BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KENNETH LACKEY, Claimant, vs. DAVE KOPPES TRUCKING, INC., Employer, and INTEGRITY MUTUAL INS. CO., Insurance Carrier, Defendants.	File No. 5064363.01 ARBITRATION DECISION Head Notes: 1800; 1803

STATEMENT OF THE CASE

The claimant, Kenneth Lackey, filed a petition for arbitration seeking workers' compensation benefits from employer Dave Koppes Trucking, Inc. ("Koppes"), and their insurer, Integrity Mutual Insurance Company. Tom Wertz appeared on behalf of the claimant. Coreen Sweeney appeared on behalf of the defendants.

The matter came on for hearing on June 20, 2022, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner related to the COVID-19 pandemic, the hearing occurred electronically. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-9, Claimant's Exhibit 1-4, and Defendants' Exhibits A-R. The undersigned ruled on a motion to exclude prior to the hearing. The undersigned also ruled on an objection of the defendants prior to the hearing. The motion to exclude was denied and the objection was overruled. The exhibits were received into the record without objection.

The claimant and his wife, Peggy Lackey, testified on behalf of the claimant. Dave Koppes testified on behalf of the defendants. Sonya Wright 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 July 19, 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. That the claimant sustained an injury which arose out of, and in the course of employment on February 20, 2018.

3. That the alleged injury is a cause of temporary disability during a period of recovery.

4. That the alleged injury is a cause of permanent disability.

5. That the commencement date for permanent partial disability benefits, if any are awarded, is October 11, 2021.

6. That the claimant had gross weekly earnings of one thousand three hundred twenty-four and 88/100 dollars ($1,324.88) per week, was married, and was entitled to two exemptions at the time of the alleged injury. This provided a weekly compensation rate of eight hundred seventeen and 92/100 dollars ($817.92).

7. That prior to the hearing, the claimant was paid 35 weeks of permanent partial disability benefits at the agreed upon weekly rate.

Entitlement to temporary disability and/or healing period benefits is no longer in dispute. The defendants waived their affirmative defenses.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

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

2. Whether the permanent disability should be evaluated as an industrial disability or a functional disability pursuant to Iowa Code section 85.34(2)(v).

3. Whether the claimant is entitled to reimbursement for the costs of an independent medical examination (“IME”) pursuant to Iowa Code section 85.39.

4. Whether an assessment of costs is appropriate.

FINDINGS OF FACT

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

Kenneth Lackey, the claimant, was 66 years old at the time of the hearing. (Testimony; Defendants' Exhibit I:18). He has been married to Peggy Lackey for the last 12 years. (Testimony; DE I:18). Mr. Lackey is a 1974 high school graduate. (DE I:18).

Mr. Lackey worked in a General Electric plant in Morrison, Illinois, from 1980 to 2010. (DE I:19). He retired from this position when the plant closed in July of 2010. (DE I:19). From 2010 to the present, Mr. Lackey worked for several trucking companies. (DE I:19).

Mr. Lackey currently works for Koppes as a truck driver. (Testimony). He has a commercial drivers' license ("CDL"). (Testimony). He began employment with Koppes about six to seven years ago. (Testimony). He drives a semi-truck. (Testimony).

As a truck driver, the claimant hauls the same products from week to week. (Testimony). He picks up logs in Iowa and delivers them to a veneering plant. (Testimony). He then picks up a load to bring back. (Testimony). The customers load the logs or other items on the trailer. (Testimony). The claimant has to throw straps over the loads. (Testimony). He used to have to place tarps and chains on the loads. (Testimony). He drives between 2,200 and 2,300 miles per week. (Testimony). Generally, he leaves on Monday and does not return home until Friday. (Testimony). He keeps his trip logs electronically. (Testimony).

Mr. Lackey performs pre-trip inspections and post-trip inspections. (Testimony). These require him to walk around the truck and trailer in order to check the lights, tires, and whether there are any oil leaks. (Testimony). Mr. Koppes testified that Mr. Lackey is one of the top two drivers in his company. (Testimony).

There were some medical records submitted that predate the work incident. On December 26, 2013, Jeffrey Hunter, M.D., submitted a letter concerning Mr. Lackey's issues of vertigo and dizziness. (JE 4:1). He was symptom free for the two prior months, and Dr. Hunter had "no concerns with his ability to load, unload or operate a CMV." (Joint Exhibit 4:1). Dr. Hunter released Mr. Lackey with no restrictions. (JE 4:1).

