is no indication in the record that the claimant contributed to short-term disability premiums. Considering this was not asserted, and the parties stipulated an entitlement to the credit, I will proceed with an analysis of the appropriate credit. The parties stipulated that the claimant's weekly compensation rate is eight hundred forty-eight and 93/100 dollars ($848.93). Considering the parties acknowledged that the claimant was off work for 15.714 weeks, the claimant would be entitled to thirteen thousand three hundred forty and 09/100 dollars ($13,340.09) in temporary disability benefits at the stipulated rate. ($848.93 x 15.714 weeks = $13,340.09). The defendants paid seven thousand four hundred thirty-two and 72/100 dollars ($7,432.72) in short-term benefits, as stipulated. Therefore, the claimant is entitled to five thousand nine hundred seven and 37/100 dollars ($5,907.37). ($13,340.09 - $7,432.72 = $5,907.37).

The second healing period ended on February 1, 2021. Should any permanent disability benefits be awarded, the commencement date would be February 1, 2021.

Permanent Disability

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a) – (u) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Generally, permanent partial disability falls into two categories. A scheduled member, as defined by Iowa Code section 85.34(a) – (u), or a loss of earning capacity, also known as industrial disability, as defined by Iowa Code section 85.34(2)(v). Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936); Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935). Iowa Code section 85.34(2)(v) provides an alternative to the scheduled member and/or industrial disability compensation methods.

Iowa Code section 85.34(2)(v) states, in relevant part:

> If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

In determining whether the above provision of Iowa Code section 85.34(2)(v) applies, there is a comparison between the pre- and post-injury wages and earnings. McCoy v. Menard, Inc., File No. 1651840.01 (App. April 9, 2021). A claimant's hourly wage must be considered in tandem with the actual hours worked by that claimant or offered by the employer. Id.

The parties indicated that it was disputed as to whether or not the claimant should be compensated based upon a scheduled member injury or an industrial disability or the body as a whole. The claimant injured his right knee. He does not have injuries that extend to any other parts of his body besides the right knee and/or right lower extremity. Iowa Code section 85.34(2)(p) establishes the lower extremity as a scheduled member under our workers' compensation system. The total maximum compensation for a loss of a lower extremity is 220 weeks. See Iowa Code section 85.34(2)(p).

Iowa Code section 85.34(2)(w) allows for compensation to be paid on a proportional basis to the scheduled maximum compensation based upon the impairment suffered by the claimant.

Iowa Code section 85.34(2)(x) states:

> 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.

I am bound by statute to only consider the functional disability ratings issued by the various medical providers.

There is only one impairment rating provided in this matter, from Dr. Kreiter. I previously found Dr. Kreiter's opinions to be the most persuasive when it comes to whether or not the claimant's injury was a cause of permanent disability. Dr. Kreiter provided whole person impairment ratings along with his lower extremity impairment ratings. I am going to omit the whole person impairment ratings because the claimant's permanent impairment is to the right lower extremity. Dr. Kreiter provided the claimant with a 7 percent permanent impairment rating to his right knee due to patellar instability with residual pain based upon Table 17-33 on page 546 of the AMA Guides to the Evaluation of Permanent Impairment. Dr. Kreiter then issued a 17 percent permanent impairment rating to the right lower extremity due to the claimant's "positive drawer sign and effusion." The claimant contends that Dr. Kreiter's ratings combine to a 24 percent lower extremity permanent impairment. The Guides indicate on page 527 that "[w]hen more than one rating method is used, the individual impairment ratings are combined using the Combined Values Chart (p. 604)." Based upon the Combined Values Chart, the combined impairment ratings should be a 23 percent impairment based upon the ratings of 17 percent and 7 percent from Dr. Kreiter.

