



2. Whether claimant's permanent disability, if any, is limited to the scheduled member left lower extremity;
3. Whether claimant is entitled to reimbursement for the fees associated with an independent medical examination (IME) under Iowa Code section 85.39; and
4. Costs.

### FINDINGS OF FACT

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

Donald Byers, an over-the-road truck driver, was 68 years old on the date of the evidentiary hearing. (Hearing Transcript, page 13) After graduating from high school, Mr. Byers honorably served in the United States National Guard for 20 years. (Id.) While serving in the National Guard, Mr. Byers acquired skills as a mechanic and a truck driver. (Id.) He retired from the National Guard in 1991. (Hr. Tr., p. 14)

At the time of hearing, Mr. Byers possessed a Class A Commercial Driver's License (CDL). (Hr. Tr., p. 14) He last presented for, and passed, a Department of Transportation physical examination in the spring of 2020. (Hr. Tr., p. 52; Exhibit D, Deposition Transcript, pp. 6-7) It should be noted that claimant is required to pass a physical every year, as opposed to every two years, because he has a heart condition. (Ex. D, Depo. p. 7)

The vast majority of claimant's employment history has involved over-the-road truck driving. (See Hr. Tr., pp. 17-18) As such, a full review of claimant's work history will not be conducted.

Mr. Byers began working as an over-the-road truck driver for Amhof, the defendant employer, in 2008. (Hr. Tr., p. 50) He remained an active employee for Amhof on the date of the evidentiary hearing. (Hr. Tr., p. 15) Today, claimant operates a dry-van trailer. (Hr. Tr., pp. 39, 51) He works in a full duty capacity. (Hr. Tr., p. 49) Prior to operating the dry-van trailer, claimant drove a flat-bed trailer; however, he last routinely ran a flat-bed trailer for Amhof approximately three years prior to the date of injury. (Id.) According to claimant, he transitioned out of running flat-bed trailers because he was "getting too old to throw tarps." (Id.)

Carol Millam, Amhof Trucking's Safety Director for the past 15 years, testified at hearing. (See Hr. Tr., p. 74) Ms. Millam testified claimant has mainly operated a dry-van trailer for the past four years. (Hr. Tr., p. 75) When comparing claimant's output prior to and after the June 24, 2019 work injury, Ms. Millam testified claimant continues to drive about the same number of miles and hours per week. (Id.) Ms. Millam described claimant as a good employee and one of Amhof's better drivers. (Hr. Tr., p. 76)

At this juncture, I note that claimant presented as an above average witness. He appeared to be a very hard-working and candid individual. Counsel for defendants acknowledged the same at deposition. (See Ex. D, Depo. p. 25) Claimant appeared forthright when responding to questions at hearing. He appeared to answer each question to the best of his ability. He presented himself as an honest and trustworthy individual. I find claimant to be credible.

Claimant's pre-injury medical history is relevant for a slip and fall in January 2011. (See Ex. 1, p. 3) A January 27, 2011 MRI revealed a partial tear of the posterior cruciate ligament and some mild patellofemoral changes. He eventually returned to full duty work and was assigned zero percent (0%) impairment. (See Ex. 1, p. 3)

On June 24, 2019, claimant sustained a stipulated injury while pulling himself up into the trailer of his truck while leading with his left lower extremity. (Joint Exhibit, p. 1) At the time of the alleged injury, claimant was unloading his truck in the state of Virginia. (Hr. Tr., p. 19) According to claimant, he immediately experienced a pulling sensation and pain in his left hip and groin area, with radiating pain down the front of his leg to his ankle. (Id.) Shortly thereafter, claimant called his safety director and reported the injury. (See Hr. Tr., p. 20-23) Defendants subsequently authorized medical treatment for claimant's left knee and low back.

