BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSE RIVERA, Claimant, vs. CLOW VALVE CO., Employer, Self-Insured, Defendant.	File No. 20000533.01 ARBITRATION DECISION Headnote Nos.: 1108, 1803.1, 1803

STATEMENT OF THE CASE

Claimant, Jose Rivera, has filed a petition for arbitration seeking workers' compensation benefits against Clow Valve Co., a self-insured employer.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner the hearing was held on June 27, 2023, via Zoom. The case was considered fully submitted on July 24, 2023, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-6, Claimant's Exhibits 1-7, Defendant's Exhibits A-E, along with the testimony of the claimant and Larry Robertson.

ISSUES

1. The nature of claimant's work-related injury;

2. The extent of any permanent disability;

3. The assessment of costs.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

The parties agree claimant sustained an injury arising out of and in the course of his employment on December 5, 2019. They further agree claimant sustained a temporary disability arising out of that injury, entitlement to which is no longer in dispute.

The commencement date for permanent partial disability benefits is January 18, 2021.

At the time of the December 5, 2019, injury claimant was married with two exemptions. His gross earnings were $895.37 per week. Based on the foregoing, the weekly benefit rate is $588.94.

All affirmative defenses are waived.

Prior to the hearing the claimant was paid 79.5 weeks of compensation at the rate of $588.94 per week in the form of permanent partial disability benefits.

FINDINGS OF FACT

Claimant, Jose Rivera, was a 59-year-old person at the time of the hearing. His primary language is Spanish and while he understands and speaks a certain amount of English, an interpreter was used during the hearing so that he would understand and be able to participate in the hearing fully. At all times relevant hereto, claimant was married with one child. (Claimant's Exhibit 2:20; stipulations)

His educational history includes graduation from high school and several years of college in Guatemala. He has no specific degree from his college courses. His past work experience includes accounting, handy man, carpentry, shipping and receiving at a warehouse, maintenance of pipes and silos.

He began working for defendant employer on January 17, 2001. (CE 2:23; CE 4:36) Claimant testified that prior to commencing work for the employer in 2001 he was required to undergo a pre-employment physical which he passed without limitation. Prior to his work injury there was no medical condition that restricted his work as it relates to his right foot or low back.

Claimant's first position for the defendant employer was as a brass grinder where he would grind the parts for the inside of hydrants. The position required him to stand and bend repetitively. Based upon his medical condition he is no longer able to perform that position due to sedentary work requirements.

The next position that he worked for defendant employer was as a pattern maker and this is the position that he currently performs. Prior to his work injury he was required to walk to retrieve pattern pieces that weighed anywhere from 24 to 100 pounds. He would bend and lift pieces to place them on a rack, maneuver a cart filled with the pieces, and check that the pieces were ready to be placed onto hydrants. He was able to do this position prior to his December 5, 2019 work injury without limitations.

Larry Robertson, a scheduler and supervisor in the metal casting facility where claimant works, testified at hearing that he had an opportunity to observe claimant walk in the plant. He testified that he observed claimant walking prior to the injury and described claimant as walking slowly. After the injury he did not notice claimant walking with a big limp or any limp. Mr. Robertson acknowledged that he was unaware that claimant suffered any right foot problem or back problem prior to the December 2019 injury and that following the December 2019 injury claimant was restricted to sedentary

work. On cross-examination, Mr. Robertson acknowledged that he did not watch claimant "that much." (Hearing Transcript, page 60)

On December 5, 2019, claimant stepped in a hole with his right foot while on the premises of his employer, defendant Clow Valve Co. His right foot bent or twisted, and he fell to the ground. He felt immediate pain in his right foot and ankle which he reported to the employer the following day. He was treated by the company's nursing staff with ice, a bandage and medication. He continued to work but his right foot symptoms worsened.

On January 8, 2020, claimant was seen at Pella Regional Health Center by Matthew K. Doty, M.D. (Joint Exhibit 1:5) The exam showed significant swelling in the medial aspect of the ankle. Id. He was tender to palpation over the medial malleolus into the midfoot. Id. He walked with a limp. Id.