The defendants bring up some arguments in their posthearing brief as to why the rating of Dr. Kreiter should be disregarded when it comes to the claimant's permanent impairment of his right lower extremity. The first criticism of Dr. Kreiter's impairment analysis is that in assigning a 7 percent lower extremity impairment, Dr. Kreiter based his opinion on the claimant having patellar instability based upon Table 17-33 on page 546. The portion of Table 17-33 which allows for a rating of 7 percent to the lower extremity is based upon "[p]atellar subluxation or dislocation with residual instability." Subluxation is defined as a partial dislocation. See Merriam-Webster (Online) https://www.merriam-webster.com/dictionary/subluxation, (last viewed October 26, 2022). There is no indication in the medical records that the claimant suffered any kind of dislocation of his patella. Considering Dr. Kreiter did not provide more explanation on why he arrived at this rating for the right knee, his rating on this particular aspect of the right lower extremity is not credible and not adopted.

The second criticism of Dr. Kreiter's impairment rating by the defendants is that he does not cite to a specific section of the Guides when he assigned a 17 percent lower extremity impairment for moderate ACL instability. The defendants argues that the claimant did not display ACL instability, and note that Table 17-33 on page 546 of the Guides provides for a 17 percent impairment rating to the lower extremity due to moderate cruciate or collateral ligament laxity. The defendants argue that laxity means a "loose knee ligament." Defendants' Post-hearing Brief, p. 19. What they ignore is that Dr. Kreiter also indicated that the claimant had a positive drawer sign and continued effusion upon his examination. The anterior drawer test examines the integrity of the ACL. See The anterior drawer sign: what is it?, Online, https://pubmed.ncbi.nlm.nih.gov/1219194/ (last viewed October 26, 2022). Considering

the positive drawer sign and continued effusion, I do not find the defendants' argument convincing as to this element of the impairment rating provided by Dr. Kreiter.

I would note that the claimant had a partial medial meniscectomy on May 6, 2020, as performed by Dr. Hoffman. Table 17-33 of the Guides provides for a 2 percent permanent impairment rating to the lower extremity if the claimant had a partial medial meniscectomy. I am not substituting agency expertise in making this assertion. I am basing this solely on the Guides and Table 17-33 in conjunction with the objective medical records, which comports with the plain language of the statute. Ultimately, as noted below, this would not be combined with the 17 percent impairment rating.

The defendants next argue that Dr. Kreiter improperly combined the two impairment ratings in arriving at his combined body as a whole impairment rating. As noted above, Dr. Kreiter did not provide a combined permanent impairment rating for the right lower extremity. The 24 percent number was approximated by the claimant's attorney. The 23 percent number above is based upon the 17 percent impairment and the 7 percent impairment being combined pursuant to the Combined Values Chart on page 604 of the Guides. The defendants argue that the Guides dictate that only the higher impairment rating should be used if more than one method can be used.

According to the Guides, there are 13 methods which may be used to assess lower extremity impairments. Guides, page 525. These methods are divided into three assessment types: anatomic, functional, and diagnosis based. Id. Diagnosis based estimates are to be used to evaluate impairment caused by specific things such as ligamentous instability or various surgical procedures. Id. "In certain situations, diagnosis-based estimates are combined with other methods of assessment." Id. After the impairing conditions have been identified and rated, the rater is to select the clinically appropriate method and reference Table 17-2 on page 526 in order to determine whether the resulting impairment ratings may be combined. Id. at 526. Evaluators are to avoid combining methods that rate the same condition, and if more than one method can be used, the higher rating should be adopted. Id. at 527. Table 17-2 indicates that ratings based in the Diagnosis-Based Estimate method should not be combined with ratings based on the same method. Therefore, Dr. Kreiter improperly combined the impairment ratings.

The defendants make an argument in their posthearing brief as to apportionment pursuant to Iowa Code section 85.34(7). This is the first time that the argument has been raised. It was not listed in the hearing report as a disputed issue. However, in the interest of completeness, I will engage in a brief discussion on this issue. Iowa Code section 85.34(7) provides that "[a]n employer is not liable for compensating an employee's preexisting disability that arose … from causes unrelated to employment." The defendants argues that the claimant's previous ACL repair surgery would present him with pre-existing permanent impairment. They present no evidence as to the extent of this alleged permanent impairment in the record. They also did not include that it was an issue for consideration in the hearing report, which would have been proper under section 10 of the hearing report. There is no evidence in the record that the claimant had permanent impairment or issues with his right knee at the time of his injury in March

of 2020. While it is the claimant's burden to prove his impairment, I find that he did so with regard to the injury at issue in this case.