Mr. Lackey returned to Dr. Hunter's office to review labs and sinus problems on February 16, 2015. (JE 4:2-4). His vertigo and sleep apnea were stable. (JE 4:3). On September 12, 2016, Dr. Hunter saw the claimant again. (JE 4:5-6). Mr. Lackey had allergic rhinitis that was stable with Flonase. (JE 4:5). He complained of issues with his vertigo, for which he used meclizine. (JE 4:5). Mr. Lackey went back to Dr. Hunter's office on March 20, 2017. (JE 4:7-9). This was an annual checkup. (JE 4:7). Mr. Lackey had stable allergic rhinitis, stable intermittent vertigo, and stable sleep apnea. (JE 4:7). On December 15, 2017, Mr. Lackey went to Dr. Hunter's office for a DOT physical. (JE 4:10-11). Mr. Lackey was doing well with stable, well-controlled

hypertension. (JE 4:10). He also was compliant with sleep apnea treatment, and used his CPAP every night. (JE 4:10). Mr. Lackey passed a vision exam without use of his glasses. (JE 4:10).

On February 20, 2018, the claimant bought dinner in Illinois. (Testimony). He began to drive, and spoke to his wife on the phone. (Testimony). He then spoke to another person. (Testimony). He noted that the weather was misty or rainy, and that the temperature was close to freezing. (Testimony). Suddenly, the claimant lost control of his truck, and struck a bridge head-on. (Testimony). He does not recall anything after striking the bridge. (Testimony).

Mr. Lackey was transported to the emergency room via EMS. (Testimony; JE 1). The EMS crew arrived while firefighters were extracting Mr. Lackey from his truck. (JE 1:6). Mr. Lackey admitted to having two beers with dinner two hours prior, but the paramedic did not smell alcohol on his breath. (JE 1:6). Upon extraction, the paramedic noted that the claimant had an open right femur fracture, with six inches of bone protruding and a "large chunk of bone lying under" his right leg. (JE 1:7). Mr. Lackey also had pain in his pelvis upon palpation. (JE 1:7). Mr. Lackey rated his pain 10 out of 10. (JE 1:7). Mr. Lackey's initial Glasgow Coma Scale measured 15 out of 15. (JE 1:3).

EMS transported Mr. Lackey to Carle Foundation Hospital, where Sherfield Dawson, III, M.D., examined him in the emergency department. (JE 2:1-6). The motor vehicle accident was noted, along with "severe intrusion in the cab." (JE 2:1). Dr. Dawson noted that, upon arrival, Mr. Lackey had an "obvious gross deformity of his" right lower extremity with an open femur fracture. (JE 2:1). Mr. Lackey was "yelling in pain." (JE 2:1). Dr. Dawson also found multiple lacerations and abrasions to the bilateral upper extremities. (JE 2:2). A chest x-ray was performed, which was generally normal. (JE 2:3). A pelvic x-ray showed suspected right SI joint diastases with significant pubic symphysis diastases. (JE 2:3). An x-ray of the right femur showed "[s]ignificant angulated, overriding and comminuted and open distal shaft fracture of the right femur. Debris noted with the soft tissues or possibly with external apparatus." (JE 2:3). The x-ray also showed the pubic symphysis diastases with widening of the right SI joint. (JE 2:3). A CT of the brain was unremarkable. (JE 2:3). A CT of the chest showed multiple bilateral mildly displaced and nondisplaced rib fractures both lateral and anterior. (JE 2:3). There were also small avulsion injuries with the bilateral SI joint diastases. (JE 2:3). The CT also showed a minimal neoplastic injury or fracture to the left iliac bone, and a left L5 transverse process tip fracture. (JE 2:3). A CT of the cervical spine was unremarkable. (JE 2:4). A CT of the thoracic spine showed mild to moderate degenerative disc changes throughout. (JE 2:4). A CT of the lumbar spine showed the left transverse process tip fracture, a nondisplaced left lower sacral fracture, and the bilateral SI joint diastases noted above. (JE 2:4). A CTA of the right lower extremity showed no visible vascular injury. (JE 2:4). It showed the fractures as noted above. (JE 2:4). Based upon all of the imaging, and examination, the doctor diagnosed Mr. Lackey with a closed fracture dislocation of pubic symphysis with diastasis, rib fractures, lumbar transverse process fracture, an open right femur fracture, and a closed fracture of the tibia and fibula. (JE 2:4). Scott Matz, M.D., inserted a Foley

catheter into the claimant. (JE 2:32). He noted no injury to the urethra or bladder. (JE 2:32). Mr. Lackey was sent to the operating room with orthopedics, and then was to be taken to the ICU for ventilator support. (JE 2:4).