Rick Garrels, M.D., of Genesis Occupational Health initially diagnosed claimant with a strain of the muscle, fascia, and tendon of the left hip, prescribed gabapentin, and released claimant to regular duty work status on June 27, 2019. (JE1, p. 2)

When claimant returned to Dr. Garrels on July 5, 2019, he reported a worsening of his condition. He characterized his pain as constant, sharp, throbbing, and shooting. (JE1, p. 5) After conducting a physical examination of claimant, Dr. Garrels added, "Radiculopathy, lumbar region" to claimant's list of conditions. (JE1, p. 6) When claimant reported little to no improvement from the gabapentin prescription, Dr. Garrels increased the dosage and added tizanidine to address claimant's muscle spasms. (Id.)

Claimant first presented for physical therapy on July 16, 2019. (JE2, p. 41) The record reflects claimant reported pain in his left hip and numbness in his left knee. (Id.) On examination, claimant demonstrated an antalgic gait, as well as loss of strength and range of motion in the left hip. (Id.) On July 18, 2019, claimant was "very limited" with exercises due to his left hip pain. (JE2, p. 44)

Despite medication and physical therapy, claimant reported a worsening of his symptoms on July 19, 2019. (JE1, p. 9) Given claimant's complaints, Dr. Garrels increased claimant's gabapentin prescription for a second time, ordered an MRI of the lumbar spine, and returned claimant to restricted duty work status. (JE1, p. 10)

The MRI dated July 23, 2019, revealed mild multilevel disc bulging with posterior annular tears, mild central canal stenosis at L4-5 with no significant central canal stenosis at other levels, and left neural foraminal stenosis at L3-4 with bilateral neural foraminal stenosis at L4-5 and L5-S1. (JE3, pp. 51-52)

When claimant did not respond to the increased gabapentin dosage, Dr. Garrels decided to taper claimant off of the medication. (JE1, p. 14) In its place, Dr. Garrels prescribed tramadol and referred claimant for an epidural steroid injection (ESI). (Id.)

Timothy Miller, M.D., administered the ESI to claimant's lumbar spine on August 5, 2019. (JE4, p. 55) In his medical record, Dr. Miller provided, "Patient presents with left leg sciatic pain, pretty classic distribution of L4-5. . . . He has a herniated disc at L4-5 with definite radicular pain. . . . He does have a lot of numbness and paresthesias." (JE4, p. 54) Dr. Miller opined claimant's left leg sciatic pain was associated with a herniated disc as opposed to an inflammatory component. (Id.)

Claimant reported improvement following the August 5, 2019 ESI. (JE1, p. 17) Given claimant's positive response to the ESI, Dr. Garrels referred claimant back to physical therapy and prescribed hydrocodone. (JE1, p. 18)

Claimant presented to physical therapy on three occasions between August 12, 2019, and August 19, 2019. (See JE2, pp. 45-50) Claimant continued to demonstrate an antalgic gait. (See JE2, p. 50) His physical therapists consistently diagnosed claimant with radiculopathy, muscle weakness, and low back pain. (See JE2, pp. 45, 47, 49)

On August 19, 2019, claimant presented to Dr. Garrels reporting constant, stable pain in the left knee radiating to the ankle. (JE1, p. 21) He further reported difficulty with walking. (Id.) The medical record is not particularly clear on the matter; however, it appears as though claimant reported 6 out of 10 pain in the low back, and 10 out of 10 pain in the left lower extremity. (See Id.) Following his examination, Dr. Garrels discontinued physical therapy, prescribed a cane, and referred claimant to Michael Dolphin, D.O., for orthopedic evaluation of the lumbar spine. (JE1, p. 22)

Claimant presented to an appointment with Cheryl Benson, PA-C, of Genesis Occupational Health on August 30, 2019. (JE1, p. 25) The evidentiary record provides no explanation as to why claimant's care was momentarily transitioned to Ms. Benson as opposed to Dr. Garrels. The record notes that Ms. Benson reviewed claimant's medical records prior to her examination. (Id.) It appears from the medical record that claimant had previously injured his left knee and received an ESI for the same. (See id.) After conducting a physical examination, Ms. Benson ordered an x-ray of claimant's left knee and referred claimant to Dr. Miller for a pain consultation regarding the lumbar spine and left knee. (JE1, pp. 26-27) Without explanation, Ms. Benson cancelled Dr. Garrels' orthopedic referral to Dr. Dolphin and, instead, simply prescribed a Medrol Dosepak. (JE1, p. 27)