On January 8, 2020, claimant underwent x-rays of the ankle which showed findings suspicious for fracture dislocation at the midfoot involving the navicular bone. (JE 1:3) CT of the left foot on the same date showed midfoot fracture/dislocation involving the navicular bone, with small fracture fragments arising from the proximal and plantar surfaces of the 1st and 3rd cuneiforms, likely secondary to dislocation. (JE 1:1-2) This was consistent with the claimant's report of injury a month prior. (JE 1:2)

Claimant was placed on sedentary work duty and sent to Joseph Galles, M.D., at Iowa Ortho for a consultation which took place on January 10, 2020. (JE 1:6, JE 2:7-9) As a result of the examination, Dr Galles recommended surgery or a brace but noted that the claimant had a complicated and difficult condition as an insulin-dependent diabetic who very likely had neuropathy which predisposed him to developing a Charcot arthropathy. (JE 2:9) Dr. Galles wrote:

> It is apparent to me that he was fine prior to the alleged work related injury and [*sic*] which she [*sic*] stepped in a hole. It is my opinion that the work related incident is the primary instigating factor that has now led him to developing Charcot arthropathy of his foot. This is not an exacerbation of a pre-existing condition but rather the injury is what now has led him to developing Charcot arthropathy.

(JE 2:9)

Dr. Galles provided a prescription for claimant to obtain a total contact patellar tendon bearing (PTB) AFO brace in order to stabilize the foot and allow the Charcot process to go right through the stages and hopefully end up with a plantigrade foot. Id. Surgery would then follow. Id. Dr. Galles warned claimant that amputation might happen regardless and that it was more likely than not that even with an optimal outcome he would have permanent restrictions of minimal weight bearing activity to protect his foot permanently. Id.

After returning for a second appointment, with his daughter serving as a translator, claimant opted for surgery, a right foot medial column fusion at the

naviculocuneiform joint, which Dr. Galles performed on February 20, 2020. (JE 2:13-15, JE 4:91-93)

During the February 11, 2020, pre-op physical, it was noted that he had mild pain in the right foot and that he limped on the right side with the brace. (JE 3:78-79) He weighed approximately 340 pounds at the pre-op. (JE 3:76)

Claimant was kept off work from February to June 2020. (JE 2:33)

On March 3, 2020, claimant returned to Dr. Galles for his first follow-up visit post-surgery. (JE 2:17) At this visit, claimant was ambulating with a knee walker, non-weightbearing, and had inflammation, swelling, and tenderness on the right and an antalgic gait. (JE 2:17-18) Sutures were removed at the March 13, 2020, visit and claimant was to follow up in two weeks for x-rays. (JE 2:22) His physical examination was unchanged from March 3, 2020, including the antalgic gait. Id.

At the April 20, 2020, visit, claimant's physical examination revealed continued healing along the incision, overall reduction in swelling with normal skin wrinkling starting to return, and pain-free active and passive range of motion of the ankle. (JE 2:29)

On May 18, 2020, claimant was approximately three months post-surgery. (JE 2:31) Dr. Galles allowed claimant to begin a gradual transition from partial weight-bearing in a Bledsoe boot to full weight-bearing the following week if comfortable. (JE 2:32) If there was any redness, increased warmth, or increased swelling, he was to back off activity. Id.

Dr. Galles allowed claimant to return to work with a seated only restriction on June 1, 2020. (JE 2:33) Per the claimant's testimony, defendant employer obliged those restrictions and gave claimant the task of organizing paperwork while seated.

On June 19, 2020, Dr. Galles transitioned claimant to full weight-bearing with the Bledsoe boot. (JE 2:35) Work restrictions of sit-down work only were continued. Id. Claimant had full ankle flexibility, no crepitus or instability, no pain on stress testing. Id.

At the July 17, 2020, visit, claimant presented with complaints of sharp pain in the right foot aggravated by walking and relieved by rest. (JE 2:37) Claimant was pain-free during the medical visit. Id. Dr. Galles was pleased with the claimant's recovery, but advised claimant that he needed to watch his foot closely for changes in swelling or any type of pain. (JE 2:38) Claimant was returned to work with no restrictions as tolerated. (JE 2:39)

Claimant continue to do office work, but developed swelling in his right foot. Upon his return to Dr. Galles, claimant reported pain in the right foot aggravated by walking and increased swelling. (JE 2:40) Dr. Galles believed claimant was experiencing progression of Charcot changes affecting the transverse tarsal joint. (JE 2:41) At this point, additional surgery would be very complex and higher risk with a substantial potential for infection, wound breakdown, and amputation. Id. Dr. Galles placed claimant on permanent work restrictions of sedentary work only and a prescription for a custom rigid AFO brace. (JE 2:41)

As a result of this restriction, claimant was moved to an accommodated position as a pattern maker. He was provided a special stool and coworkers would retrieve heavy pieces for him and bring them to his workstation so he no longer had to walk as part of his work duties. The limited walking the claimant would perform at work was to use the bathroom, which was 200 to 300 feet from his workstation. He stated that he walked with the use of a cane, and that he continued to limp with any ambulation.