Mark Palermo, D.O., also consulted on Mr. Lackey's care due to the pelvic injury and right open distal femur fracture. (JE 2:11-12). Dr. Palermo recommended that the claimant have an "urgent application of an external fixator" for his right distal femur fracture, along with irrigation and debridement. (JE 2:12). The pelvic injury would also be addressed in the operating room. (JE 2:12).

Mr. Lackey was intubated and sedated following surgery to repair his fractures. (JE 2:4-6). Christopher Vetter, M.D., examined Mr. Lackey at Carle Foundation Hospital on February 21, 2018. (JE 2:6-10). Mr. Lackey had an external fixator on his right lower extremity. (JE 2:7). He also had his right hand and forearm in a splint, with a dressing in place. (JE 2:7). Mr. Lackey displayed an "elevated CK" which Dr. Vetter attributed to rhabdomyolysis. (JE 2:9). He also had lactic acidosis. (JE 2:10). Dr. Vetter consulted further regarding pressure injury prevention. (JE 2:10). He recommended certain measures be taken to avoid pressure ulcers. (JE 2:10). Mr. Lackey's family requested that he be transferred to a hospital in Iowa, but he was not yet stable enough to do so on an elective basis. (JE 2:10).

Dr. Palermo examined Mr. Lackey again on February 23, 2018, and proceeded with an open reduction/internal fixation of the pubic symphysis with bilateral sacroiliac screws, irrigation of open wounds of the right femur and right tibia, and fluoroscopic examination of the left leg. (JE 2:30-31). Mr. Lackey tolerated the procedure well. (JE 2:30).

On February 28, 2018, Dr. Vetter again examined the claimant. (JE 2:51-54). Dr. Vetter's record noted the following diagnoses: deep right hand lacerations involving the joint capsule, separation of the left acromioclavicular joint, acute blood loss anemia, multiple closed compression fractures of the pelvis involving an unstable pelvic ring, a lumbar transverse process fracture, abnormal liver enzymes, multiple rib fractures, acute respiratory failure following trauma and surgery, trauma, a comminuted open fracture of the right femur, and an open fracture of the right tibia and fibula. (JE 2:53-54).

Mr. Lackey was admitted to the rehabilitation unit at Finley Hospital, in Dubuque, Iowa, on March 7, 2018. (JE 3:1-11). His history of treatment at Carle Foundation Hospital was reviewed. (JE 3:1-11). Upon admission, he remained nonweightbearing on his lower extremities. (JE 3:5). He had mild to moderate pain, along with mild numbness and tingling, in his right leg, especially at the knee. (JE 3:5). It was anticipated that he would be in the inpatient rehabilitation unit for 17 days, and that his rehabilitation potential was "good." (JE 3:9). He would have 180 minutes of therapy per day, for 5 out of 7 days of the week. (JE 3:9). This would consist of 90 minutes of physical therapy, 90 minutes of occupational therapy, and 30 minutes of speech therapy. (JE 3:9). Mr. Lackey's goals included: improving his gait abnormality, improving his ability to perform his activities of daily living, and improving his cognition. (JE 3:10). The examiner recommended a psychologic follow up due to Mr. Lackey's

strange, vivid dreams, and his becoming tearful when describing the accident. (JE 3:10).

On March 8, 2018, Mr. Lackey reported feeling worn out overall, after working with therapy. (JE 3:13). His pain was controlled by Norco and other pain medications. (JE 3:13). Mr. Lackey had a session of speech therapy on the same day. (JE 3:15). The therapist could not conclude her evaluation because Mr. Lackey became tearful and required emotional support upon discussing his accident. (JE 3:15). Mr. Lackey told the therapist that when he becomes emotional, he "shuts down and cannot think straight" and that he cannot get past the gravity of the situation. (JE 3:16). The therapist indicated that she would defer to the medical team for any treatment for depression or anxiety surrounding the accident. (JE 3:16). The therapist opined that the claimant did not have a documented TBI. (JE 3:18).

Mr. Lackey visited with hospitalist Rebekah Bond, M.D., on March 9, 2018. (JE 3:19-21). Dr. Bond observed that Mr. Lackey worked well with therapy. (JE 3:20). It was noted that Mr. Lackey had a right foot drop, which necessitated a recommendation for a brace. (JE 3:20). Mr. Lackey's therapy continued on this date, with less emotional affect noted. (JE 3:22). Mr. Lackey's mental status remained grossly within normal limits. (JE 3:22-23). David S. Field, M.D., also examined Mr. Lackey on this date. (JE 5:1). Dr. Field opined that it would be two to three weeks at a minimum before he could bear weight, and then another three to four weeks "at least" on the right side. (JE 5:1).