Based upon the foregoing and the evidence in the record, the proper impairment rating is the 17 percent impairment rating provided by Dr. Kreiter based upon Table 17-33 on page 546 of the Guides. I adopt this impairment rating. Therefore, the claimant is entitled to 37.4 weeks of permanent partial disability benefits for his right lower extremity impairment. (220 weeks x 0.17 = 37.4 weeks).

Medical Expenses

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Pursuant to Iowa Code 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn, 420 N.W.2d at 463. Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution."). See also Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (Iowa App. 2015)(Table) 2015 WL 7574232 15-0323.

The employee has the burden of proof to show medical charges are reasonable and necessary, and must produce evidence to that effect. Poindexter v. Grant's Carpet Service, I Iowa Industrial Commissioner Decisions, No. 1, at 195 (1984); McClellan v. Iowa S. Util., 91-92, IAWC, 266-272 (App. 1992).

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodward State Hospital School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Border Company , No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury) See also Bass v. Veith Construction Corp., File No 5044438 (App. May 27, 2016) (Claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v. Trinity Health,

File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills).

Nothing in Iowa Code section 85.27 prohibits an injured employee from selecting his or her own medical care at his or her own expense following an injury. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 205 (Iowa 2010). In order to recover the reasonable expenses of the care, the employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial. Id. The Court in Bell Bros. concluded that unauthorized medical care is beneficial if it provides a "more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

The defendants in this matter denied liability for the claimant's right knee injury and treatment following April 7, 2020. The care undertaken by the claimant after this denial is contended to be unauthorized care by the defendants. The record shows that the care sought by the claimant provided a more favorable medical outcome than would likely have been achieved by the denial of care by the defendants. Therefore, the defendants are responsible for the outstanding medical billing as noted herein. Based upon my review of the medical records, the claimant has proven that the treatment was related to the injury sustained by the claimant on March 26, 2020, in the course and scope of his employment with Arconic. Claimant's exhibits indicate that the claimant's insurer paid seventeen thousand five hundred ninety and 61/100 dollars ($17,590.61) for the care sought by the claimant. The claimant paid one thousand seven hundred ninety-one and 38/100 dollars ($1,791.38) for the medical care. Therefore, it is appropriate for the defendants to reimburse the claimant's health insurer seventeen thousand five hundred ninety and 61/100 dollars ($17,590.61), and the claimant one thousand seven hundred ninety-one and 38/100 dollars ($1,791.38).

Additionally, the claimant is entitled to compensation for medical mileage. Mr. Akers submitted a mileage estimate as Claimant's Exhibit 6, pages 43-46. I cross-referenced the dates requested for mileage with the medical records in evidence and confirmed that the dates for which the claimant requested mileage also had corresponding related appointments. I found one duplicate mileage listed for November 6, 2020, which was a 9.2 mile round trip. There is no indication in the records that there were two physical therapy appointments that day. Therefore, 9.2 miles is excluded from the calculation of the final amounts. I also compared the distances claimed by entering the claimant's address and the providers addresses. There is an issue with whether the amount of mileage claimed is reasonable. Taking the shortest route between two places is reasonable.

I would note that I previously have made calculations based upon this framework. This was affirmed by the commissioner and Iowa District Court for Polk County as reasonable and not violative of a claimant's due process rights. This is not conducting an "independent investigation" by relying on Google Maps to determine the mileage from the claimant's home to a medical appointment. See Trujillo v. John Deere Davenport Works, File No. 19700625.01 (App. Dec., August 4, 2021)(affirmed by District Court citing Mycogen Seeds v. Sands, 686 N.W.2d 457, 465 (Iowa 2004)). The burden shifting test in Mycogen Seeds requires the claimant to produce evidence that

their chosen manner of transportation was reasonable and economical under the circumstances. Mycogen Seeds, 686 N.W.2d at 486. This then shifts a burden to the defendants, and finally the Commissioner (or in this case Deputy Commissioner) considers the evidence presented and determines how much compensation the claimant is owed. Id. In this case, like Trujillo, there is no explanation as to how the claimant determined their mileage calculations.