There was no medical doctor that prescribed the use of the cane however, Dr. Galles was aware claimant used one and did not advise him against it. (See JE 2:45) Larry Robertson, claimant's supervisor, testified that he has not observed claimant walk with a limp and that for as long as he has observed claimant at work, claimant moved slowly.

On September 25, 2020 claimant returned to see Dr. Galles. (JE 2:44) At this time he continued to have sharp pain in the right foot. Id. In the physical examination section, claimant's gait was noted to be antalgic, and he walked with the assistance of a cane. (JE 2:45) Dr. Galles reiterated that claimant should obtain the prescribed AFO brace.

On September 30, 2020, claimant was fitted for his AFO brace. (JE 5:98) He was able to ambulate safely and without discomfort. (JE 5:99)

At the October 23, 2020, visit claimant was using the AFO brace but had continued pain in the right foot along with swelling. (JE 2:49) He walked with an antalgic gait. Id. Dr. Galles wrote:

> 8 months out from surgery now with progression of Charcot changes affecting the transverse tarsal joint with solid healing apparently had not occurred at the naviculocuneiform articulation. He will continue to wear his AFO brace for support of his RIGHT foot at all times during ambulatory activity. He will continue sit down duties at work.

Id.

On November 16, 2020, claimant was seen by Kimberlee A. Walker, ARNP, for routine care related to his diabetes, hyperlipidemia, and hypertension. (JE 3:82) He gained approximately 15 pounds since the previous visit due to being nonambulatory. (JE 3:85) He weighed 348 pounds at the time. (JE 3:82) His physical exam revealed he limped on the right side using a cane. (JE 3:85) He was advised to watch his diet in order to lose weight. Id.

On January 18, 2021, claimant returned to Dr. Galles for follow-up. (JE 2:52) He had pain of 4 on a 10 scale in his right foot with cold weather aggravating his symptoms. Id. During the physical examination, he had decreased active range of motion in the right ankle, and limited passive range of motion. (JE 2:53) He had an uneven gait and ambulated with the use of an AFO brace and a walking cane. (JE 2:53, JE 2:57) He had mild swelling but no increase in warmth or erythema and no crepitus or gross instability. (JE 2:53) Dr. Galles found claimant to be at maximum medical improvement and

advised him to continue normal activities as tolerated. Id. Claimant was to continue with current work restrictions and continue to wear his brace while ambulatory. Id.

In a letter dated January 20, 2021, Dr. Galles opined that claimant had sustained a work-related injury to his right foot on December 5, 2019.

> This injury resulted in a dislocation of the naviculocuneiform joint, which required open reduction internal fixation and fusion of the joint. Subsequently, he has developed advanced arthritic changes of the talonavicular joint secondary to Charcot arthropathy changes of his foot. Despite the severe nature of his pathology, he is doing well with a custom rigid AFO brace and has been released to sedentary work-related activities with a restriction of avoiding uneven ground, and wear AFO brace during ambulatory activity. According to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Table 17–5, subheading D, this will constitute a 15% whole person impairment secondary to the routine use of an AFO brace for ambulatory activity, which would be considered for his lifetime."

(JE 2:58)

On February 11, 2022 claimant presented to Dr. Galles for his one-year check-up. (JE 2:59) Claimant had been wearing his custom rigid AFO brace and continued to have pain while walking. Id. Claimant reported that the pain was relieved by using a cane. Id. Dr. Galles did not discourage the use of the cane. The physical exam showed no change in overall alignment and swelling was as expected. (JE 2:60) Claimant was to continue to wear the AFO brace during ambulatory activity and remain in sedentary work. Id.

On May 12, 2022, Dr. Galles filled out a form acknowledging that claimant met the criteria for a handicap parking permit as claimant could not walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device and that claimant was severely limited in his ability to walk due to an arthritic, neurological or orthopedic condition. (JE 2:65)

On June 17, 2022, claimant returned for follow up. (JE 2:66) His pain had increased from 4 to 5 on a 10 scale. Id. The pain was aggravated by walking or standing and relieved by rest. Id. He had diminished sensation secondary to his existing neuropathy. Id. Claimant presented wearing Crocs and Dr. Galles advised claimant to avoid wearing poorly supportive shoes as much as possible and instead use the previously provided insoles. (JE 2:67) Claimant needed to monitor his skin on a daily basis to watch for worsening symptoms. Id.