On March 10, 2018, Alexander Johnson, M.D., examined the claimant while in the hospital. (JE 3:25-26). The claimant complained of mild discomfort and pain in his right leg. (JE 3:25). At the time, Mr. Lackey needed a wheelchair. (JE 3:27). He had some cognitive language deficits noted in his speech therapy. (JE 3:27). The speech therapist noted that the claimant had one episode of issues with word retrieval. (JE 3:28). He noted that he did not feel foggy or disoriented. (JE 3:28-29). Dr. Field met with the claimant again on March 10, 2018. (JE 5:2). Dr. Field noted that Mr. Lackey would not be able to bear weight until x-rays showed "progressive consolidation in both the left and right sides." (JE 5:2).

Dr. Johnson examined Mr. Lackey again on March 11 and 12, 2018. (JE 3:30-32). Mr. Lackey had the day off from therapy sessions. (JE 3:30). He remained nonweightbearing, and in a wheelchair. (JE 3:30-31). Additional x-rays were performed on March 12, 2018, which showed a stable appearance of the right femur with internal fixation. (JE 3:31; 5:3). The right tibia and fibula were also noted to be stable with internal fixation through the tibia. (JE 3:32; 5:3). Dr. Johnson recommended that they continue supportive management while awaiting healing of the wounds and fractures. (JE 3:32).

On March 13, 2018, Alexander Chung, M.D., examined the claimant at Finley Hospital. (JE 3:33-36). Mr. Lackey told Dr. Chung that he felt about the same, without significant changes. (JE 3:35). The next day, Dr. Chung examined Mr. Lackey while he was sitting upright in a wheelchair. (JE 3:37). Mr. Lackey reported to Dr. Chung that he had discomfort in his right knee. (JE 3:37). He had no pain in his shin or pelvis. (JE 3:37). Dr. Field met with Mr. Lackey again on March 14, 2018. (JE 5:4). Dr. Field

opined that Mr. Lackey was generally doing well. (JE 5:4). Mr. Lackey had no issues with the left side, but continued to be nonweightbearing. (JE 5:4). Dr. Field recommended that Mr. Lackey increase activity while monitoring the pelvic fracture. (JE 5:4). Once the pelvic fracture was adequately healed, Mr. Lackey could begin activities with a walker while putting full weight on his left leg. (JE 5:4).

By March 15, 2018, Mr. Lackey told Dr. Chung that he had continued discomfort in his right knee and femur. (JE 3:41). Dr. Chung observed that Mr. Lackey was "[o]riented x 3" with no gross motor deficits. (JE 3:43). Dr. Field again opined that Mr. Lackey would likely be resting for at least another two weeks before he could begin weightbearing. (JE 5:5). He also complained to Dr. Chung of persistent mild discomfort to the right upper knee on March 16, 2018. (JE 3:45). During this visit, Dr. Chung noted that Dr. Field recommended that the claimant remain nonweightbearing for at least two more weeks. (JE 3:45).

On March 17, 2018, Dr. Chung saw Mr. Lackey again. (JE 3:50-54). Dr. Chung opined that Mr. Lackey was doing well from a clinical perspective. (JE 3:53). His blood pressure, which was previously high, was falling. (JE 3:53). Dr. Chung noted that Dr. Field recommended x-rays in 10 days, in order to assess the status of the fractures. (JE 3:53). On March 18, 2018, Mr. Lackey continued to complain of mild discomfort in the right upper knee, though Dr. Chung did not observe any erythema or effusion. (JE 3:55-58). Dr. Chung observed Mr. Lackey again on March 19, 2019. (JE 3:59-63). Outside of his discomfort in his right knee, Dr. Chung opined that Mr. Lackey was clinically stable. (JE 3:59). An x-ray of the pelvis showed no significant changes when compared to a previous CT scan. (JE 3:59). Dr. Chung deferred to Dr. Field as to decisions regarding when Mr. Lackey could begin bearing weight. (JE 3:59).

Jared Nyabuti, M.D., visited with the claimant on March 20, 2018. (JE 3:64-65). Dr. Nyabuti recommended that the claimant continue with therapy and his current medical management. (JE 3:64). Mr. Lackey told Dr. Nyabuti that he was doing well, and continued with physical and occupational therapy. (JE 3:64). The physical therapy records indicated to Dr. Nyabuti that the claimant was gaining strength well. (JE 3:64). The next day, the claimant told Dr. Nyabuti that he had no new complaints. (JE 3:66-67). He further mentioned that he had not been able to be on two feet, yet. (JE 3:66). Dr. Nyabuti recommended that Mr. Lackey continue his treatments, and with current medical management. (JE 3:66). Dr. Field also examined the claimant on March 21, 2018. (JE 5:8). Dr. Field reviewed x-rays of the claimant's pelvis, which showed the eight screws in place and in good alignment. (JE 5:8). Dr. Field recommended re-evaluating the ambulation process within the next week. (JE 5:8). On March 22 and 23, 2018, Dr. Nyabuti observed no changes to the claimant's conditions, and made no new recommendations. (JE 3:68-71).