Therefore, I considered the claimant's home address and the address of each of the medical providers. I input this information into Google Maps, and considered the shortest distance to be the most reasonable and economical under the circumstances considering the lack of any other information presented by the claimant as to the claimed mileage.

The claimant requests mileage reimbursement as follows:

Orthopaedic Specialists	45.6 miles round-trip
Metro MRI	37.2 miles round-trip
QCB Lab Administration	37.2 miles round-trip
Mississippi Valley Surgery	37.2 miles round-trip
Rock Valley Physical Therapy	9.2 miles round-trip
Dr. Richard Kreiter	39.2 miles round-trip

I found the following mileages based upon Google Maps, and as noted above, considered the shortest distance between two points to be the most reasonable and economical considering the circumstances:

Orthopaedic Specialists	35.2 miles round-trip
Metro MRI	37.2 miles round-trip
QCB Lab Administration	37.2 miles round-trip
Mississippi Valley Surgery	35.2 miles round-trip
Rock Valley Physical Therapy	9.2 miles round-trip
Dr. Richard Kreiter	39.2 miles round-trip

Of note, the claimant provided accurate reimbursement rates as noted in Claimant's Exhibit 6. The foregoing calculations are based upon those rates. Based upon the mileages considered above, I find that the claimant is entitled to recover five hundred forty-five and 07/100 dollars ($545.07) for his medical mileage.

IME Reimbursement

Iowa Code 85.39(2) states:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be

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

Iowa Code section 85.39(2).

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). An opinion finding a lack of causation is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021).

In this case, Dr. Koerner opined that the claimant suffered a temporary exacerbation of his previous knee issue. I found that to not be the case and concluded above that the claimant's right knee injury arose out of and in the course of his employment with Arconic. The claimant obtained an IME from Dr. Kreiter, which provided a causation opinion and an impairment rating. I conclude that Dr. Koerner's opinion is akin to an opinion finding a lack of causation and therefore is tantamount to a zero percent impairment rating. The defendants shall reimburse the claimant one thousand and 00/100 dollars ($1,000.00) for Dr. Kreiter's reasonable IME fees.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 5. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code section 86.40. 876 Iowa Administrative Code 4.33(6) provides:

> [c]osts taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed

> the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

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

The claimant seeks to recover one hundred three and 00/100 dollars ($103.00) for the cost of the filing fee. In my discretion, I award the claimant one hundred three and 00/100 dollars ($103.00) for the filing fee.

ORDER

THEREFORE, IT IS ORDERED:

That the defendants shall pay the clamant five thousand nine hundred seven and 37/100 dollars ($5,907.37) for temporary disability and/or healing period benefits.

That the defendants shall pay the claimant thirty-seven point four (37.4) weeks of permanent partial disability benefits at the agreed upon rate of eight hundred forty-eight and 93/100 dollars ($848.93) per week commencing on February 1, 2021.

That the defendants shall reimburse the claimant's insurer seventeen thousand five hundred ninety and 61/100 dollars ($17,590.61) for medical costs.

That the defendants shall reimburse the claimant one thousand seven hundred ninety-one and 38/100 dollars ($1,791.38) for medical costs.

That the defendants shall reimburse the claimant five hundred forty-five and 07/100 dollars ($545.07) for medical mileage.

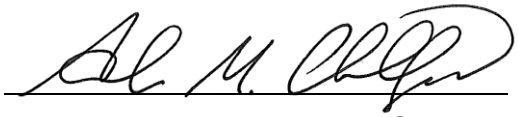
That the defendants shall reimburse the claimant one thousand and 00/100 dollars ($1,000.00) for the IME expenses of Dr. Kreiter.

That the defendants shall reimburse the claimant one hundred three and 00/100 dollars ($103.00) for costs incurred.

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

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

Signed and filed this 21st day of November, 2022.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

M. Leanne Tyler (via WCES)

Troy Howell (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.