Claimant's medical care returned to Dr. Garrels on September 6, 2019. (JE1, p. 29) Claimant unsurprisingly reported continued left knee pain despite taking the Medrol Dosepak. (Id.) Following his examination, Dr. Garrels administered a corticosteroid injection to claimant's left knee. Shockingly, despite claimant's continued complaints of pain, Dr. Garrels anticipated improvement following the steroid injection and released claimant to return to regular duty work status. Apparently waiting to see if the injection

actually improved claimant's condition before returning him to full duty work was too much to ask. (JE1, p. 31)

Dr. Miller administered a second ESI to claimant's lumbar spine on September 9, 2019. (JE4, p. 56) According to claimant, his treating physicians shifted their focus to his left knee following Dr. Miller's second round of ESIs to the low back. (Ex. D, Depo. pp. 18-19)

Claimant reported improvement in his left knee pain following the September 6, 2019 injection. (JE1, p. 33) Instead of pain, claimant was reporting "fullness" in his left knee at his September 27, 2019 appointment. Claimant described the "fullness" as achy and dull. (Id.) Claimant reported his regular job duties were going well and he had full function of his left knee. (Id.) However, claimant continued to complain of numbness in the left lower extremity. More specifically, claimant reported that the lateral aspect of his left leg, from his knee to his foot, felt numb. (JE1, p. 34)

At the same appointment, claimant reported interval resolution in his back pain following the September 9, 2019 ESI to the lumbar spine. (Id.) Dr. Garrels stated he would consider having claimant return to Dr. Miller should claimant's low back pain return. (JE1, p. 35) Dr. Garrels concluded that an orthopedic referral to Dr. Dolphin was no longer necessary. (Id.)

However, when claimant continued to report constant pain and numbness in the left lower extremity at his November 15, 2019 follow-up appointment, Dr. Garrels referred claimant to Dr. Dolphin for an orthopedic evaluation of the lumbar spine. (JE1, pp. 37-38)

Pursuant to Dr. Garrels' referral, claimant presented to Dr. Dolphin on December 5, 2019. (JE5, p. 57) Dr. Dolphin reviewed the results of claimant's MRI, noting slight foraminal narrowing on the left at L3-4, and no frank herniation or severe stenosis. (JE5, p. 59) Following his examination, Dr. Dolphin diagnosed claimant with low back pain, difficulty with walking, and spinal stenosis without neurogenic claudication. Dr. Dolphin did not consider claimant's low back condition to be surgical. Instead, Dr. Dolphin recommended that claimant be examined by a knee specialist in the near future. (Id.)

Pursuant to Dr. Dolphin's recommendation, claimant presented to John Hoffman, M.D., on January 3, 2020, with complaints of constant, all over pressure pain in the left knee. (JE5, p. 60) The medical record contains a note that claimant, "has a pinched nerve in his back which causes numbness down the outside of his knee." (Id.) The record also mentions that claimant had previously sustained a torn meniscus in 2011. (Id.) After reviewing claimant's December 27, 2019 left knee MRI, Dr. Hoffman administered a second cortisone injection into claimant's left knee and scheduled him for physical therapy. (JE5, pp. 61, 63; JE6, p. 75) When the second injection to the left knee did not provide claimant any relief, Dr. Hoffman scheduled claimant for surgery. (See JE5, pp. 64, 67)

Dr. Hoffman performed a left knee arthroscopy with chondroplasty of the patellofemoral joint on February 12, 2020. (JE7, pp. 76-77)

Claimant completed his final course of physical therapy on February 21, 2020. (JE5, p. 68) He returned to full duty work on February 24, 2020. (JE5, p. 69)

At hearing, claimant testified that he cannot kneel, jump, crawl, or easily squat. (Hr. Tr., p. 45) He has a difficult time gardening, pulling weeds, and working on his hands and knees. (Id.) As for his low back, claimant testified that his back will hurt if he stands for prolonged periods of time or if he bends over repetitively. (Hr. Tr., p. 46)

Dr. Hoffman placed claimant at maximum medical improvement (MMI) as of March 26, 2020. (JE5, p. 71) He assigned one percent permanent impairment to the left lower extremity based on the arthroscopy and chondroplasty of the patellofemoral joint. (Id.)