Dr. Chung examined Mr. Lackey again on March 24, 2018. (JE 3:72-76). Mr. Lackey reported doing well overall with no complaints. (JE 3:72). The current plan of care was to begin pelvic weightbearing in two weeks. (JE 3:72). The record noted that the right lower extremity would require more healing time before he could bear weight on it. (JE 3:72). Dr. Chung indicated that he deferred to Dr. Field on decisions pertaining to weightbearing. (JE 3:72). Dr. Nyabuti visited with Mr. Lackey on March 25

and 26, 2018, in the hospital. (JE 3:77-78). Mr. Lackey indicated that he had no new complaints, and continued with therapy. (JE 3:77). He had the same report on March 26, 2018. (JE 3:79-80).

Suraj Pazhoor, M.D., examined the claimant on March 27, 28, and 29, 2018, and found nothing remarkable. (JE 3:81-86). Dr. Field reviewed Mr. Lackey's progress with his treating surgeon on March 30, 2018. (JE 5:11). They agreed that the claimant should at least begin a trial of progressive weightbearing on the left leg with a walker during the next week. (JE 5:11). Dr. Field also indicated that an EMG may be necessary as it related to the drop foot on the right side. (JE 5:11). On March 30 and 31, and April 1, 2018, Mr. Lackey told Dr. Pazhoor that he was doing well and "making good progress." (JE 3:87-92). Dr. Field then recommended that Mr. Lackey begin weightbearing on Monday as tolerated on the left side with support of a walker. (JE 5:12). He was to remain nonweightbearing on the right side. (JE 5:12). Mr. Lackey told Dr. Pazhoor that he did well on his first full day of weightbearing on April 2, 2018. (JE 3:93-94). On April 3, 2018, Dr. Bond saw the claimant again. (JE 3:95-96). Mr. Lackey continued to complain of pain in his right knee. (JE 3:95). He also had numbness in his right leg, but felt that he could feel touch throughout his leg. (JE 3:95). Dr. Bond noted that Mr. Lackey was back to weightbearing on his leg. (JE 3:95).

On April 3, 2018, the inpatient rehabilitation team, including Stanley Mathew, M.D., held a team conference to discuss Mr. Lackey's progress. (JE 3:97-102). He only had one incident where he could not remember a word, and was "minimally tearful." (JE 3:101). He did not feel foggy or disoriented. (JE 3:101). He progressed to ambulation with "FWW" [front-wheeled walker], but was limited by fatigue. (JE 3:100). The therapist noted that Mr. Lackey was pushing himself to do better during each session. (JE 3:100). He demonstrated "good judgment" when it came to safety and transfers. (JE 3:99).

Dr. Bond visited Mr. Lackey again on April 4, 2018. (JE 3:103-104). Her record and notes are largely the same as those from April 3, 2018. (JE 3:103-104). Dr. Field met with Mr. Lackey on the same day. (JE 3:105-106). Dr. Field recommended an EMG of the right leg to evaluate weakness and drop foot. (JE 3:105; 5:14). Dr. Field also recommended an AFO to assist with ambulation. (JE 3:105; 5:13). X-rays showed "progressive consolidation" of the tibial fracture, and a lack of abundant callus formation around the distal comminuted femoral fracture. (JE 3:106; 5:15). Dr. Field opined that femoral weightbearing may take another four or more weeks due to the femoral fractures, as the tibia was doing well. (JE 3:106; 5:15).

On April 6, 2018, Dr. Bond re-examined the claimant. (JE 3:107-108). The claimant continued to have pain in his right knee, along with numbness in his right leg. (JE 3:107). He remained stable on April 7, 2018. (JE 3:109-110). On April 8, 2018, Mr. Lackey told Dr. Bond that he had trouble sleeping the night before due to "significant spasms in the right leg above the knee." (JE 3:111-113). Mr. Lackey indicated that he could see the muscle spasming in his leg. (JE 3:111). Dr. Bond opined that the claimant's muscle spasm was a problem, and was likely related to increased activity and therapy. (JE 3:112). After taking methocarbamol and having a massage, Mr. Lackey told Dr. Bond that his muscle spasms improved greatly. (JE 3:114-115). Dr.