On December 2, 2022, claimant returned to Dr. Galles. (JE 2:69) At this visit, his pain had decreased to 3-4 on a 10 scale. Id. The pain in his right ankle was acute and sharp and unchanged. Id. Dr. Galles assured claimant that he was doing well and provided claimant with another order for custom orthotics. (JE 2:70)

On June 2, 2023, claimant return to Dr. Galles for recheck of the right foot. (JE 2:73) Overall claimant was doing well. Id. He was wearing his AFO brace at work and conducting daily skin checks as recommended. Id. He ambulated with a cane. Id. Examination of the right foot demonstrated no change in overall anatomic alignment relative to the December 2022 visit. (JE 2:74) Claimant had diminished sensation over the dorsum of the foot secondary to his existing neuropathy. Id. Sensation was intact to light touch at the ankle. Id. There was minimal swelling. Id. Dr. Galles advised claimant to continue with his work restrictions of sedentary work only, to continue to wear his AFO brace with ambulation and while at work, and to continue monitoring of his skin condition. Id.

On February 22, 2022, Sunil Bansal, M.D., conducted an independent medical evaluation of claimant. (Claimant's Exhibit 1:1) At the time of the evaluation, claimant reported pain in his right foot with additional pain in the back and hip due to his limp. (CE 1:7) Claimant told Dr. Bansal that he reported this back pain to his doctors, but was not provided any treatment for it. Id. Claimant also maintained this position at hearing. Claimant's back pain radiated down both of his legs with numbness and tingling in the foot. (CE 1:7) He was able to stand or walk comfortably only for five minutes, and was unable to navigate stairs. Id. He rarely walked on uneven ground, and he did wear his AFO brace. Id.

He stated that while he sits on a stool at work, his feet were swollen and hurt by the end of the day. (CE 1:8)

During the examination, there was tenderness to palpation over the lumbar back into the left sacroiliac joint with guarding noted. (CE 1:8) He had a positive Fabre's test on the left but negative on the right. Id. Straight leg tests on both legs were negative. Id. His range of motion measurements were:

Flexion:	82 degrees
Extension:	25 degrees
Left lateral flexion:	33 degrees
Right lateral flexion:	26 degrees

(CE 1:9)

Dr. Bansal, an occupational health specialist, diagnosed claimant with sacroiliitis in the back as well as right foot naviculocuneiform fracture/dislocation with developing Charcot arthropathy. (CE 1:9) Dr. Bansal agreed that claimant reached MMI as of January 18, 2021. (CE 1:10) As for causation, Dr. Bansal wrote "In regard to his back pain, my diagnosis is sacroiliitis that has progressively worsened in intensity from the altered gait secondary to his right foot pathology." (CE 1:11) He assigned 15 percent whole person impairment for the right foot injury and 5 percent impairment for the low back due to radicular pain, loss of range of motion, and guarding. (CE 1:11) Dr. Bansal recommended periodic sacroiliac joint injections. (CE 1:12)

The cost of his IME was $547.00 for the examination and $2,751.00 for the report. (CE 1:13)

On March 21, 2023, Joseph Chen, M.D., a physical medicine and rehabilitation specialist and spinal cord specialist, conducted an IME. (Defendant's Exhibit A:1) At the time of the examination, Dr. Chen recorded claimant's present clinical findings to include pain in the right foot that he usually rated 4-5 on a 10 scale, increasing after walking, and low back pain. (DE A:4)

Dr. Chen observed claimant to walk with an antalgic gait with decreased stance on the right lower extremity and use of a cane in the right hand. (DE A:5) He exhibited a large body habitus with a mild Trendelenburg gait due to decreased pelvic stability with standing. Id. He sat in a chair and moved to the examination table without apparent difficulties or excessive pain behaviors. Id. There were no areas of swelling, erythema or deformity in the low back and buttock. Id. Lumbar spine range of motion in flexion was limited to fingertips to the knees. Id. He had limited side bending and extension due to reports of pain. Id. Lumbar extension was limited to 25 degrees. Id. Bilateral lumbar side-bend was limited to 30 degrees. Id. Sitting straight leg tests were negative. Id. Ankle reflexes were absent. Id. He had trace weakness in the ankle dorsiflexors and toe extensors bilaterally and had decreased sensation in a distal to proximal gradient from the toes up to his mid-calves. Id.