Claimant scheduled an independent medical examination (IME) with Richard Kreiter, M.D. to occur on July 14, 2020. (Ex. 1, p. 1) At the time of the IME, claimant continued to experience some left lower back and buttock pain. He also described numbness and tingling in the lateral aspect of the left knee, but no sciatica from the buttock down the leg and below the knee. (Ex. 1, p. 4) According to claimant, the sciatica resolved subsequent to the two ESIs and physical therapy. (Id.) Claimant was unsure as to whether his knee surgery was beneficial. At the time of the IME, claimant felt as though his knee had returned to its pre-surgery condition. (Id.) Dr. Kreiter observed normal range of motion in the left knee, and limited range of motion in the lumbosacral region. (Id.)

Dr. Kreiter opined the June 24, 2019 work injury caused (1) a subluxing patella event, with increasing left knee pain, which led to arthroscopic surgery, and (2) an aggravation and acceleration of an otherwise asymptomatic lumbosacral low back condition, with sciatica. (Ex. 1, p. 1) With respect to permanent impairment, Dr. Kreiter assigned seven percent (7%) impairment to the left lower extremity, or three percent (3%) whole person impairment. (Id.) For the low back, Dr. Kreiter placed claimant in DRE Category II, and opined claimant's permanent impairment would fall between five to eight percent whole person impairment. He further opined, "From the combined values chart this could be as much as a 10% whole person impairment." (Id.)

Regarding permanent restrictions, Dr. Kreiter recommended claimant limit squatting, kneeling, crawling, and jumping. (Id.) He further recommended claimant avoid driving vehicles with a rough ride, such as heavy equipment, as it would cause more axial loading to the lumbar spine and could increase injury to said area. Lastly, he recommended against driving, loading, or tarping flatbed trailers. (Id.) Dr. Kreiter acknowledged that claimant is tolerating his present work conditions. (Id.)

In response to Dr. Kreiter's IME report, defendants penned a letter to Dr. Garrels, requesting his opinion as to claimant's lumbar spine condition. (Ex. A, p. 1) Dr. Garrels responded to defendants on August 5, 2020. (Ex. A, p. 3) Dr. Garrels estimated

claimant reached MMI for the low back condition on December 5, 2019. (Id.) With respect to permanent impairment, Dr. Garrels placed claimant in DRE Category I and assigned zero percent impairment to the lumbar spine as a result of the June 24, 2019 work injury. (Id.) While not specifically asked to opine on claimant's left knee, Dr. Garrels took the opportunity to assign zero percent impairment to the left lower extremity as a result of the June 24, 2019 work injury. (Id.)

Claimant's left lower extremity condition is the only condition that all three physicians opined on. (See JE5, p. 71; Ex. 1, p. 1; Ex. A, p. 3) After considering the competing medical opinions, it is difficult for me to accept the opinions of Dr. Garrels, an occupational physician, over the opinions of two orthopedic surgeons. This is particularly true with respect to claimant's left lower extremity, as Dr. Garrels is the only physician to opine claimant sustained no permanent impairment as a result of the surgical left knee condition. Defendants appear to concede this point, noting in their post-hearing brief that they no longer dispute whether claimant sustained a permanent injury to his left knee as a result of the June 24, 2019 work injury. Nevertheless, I reject Dr. Garrels' opinion and find claimant carried his burden of proving he sustained a permanent injury to the left lower extremity as a result of the June 24, 2019 work injury. Such a finding is in line with the expert opinions of both Dr. Hoffman and Dr. Kreiter.

Dr. Hoffman assessed claimant with one percent impairment to the left lower extremity "based on arthroscopy and chondroplasty of the patellofemoral joint." (JE5, p. 71) Dr. Hoffman notes that he utilized the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition in rendering his impairment rating. (Id.) While I have little reason to question the validity of Dr. Hoffman's impairment rating, it is important to note he did not cite to a specific table or page in the AMA Guides that would allow the undersigned to verify his assessment.