Field also examined Mr. Lackey on April 8, 2018. (JE 5:16). Dr. Field noted that he previously provided a prescription for a brace, and that the EMG was already arranged. (JE 5:16). Dr. Field recommended x-rays of the right femur and tibia in another three weeks. (JE 5:16). Dr. Field noted that the right leg appeared stable upon examination, as "nothing else is happening" and Mr. Lackey was progressing with ambulating and full weightbearing on the left leg. (JE 5:16).

Mr. Lackey's inpatient rehabilitation team had another conference on April 10, 2018. (JE 3:117-121). Mr. Lackey was using a two-wheeled walker with assistance. (JE 3:119). The record opined that Mr. Lackey would only require speech therapy for no more than one to two sessions. (JE 3:120). Mr. Lackey was also evaluated for a wheelchair. (JE 3:122). This would allow Mr. Lackey to better maneuver in his house. (JE 3:122).

On April 14, 2018, Dr. Field visited with the claimant again to discuss his progress. (JE 5:17). Dr. Field opined that Mr. Lackey was "doing very well," but that his main issue continued to be his femur fracture. (JE 5:17). Dr. Field felt that Mr. Lackey could probably bear weight on the tibial fracture, and was fully weightbearing on the left side. (JE 5:17). Dr. Field opined that it would take at least three months to bear weight on his right side due to the femoral fracture. (JE 5:17).

On April 17, 2018, Mr. Lackey was discharged from the inpatient hospital. (JE 3:123-131). Mr. Lackey was discharged with a wheelchair referral, a commode referral, a CPAP referral, an ankle orthosis referral, a walker referral, and a cane or crutches referral. (JE 3:123-124). Pinalkumar Patel, M.D., was involved in the discharge process. (JE 3:128-129). Dr. Patel recounted the circumstances surrounding Mr. Lackey's work injury, and subsequent treatment. (JE 3:128-129). Mr. Lackey did "very well" with physical and occupational therapy. (JE 3:129). Mr. Lackey was discharged with prescriptions for pain medications and was instructed to follow up with his primary care physician and orthopedic physician. (JE 3:129).

Due to numbness in the right foot and toes, along with drop foot, Ronald Sims, M.D. performed an EMG on Mr. Lackey on April 20, 2018. (JE 6:1-4). Dr. Sims observed that Mr. Lackey had marked edema in the right foot and ankle. (JE 6:4). The EMG showed right femoral neuropathy and right peroneal neuropathy. (JE 6:4). Dr. Sims also noted that Mr. Lackey had abnormal left peroneal motor and sensory results; however, Dr. Sims indicated that the findings were not readily interpreted "given limited information." (JE 6:4).

The claimant followed-up with Dr. Hunter at Medical Associates Clinic, P.C., on April 24, 2018. (JE 4:12-14). Mr. Lackey continued to have a wound on his right lower leg, for which Dr. Hunter performed dressing changes. (JE 4:12). Mr. Lackey told Dr. Hunter that he continued to gain ground, even though he was still nonweightbearing on the right leg. (JE 4:12). Mr. Lackey denied any concussion issues or headaches. (JE 4:12). Dr. Hunter recommended that Mr. Lackey wean away from hydrocodone over the next few months. (JE 4:13). Dr. Hunter opined that the claimant's various fractures were healing well. (JE 4:13).

Dr. Field examined Mr. Lackey on April 30, 2018. (JE 5:18-21). Dr. Field noted that he performed additional x-ray examination, and that, in addition to the fractures, Mr. Lackey had an issue with drop foot on the right side. (JE 5:18). This had not responded to any treatment in the time since the incident. (JE 5:18). Dr. Field noted the results of the EMG, which showed evidence of a peroneal nerve injury to the right leg along with "some neuropathy" in the right thigh. (JE 5:18). Dr. Field opined that the claimant would benefit from a bone stimulator for the distal supracondylar fracture, along with exploration and decompression of the peroneal nerve "at least at the knee in the proximal tunnel here" to attempt to provide the best outcome. (JE 5:18). Dr. Field prescribed Skelaxin as a muscle relaxant. (JE 5:18). Dr. Field provided a note indicating that Mr. Lackey was to remain off work until at least the next appointment. (JE 5:21).

On May 2, 2018, Dr. Hunter indicated that Mr. Lackey still needed intermittent skilled nursing, physical therapy, and occupational therapy. (JE 4:15-17).

Mr. Lackey had a preoperative examination ahead of the planned right peroneal nerve decompression, on May 21, 2018. (JE 4:18-20). The examination was normal, and Dr. Hunter cleared Mr. Lackey for surgery with no further workup required. (JE 4:19).