The bilateral hip and pelvis range of motion examination revealed flexion to at least 120 degrees. Id. Passive abduction while supine was normal to 30 degrees. Id. Passive hip internal rotation was normal to at least 20 degrees without groin pain. Id. Passive external rotation to 30 degrees with buttock pain. Id. He was tender to palpation along the midline gluteal muscle mass and medial sacral muscle attachment areas. He was unable to sit comfortably with either leg crossed on top of the other due to his body habitus and inflexibility in his low back and hip muscles. Id.

Dr. Chen interpreted claimant's response to health status measures such as fear avoidance beliefs and pain catastrophizing scale as essentially normal. (DE A:6)

After review of the records and the examination, Dr. Chen concluded that claimant had a pre-existing history of significant Class 3 obesity with a 25-year history of poorly controlled diabetes with neuropathic complications. (DE A:7) Based on some findings in the examination, Dr. Chen detected that claimant's left foot arch had begun to collapse. Id. It was his medical opinion that because of claimant's long personal history of diabetes he was unable to sense he had sustained a severe sprain of his right foot when he stepped in a pothole. Id. By continuing to ambulate on his right foot without the benefit of having protective sensation, his midfoot ankle injury progressed to a Lisfranc fracture dislocation in the week prior to him seeking out medical treatment. Id.

Dr. Chen went on to write that he disagreed with Dr Galles that claimant developed a Charcot arthropathy of his foot as a result of stepping in the hole. Id. Individuals develop Charcot arthropathy due to poorly controlled diabetes and not following an injury. Id. Charcot arthropathy or diabetic joint arthropathy occurs over years of hyperglycemia that damages peripheral nerves that are critical to providing a protective response to injury or pain. Id.

Dr. Chen further concluded that claimant did not have sacroiliitis as proposed by Dr. Bansal but rather the claimant's antalgic gait had led to muscle imbalances with weakness in his gluteal muscles which attach near the sacroiliac joint. Id. This nonspecific low back pain occurs frequently in the adult general population who have truncal obesity or other personal and biomechanical factors that impede one's ability to work on gluteal flexibility and strength. Id. Claimant did not have any lumbar or pelvic spine x-rays to confirm sacroiliitis and likely radiographs would show age-appropriate degenerative changes unrelated to the work injury or antalgic gait. Id.

For the impairment, Dr. Chen would assign 20 percent based on an ankle sprain complicated by midfoot deformity. (DE A:8) He would not assign any impairment for the whole person due to altered gait or need for gait assistance. Id. In Dr. Chen's opinion, the altered gait is largely due to his pre-existing morbid body habitus of 350 pounds and profound physical deconditioning. Id. If claimant had better personal health conditions, Dr. Chen did not believe he would require the use of a cane or ankle foot orthosis for ambulation. Id.

Dr. Chen agreed with the sedentary work restrictions and recommended improved management of his diabetes and hyperglycemia, meticulous foot care bilaterally, stretching and strengthening of the bilateral lumber, hip, and gluteal muscles. (DE A:9)

In the photos taken of claimant by Dr. Chen, the right foot showed significant swelling. (DE A:12)

On May 10, 2023, Dr. Bansal issued a response to the report of Dr. Chen. (CE 1:14) In the response, Dr. Bansal disagreed with Dr. Chen's assertion that the sacroiliitis was solely attributable to the claimant's obesity. (CE 1:15) For support of his position, Dr. Bansal pointed out that claimant only experienced back pain after the foot injury, and the inflammation of sacroiliitis was localized in the left sacroiliac joint likely as a consequence of compensatory overload stemming from the right foot pathology. (CE 1:15)

As stated previously, claimant remains an employee of the defendant employer. He is working as a pattern maker. His supervisor, Mr. Richardson, testified that claimant has a unique pattern making skill. It is presumed that because of the skill, claimant's need for sedentary work is accommodated.

Claimant testifies that before he was injured, he was 25 pounds lighter and was able to walk 3 miles three times a week. At hearing he testified he weighed presently about 345 pounds but in past medical records it was shown that he had weighed at least 348 pounds as of November 4, 2019. As stated above, he has had challenges in losing weight.

Claimant testified that he is making more now per hour than he was at the time of the injury. Currently claimant earns $28.40 per hour while he was making $21.70 per hour at the time of the injury. (Ex D)

Claimant seeks reimbursement for costs of $118.06. (CE 7:57) Prior to the issuance of this decision the parties affirmed that the reimbursement of the independent medical examination is no longer in dispute. (See Hearing Report)

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 R. App. P. 6.904(3).