Dr. Kreiter assessed claimant with seven percent impairment to the left lower extremity due to patellar residual instability. (Ex. 1, p. 1) Unlike in Dr. Hoffman's report, Dr. Kreiter specifically cited to Table 17-33 on page 546 of the AMA Guides, Fifth Edition when providing his impairment rating. (Id.) The one percent impairment rating assigned by Dr. Hoffman does not match any of the lower extremity impairment ratings provided in Table 17-33. Again, this does not necessarily render Dr. Hoffman's impairment rating inaccurate; however, specificity matters in a battle of the experts. As such, I find the permanent impairment rating offered by Dr. Kreiter to be most convincing and consistent with the AMA Guides, Fifth Edition. I further find claimant carried his burden of proving he sustained seven percent permanent impairment to the left knee as a result of the June 24, 2019 work injury.

Mr. Byers also asserts he sustained a permanent injury or material aggravation of his low back condition on June 24, 2019. In support of his claim, claimant again offers the opinions of his expert physician, Dr. Kreiter. In his report, Dr. Kreiter opines that the June 24, 2019 work injury aggravated and accelerated an otherwise asymptomatic lumbosacral back which caused left sciatica and was treated with epidural steroid injections on the left at L4-5. (Ex. 1, p. 1) As a result, Dr. Kreiter placed

claimant in the DRE Category II and assigned five to eight percent impairment to the whole person. (Id.)

According to the AMA Guides, Fifth Edition, if an individual had a radiculopathy caused by a herniated disc or lateral spinal stenosis that responded to conservative treatment and, at the time of the impairment rating, he or she had no radicular symptoms or signs, said individual is correctly placed in DRE Category II. (Guides, p. 383) This passage in the AMA Guides is consistent with claimant's medical history following the June 24, 2019 work injury.

Three days after the date of injury claimant presented to Dr. Garrels with complaints of radiating low back pain. Between July 5, 2019, and November 15, 2019, Dr. Garrels or members of his medical team consistently diagnosed claimant with radiculopathy in the lumbar region following each examination. (JE1, pp. 5-39) During this time period, Dr. Garrels referred claimant for an orthopedic evaluation of his lumbar spine on three different occasions. Defendants offer no explanation as to why Dr. Garrels' first two referrals were not authorized in a timely fashion. Dr. Garrels also referred claimant to Dr. Miller, a pain management specialist, for epidural steroid injections. As previously mentioned, Dr. Miller was of the opinion that claimant's sciatic pain illustrated a "pretty classic distribution of L4-5 . . . associated with disc more than inflammatory component." Dr. Miller further opined claimant "has herniated disc at L4-5 with definite radicular pain." (JE4, p. 54)

Further, on July 23, 2019, claimant obtained an MRI of his lumbar spine. The radiologist who carried out the diagnostic imaging documented multilevel disc bulging with posterior annular tears, mild central canal stenosis at L4-5, and left neural foraminal stenosis at L3-4 with bilateral neural foraminal stenosis at L4-5 and L5-S1. (JE3, pp. 51-52)

Given these findings, Dr. Miller recommended and performed a series of ESIs at L4-5. The ESIs, administered to address claimant's lumbar radiculopathy, successfully alleviated claimant's lumbar radiculopathy, suggesting Dr. Garrels and Dr. Miller were correct in their diagnoses.

Defendants appear to make the argument that claimant's low back pain and alleged radiculopathy were solely attributable to claimant's left lower extremity. Defendants rely on the opinions of Dr. Dolphin in support of such an argument. In this regard, defendants present Dr. Dolphin's one-time examination and report as if it was an independent medical examination, with the express purposes of determining whether (1) claimant had lumbar radiculopathy; and (2) whether said radiculopathy was causally related to the June 24, 2019 work injury. Such an assertion appears to be based in revisionist history as opposed to fact.