On May 25, 2018, Dr. Field performed an open decompression of the peroneal nerve at the level of the fibular head. (JE 3:132). Dr. Field's diagnosis was that Mr. Lackey had a probable peroneal nerve contusion or palsy at the fibular head. (JE 3:132). Dr. Field correlated the results of the EMG to the aforementioned diagnosis, and Mr. Lackey's drop foot. (JE 3:132). Dr. Field noted that the peroneal nerve appeared somewhat flattened and softened in the leg. (JE 3:132).

Dr. Hunter examined Mr. Lackey again on June 1, 2018, at Medical Associates Clinic, P.C. (JE 4:21-22). Mr. Lackey told Dr. Hunter that "everything" was bothering him, he thought he was depressed, and he was tearful. (JE 4:21). His mood worsened over the last month which concerned his wife. (JE 4:21). Dr. Hunter diagnosed Mr. Lackey with major depressive disorder. (JE 4:22). Dr. Hunter recommended medication and that Mr. Lackey pursue counseling. (JE 4:22). Mr. Lackey declined the offer of counseling. (JE 4:22). Dr. Hunter also recommended that Mr. Lackey have no access to guns. (JE 4:22).

Dr. Field visited with Mr. Lackey on June 5, 2018, with regard to the right nerve peroneal decompression completed on May 25, 2018. (JE 5:22-23). Dr. Field removed the sutures, and noted that the surgical wounds were healing well. (JE 5:22). Mr. Lackey told Dr. Field that he noticed improvement in the dorsiflexion of his right foot, along with a diminishment in numbness in the great toe. (JE 5:22). Mr. Lackey continued to have stiffness in his ankle. (JE 5:22-23). Additional femoral x-rays were performed, which showed progressive consolidation of the fractures in the femur. (JE 5:23). Dr. Field opined that Mr. Lackey could begin "partial weightbearing" at about 30 pounds, and then progressing from there. (JE 5:23). Dr. Field requested that the claimant return in one month. (JE 5:23).

On June 14, 2018, Mr. Lackey followed up with Dr. Hunter for chronic pain management. (JE 4:23-24). Mr. Lackey was taking three hydrocodone per day, and Dr. Hunter reviewed a pain contract with him. (JE 4:23). Mr. Lackey requested a refill of his pain patch. (JE 4:23). The claimant was using a walker at the time and had a 30-pound weightbearing limit. (JE 4:24).

Dr. Hunter examined Mr. Lackey again on June 29, 2018, as a recheck on depression issues. (JE 4:25-27). Mr. Lackey was taking citalopram on a daily basis. (JE 4:25). The claimant told Dr. Hunter that his mood was more positive, and Dr. Hunter observed that he was smiling and interactive. (JE 4:25). His wife told Dr. Hunter that his mood was "significantly improved." (JE 4:25). Dr. Hunter indicated that the plan was to keep Mr. Lackey on antidepressants for six to twelve months. (JE 4:25). Mr. Lackey continued to have significant limitations with his right lower extremity. (JE 4:25). He still used a walker and continued to only bear 30 pounds of weight. (JE 4:25). Mr. Lackey requested a handicapped parking sticker, which Dr. Hunter provided. (JE 4:25). Mr. Lackey expressed a concern about permanent disability regarding continued use of his right leg, which Dr. Hunter indicated he should discuss with his orthopedic providers. (JE 4:25). Dr. Hunter observed a small ulcer on the right leg, but he noted no signs of infection. (JE 4:26). He recommended an antibiotic ointment. (JE 4:26).

Dr. Field saw Mr. Lackey for a follow-up on July 2, 2018. (JE 5:23-24). Mr. Lackey had therapy for his right ankle. (JE 5:23). Mr. Lackey displayed active dorsiflexion of the right ankle. (JE 5:24). The claimant's peroneal nerve function was intact, and overall Dr. Field felt that Mr. Lackey was improving. (JE 5:24). Dr. Field indicated that questions remained as to whether or not Mr. Lackey would gain any functional use of his right leg. (JE 5:24). Dr. Field noted that this would not be known until later in the summer. (JE 5:24). Dr. Field also provided Mr. Lackey with an injection of Celestone and Xylocaine in the right ankle. (JE 5:24).

Dr. Field examined the claimant again on August 13, 2018, as a follow-up for his work-related injury. (JE 5:24-25). Mr. Lackey seemed to be progressively improving. (JE 5:24). He continued to use a bone stimulator, and the injection in the right ankle helped "considerably." (JE 5:24). Dr. Field recommended that the claimant take an occasional Aleve one or two times per day rather than continuing hydrocodone. (JE 5:24). Based upon his recent recovery, Dr. Field felt that Mr. Lackey could resume driving in the future. (JE 5:25).