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

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

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

The primary question presented in this hearing is whether claimant sustained an injury solely to his right lower extremity or whether he has suffered a sequela injury to his low back and hips. Defendant points out that there is no medical record of claimant complaining of back pain. The only medical record documenting back pain is the independent medical examination of Dr. Bansal. Defendant argues that Dr. Bansal's diagnosis of sacroiliitis is not supported by any objective findings such as radiographs.

Dr. Chen believes that claimant has a degenerative condition consistent with claimant's age and weight.

Defendant further argues that Dr. Chen's opinion should be given the most weight as he allegedly correctly identified the claimant's injury as being a rocker bottom midfoot deformity rather than the diagnosis given to him by his treating physician Dr. Galles. Dr. Chen opined claimant had Charcot arthropathy in his right ankle as a result of claimant's unchecked, uncontrolled diabetic condition and that this opinion was supported by the bilateral nature of claimant's diabetic neuropathy.

The difference between Dr. Chen's opinion and that of Dr. Galles and Dr. Bansal is that the latter two experts acknowledge claimant's pre-existing diabetic neuropathy but go on to opine that because of the injury claimant developed Charcot arthropathy, and in the case of Dr. Bansal, low back and hip pain from the constant use of the brace. These opinions are best supported by claimant's pre-injury condition where he did not walk with a limp, he did not need sedentary work restrictions, and he was able to perform the duties of his position as a pattern maker which include lifting of heavy materials, pushing carts, and other repetitive work without accommodation.

Claimant's diabetic condition made him predisposed to suffering a more serious outcome from a sprained ankle, but the law allows for an award of benefits if the worker's pre-existing condition is materially aggravated, accelerated, worsened or lighted up.

The opinions of Dr. Galles and that of Dr. Bansal are given greater weight as they are more consistent with claimant's pre and post physical conditions. While Dr. Galles did not treat claimant for back complaints, there are several references to claimant's antalgic gait. Dr. Galles ordered claimant to wear the AFO brace while ambulating and while at work. Dr. Galles was aware claimant used a cane and did not discourage him from doing so. Dr. Chen agreed claimant had low back pain and attributed it to altered gait. The difference is that Dr. Chen did not believe the low back pain and altered gait were the result of claimant's work injury but rather claimant's current weight and ongoing diabetes condition. Dr. Chen explained that the antalgic gait has led to muscle imbalances with weakness in claimant's gluteal muscles which attach near the sacroiliac joint.

Claimant did not have an altered gait prior to his injury. His supervisor, Mr. Richardson, testified that claimant walked slow both before and after the injury but did not observe him to limp. However, three doctors did observe claimant to walk with an antalgic gait.

Based on the foregoing, the opinions of Dr. Galles and Dr. Bansal are adopted herein. It is specifically found that claimant sustained a low back injury as sequela to his right ankle injury sustained on December 5, 2019, arising out of and in the course of his employment.

Because claimant is earning more today than he did at the time of his injury, Iowa Code Section 85.34(2)(v) applies. That statutes says that 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.

Functional impairment is measured 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. Iowa Code Section 85.34(2)(w). Dr. Galles and Dr. Bansal assigned a 15 percent whole person impairment rating for the right foot injury and Dr. Bansal assigned a 5 percent whole person impairment rating for the back. Together, the impairment rating for claimant is 20 percent.

Claimant also seeks an assessment of costs. IAC Rule 876 4.33 permits the award of costs at the discretion of the deputy. Costs taxed by the workers' compensation commissioner or a deputy workers' compensation commissioner can include transcription costs when appropriate, costs of service of the original notice and subpoenas, the reasonable costs of obtaining no more than two doctors' or practitioners' reports, filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and costs of persons reviewing health service disputes. IAC Rule 876 4.33.

Claimant seeks recovery for costs including service costs but not the report of Dr. Bansal as the parties determined prior to this issuance of this decision that the reimbursement of the independent medical examination is no longer in dispute. The report is not awarded These costs fall within the guidelines of Iowa Administrative Rule 876 4.33 and are awarded herein.

ORDER

THEREFORE, it is ordered:

That defendant is to pay unto claimant one hundred (100) weeks of permanent partial disability benefits at the rate of five hundred eighty-eight and 94/100 dollars ($588.94) per week from January 18, 2021.

That defendant shall pay accrued weekly benefits in a lump sum.

That defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

That defendant is to be given credit for benefits previously paid.

That defendant shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33 as described above including the transcript costs for this hearing.

Signed and filed this ____2nd____ day of November, 2023.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Byrne (via WCES)

Robert Cardell Gainer (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, 10A) 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.