According to defendants, claimant was sent to Dr. Dolphin to "rule out" lumbar radiculopathy as an explanation for claimant's left lower extremity symptoms. Defendants assert Dr. Dolphin's medical records reveal claimant's ongoing problems stemmed from his left knee and not the lumbar spine. They provide,

There is nothing in Dr. Dolphin's note to indicate he felt Claimant had lumbar radiculopathy affecting his left leg. Rather, he ostensibly attributed Claimant's left leg symptoms to his left knee condition.

(Defendants' Brief, pp. 5-6) Defendants are correct; technically speaking, there is nothing in Dr. Dolphin's medical record to indicate he felt claimant had lumbar radiculopathy affecting his left leg. However, when looking to the evidentiary record as a whole, it is clear defendants have taken Dr. Dolphin's findings out of context.

It is important to remember that Dr. Dolphin's medical report is a snapshot of a specific period in time. In his report, Dr. Dolphin did not diagnose lumbar radiculopathy or provide any meaningful discussion regarding the same. Instead, Dr. Dolphin addressed claimant's then-current complaints and determined the same were likely stemming from the left knee. Logically speaking, this makes sense, as it is well documented and virtually indisputable that claimant's lumbar radiculopathy had subsided prior to Dr. Dolphin's examination.

At the time Dr. Garrels referred claimant to Dr. Dolphin for a surgical consultation, both Dr. Garrels and Dr. Miller had already diagnosed and treated claimant for his complaints of lumbar radiculopathy. Dr. Garrels was aware of the fact claimant's lumbar radiculopathy had improved when he referred claimant to Dr. Dolphin for ongoing symptoms in the left lower extremity. Dr. Garrels referred claimant to Dr. Dolphin to rule out lumbar radiculopathy as an explanation for claimant's lingering pain. In other words, Dr. Dolphin's examination addressed the lingering pain claimant was experiencing in his left lower extremity after the lumbar radiculopathy had subsided. He did not comment on claimant's previously diagnosed lumbar radiculopathy except to note that claimant's condition was not surgical. Dr. Dolphin's medical record does not support defendants' argument.

It is also worth noting Dr. Dolphin was apparently not asked to elaborate on his findings or otherwise provide a final report in this matter.

The evidentiary record contains two expert reports pertaining to the lumbar spine. When comparing the impairment ratings offered by Dr. Garrels and Dr. Kreiter, I note that Dr. Garrels had the opportunity to evaluate claimant's low back on multiple occasions. (See JE1) In contrast, Dr. Kreiter examined claimant on a one-time basis for purposes of litigation. On the other hand, as previously mentioned, Dr. Kreiter's credentials and level of experience are superior to those of Dr. Garrels'.

At first glance, it would seem as though Dr. Garrels' impairment rating is consistent with claimant's reporting that his radiating low back pain went away after approximately three months of treatment. (Hr. Tr., pp. 54, 58) However, this is a common misconception in the realm of workers' compensation. The resolution of an individual's symptoms does not necessarily render their condition temporary in nature. An individual's ongoing symptoms is a factor to be considered in determining the extent of permanent disability; it is not a determinative factor when considering the nature of disability. As previously noted, placement in DRE Category II actually requires that an

individual's condition is no longer symptomatic. Any disability that remains after stabilization of the condition will support an award of permanent partial disability benefits to the extent the residual impairment decreases the claimant's earning capacity.

Moreover, Dr. Garrels did not elaborate on how he reached his ultimate conclusion that claimant did not sustain any permanent disability as a result of the June 24, 2019 work injury. This is particularly relevant when considering the fact Dr. Garrels consistently diagnosed claimant with lumbar radiculopathy, including in his August 5, 2020 letter. (See Ex. A, p. 3) There is no evidence Dr. Garrels reviewed any updated medical records prior to rendering his final opinion. There is no evidence Dr. Garrels conducted an updated evaluation of claimant prior to responding to defendants' July 16, 2020 letter. (See Ex. A, pp. 1-4)

It is somewhat disconcerting that Dr. Kreiter did not provide a definitive impairment rating. Instead, he simply placed claimant in DRE Category II, and explained conditions that fall in Category II carry with them an impairment range between five and eight percent. He added: "From the combined values chart [claimant's impairment from the left lower extremity and low back] could be as much as a 10% whole person impairment." (Ex. 1, p. 1) That being said, it is clear Dr. Kreiter is of the opinion that claimant's low back condition is causally related to the June 24, 2019 work injury and permanent.

Ultimately, I accept Dr. Kreiter's expert opinion with respect to claimant's low back condition and find claimant's injury to the low back is permanent in nature. Because claimant's low back condition is asymptomatic, and with the understanding that I am not a medical professional with the ability to assign a specific impairment rating, I will default to the five percent impairment rating provided by Dr. Kreiter. I further find the restrictions recommended by Dr. Kreiter accurately reflect claimant's functional abilities and accept the same as claimant's permanent restrictions.

I find claimant carried his burden of proving by a preponderance of the evidence he sustained a permanent injury to the low back as a result of the June 24, 2019 work injury. Given this finding, I must determine whether claimant is entitled to industrial disability. Because claimant has returned to work, earning the same or greater wages as he did on the date of injury, I find claimant's entitlement to permanent partial disability benefits is currently limited to his functional impairment rating. The issue of industrial disability is not ripe for determination at this time.

Using the Combined Values Chart found at page 604 of the AMA Guides, Fifth Edition, I find that the three percent whole person permanent impairment rating for the left knee combines with the five percent whole person impairment rating for the lumbar spine and results in a combined rating equal to eight percent of the whole person. I find that Mr. Byers proved an eight percent permanent impairment of the whole person as a result of the injuries sustained on June 24, 2019.

Claimant also seeks an award of medical mileage for past medical treatment. Claimant attached itemized medical mileage statements in Exhibit 6. The medical mileage statements appear thorough and accurate. I find that claimant has proven he traveled the medical mileage now claimed and itemized in the medical mileage statements in Exhibit 6.

### CONCLUSIONS OF LAW

The initial disputed issue is whether claimant sustained permanent disability as a result of the June 24, 2019 work injury and, if so, the extent of claimant's entitlement to permanent disability benefits. Mr. Byers asserts he sustained permanent injuries to both the left lower extremity and the low back on June 24, 2019. If compensable, the low back injury would serve as the basis for an award of industrial disability.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

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

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

In their post-hearing brief, defendants concede that claimant sustained a permanent injury to his left knee as a result of the June 24, 2019 work injury. On this issue, I found the opinions of Dr. Kreiter to be the most persuasive and credible.

Accordingly, I accepted Dr. Kreiter's three percent impairment rating to the left lower extremity.

Defendants dispute whether claimant sustained a permanent injury to the low back as a result of the June 24, 2019 work injury.

Claimant produced evidence from Dr. Kreiter opining that the work injury resulted in permanent impairment of the lumbar spine. I reviewed all pertinent medical records and analyzed claimant's testimony at both the evidentiary hearing and at his deposition. Ultimately, I found claimant produced sufficient evidence to show the June 24, 2019 work injury was a cause of permanent disability in claimant's low back.

Having found claimant carried his burden of proving he sustained a permanent injury to the low back as a result of the June 24, 2019 work injury, I conclude claimant established by a preponderance of the evidence that his injury extends into the body as a whole and should be compensated pursuant to Iowa Code section 85.34(2)(v).

Iowa Code section 85.34(2)(v) (2018) provides:

In all cases of permanent partial disability other than those hereinabove described or referred to in paragraphs 'a' through 't' hereof, the compensation shall be paid during the number of weeks in relation to five hundred weeks as the reduction in the employee's earning capacity caused by the disability bears in relation to the earning capacity that the employee possessed when the injury occurred. A determination of the reduction in the employee's earning capacity caused by the disability shall take into account the permanent partial disability of the employee and the number of years in the future it was reasonably anticipated that the employee would work at the time of the injury. 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.

Industrial disability is not awarded if the claimant "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." Iowa Code section 85.34(2)(v).

In this case, claimant returned to work for Amhof Trucking performing the same job duties he performed at the time of his injury. He earned the same wages he earned on the date of injury up until approximately September 6, 2020, when he received a raise. (See Hr. Tr., p. 75) He now earns more than he did on the date of injury. As such, I conclude that claimant returned to work and was offered ongoing work by Amhof Trucking at a wage rate in which claimant would receive the same or greater wages as

those earned on the date of injury. He continued to work for the defendant employer as of the date of the evidentiary hearing. Given this information, I conclude claimant's current recovery is limited to his permanent functional impairment rating resulting from the injury. Iowa Code section 85.34(2)(v).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Iowa Code section 85.34.

Having found the impairment rating of Dr. Kreiter to be most convincing in this evidentiary record, I found Mr. Byers proved an eight percent permanent functional impairment of the whole person as a result of the June 24, 2019 work injury. This finding entitles claimant to an award equivalent to eight percent of the whole person.

Unscheduled injuries are compensated on a 500-week schedule. Iowa Code section 85.34(2)(v). Having found claimant sustained eight percent impairment to the body as a whole, I find claimant is entitled to an award of 40 weeks of permanent partial disability benefits (8 percent of 500 weeks).

Claimant is entitled to ongoing medical benefits pursuant to Iowa Code section 85.27.

Claimant seeks an award of medical mileage. 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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Mr. Byers attached a detailed summary of the medical mileage claimed in this case. I conclude that claimant has established entitlement to reimbursement of his medical mileage as summarized and itemized in Exhibit 6. (Ex. 6, pp. 27-31)

Next, Mr. Byers seeks reimbursement of his independent medical examination with Dr. Kreiter. Claimant submitted a check, indicating the payment of \$1,000.00 to Dr. Kreiter for the IME, into evidence. (Ex. 5, pp. 26-27) At hearing, claimant requested the opportunity to submit an itemized invoice of Dr. Kreiter's IME fees. The request was granted. Claimant attached the invoice to his post-hearing brief.

Iowa Code section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for

reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

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 employer is not obligated to reimburse a claimant's independent medical evaluation fee unless the claimant has complied with the necessary statutory process for obtaining that reimbursement. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 844 (Iowa 2015).

In this case, claimant established that defendants obtained a permanent impairment rating before claimant obtained Dr. Kreiter's evaluation and impairment rating. Claimant has established the prerequisites of Iowa Code section 85.39 to qualify for reimbursement of Dr. Kreiter's independent medical evaluation fee. Therefore, I conclude that claimant has established entitlement to reimbursement of Dr. Kreiter's examination pursuant to Iowa Code section 85.39.

The only remaining issue for determination is an assessment of costs. This agency possesses discretion in the determination of whether to assess costs. Iowa Code section 86.40. In this case, claimant has received an award of benefits, and said award is greater than the amount voluntarily paid by defendants prior to the evidentiary hearing. In other words, claimant was generally successful in his claim. As such, I conclude it is appropriate to assess the costs associated with this case to defendants. Iowa Code section 86.40. Claimant's filing fee of \$100.00 shall be assessed pursuant to 876 IAC 4.33(7).

## ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant forty (40) weeks of permanent partial disability benefits commencing on March 26, 2020, at the stipulated rate of nine hundred thirty-one and 30/100 dollars (\$931.30) per week.

Defendants are entitled to the stipulated credit identified on the hearing report against this award of benefits.

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

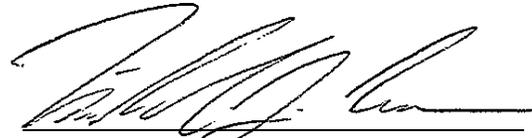
Defendants shall reimburse claimant's medical mileage as summarized and itemized in Exhibit 6 in a total amount of four hundred seventeen and 81/100 dollars (\$417.81).

Defendants shall reimburse claimant's independent medical evaluation fees in the amount of one thousand and 00/100 dollars (\$1,000.00).

Defendants shall reimburse claimant's costs totaling one hundred and 00/100 dollars (\$100.00).

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

Signed and filed this 31<sup>st</sup> day of March, 2021.



MICHAEL J. LUNN  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Mary L. Tyler (via WCES)

Edward J. Rose (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.