On August 29, 2018, the claimant returned to Dr. Hunter's office for an annual check-up. (JE 4:28-30). Mr. Lackey continued to heal from his leg injury and had weaned off pain patches and pills. (JE 4:28). He continued to pursue rehabilitation for his right leg. (JE 4:28).

Mr. Lackey continued his care with Dr. Field on September 24, 2018. (JE 5:25-26). Mr. Lackey's therapist inquired about an orthotic. (JE 5:25). Mr. Lackey could climb into a truck, use a clutch, and was driving a semi-tractor temporarily to see if he could drive on country roads. (JE 5:25). According to Mr. Lackey, driving was going well. (JE 5:25). Mr. Lackey displayed improved sensory evaluation of the peroneal nerve. (JE 5:26). He could bear weight without pain. (JE 5:26). Dr. Field noted that

Mr. Lackey had inversion/eversion of his ankle and foot. (JE 5:26). Dr. Field recommended that Mr. Lackey remain wearing his AFO brace and put it into a lace-up high-top boot. (JE 5:26). Dr. Field opined that Mr. Lackey could likely pass his DOT physical, and released him to work. (JE 5:26-27).

On October 23, 2018, Mr. Lackey was discharged from therapy at DBF Westmark PT. (JE 7:1-4). Mr. Lackey completed 26 physical therapy visits between July 5, 2018, and September 24, 2018. (JE 7:2). He achieved 100 percent of his goals and was doing well. (JE 7:2). Mr. Lackey had knee and ankle stiffness, but his swelling improved greatly. (JE 7:2). Due to his improved level of function, the therapist recommended he be discharged from therapy. (JE 7:2). The therapist observed that Mr. Lackey tended to hold his foot in inversion due to stiffness in his right calf. (JE 7:2). He walked well without his cane, but still displayed an antalgic gait with decreased stance on the right. (JE 7:2). His balance improved greatly since the beginning of therapy. (JE 7:3). The therapist opined that Mr. Lackey could benefit from a consultation with an orthotist for a right foot orthotic. (JE 7:3).

Dr. Hunter examined Mr. Lackey again on September 26, 2018, for another DOT physical examination. (JE 4:31-32). Dr. Hunter noted that Mr. Lackey continued to have limitation on his range of motion in his right lower extremity and ambulated with a "severe limp." (JE 4:31). He also had pain concerns. (JE 4:31). Mr. Lackey told Dr. Hunter that he felt that he could drive with his right leg. (JE 4:31). Mr. Lackey's mood and depression issues were "stable and improved." (JE 4:31). Dr. Hunter recommended a functional evaluation to review Mr. Lackey's ability to safely operate a truck. (JE 4:32).

On October 1, 2018, Mr. Lackey completed a DOT physical with chiropractor Michael Heinrich. (JE 8:1-6). Mr. Lackey noted his right leg injury, and his medications. (JE 8:1). Mr. Lackey indicated that he had previous issues with high blood pressure, high cholesterol, anxiety, depression, nervousness, mental health problems, sleep apnea, broken bones, tobacco use, and alcohol use. (JE 8:2). The examiner recommended weight loss. (JE 8:3). He also had an abnormal result for his "general" body system and extremities. (JE 8:3). His hypertension required periodic monitoring. (JE 8:4). He was given a one-year medical card. (JE 8:4). Of note, there were no issues with head or brain injuries (such as a concussion). (JE 8:2).

Mr. Lackey continued his care with Dr. Field on November 5, 2018. (JE 5:26-27). Mr. Lackey's main issue was "some weather sensitivity and an achiness of his right knee." (JE 5:26). Mr. Lackey used a cane to ambulate, and developed a hammertoe in the great toe and second toe on the right foot. (JE 5:26). Dr. Field administered an injection to the right knee. (JE 5:28). Dr. Field noted that treatment for the hammertoe may involve surgery. (JE 5:28). Dr. Field allowed the claimant to return to work without restrictions. (JE 5:29). The claimant was told to return to Dr. Field's office as needed. (JE 5:29).

On November 30, 2018, Mr. Lackey returned to Dr. Hunter's office for preoperative clearance. (JE 4:33-35). Mr. Lackey was going to have a right foot surgery. (JE 4:33). Dr. Hunter observed that Mr. Lackey had hammertoes on his right

foot. (JE 4:34). He cleared the claimant for surgery with no further workup required. (JE 4:34).

On December 14, 2018, Mr. Lackey had an arthrodesis of the right great toe, and a partial proximal phalangectomy of the second toe for shortening purposes at Finley Hospital with Dr. Field. (JE 5:30-31). Dr. Field diagnosed Mr. Lackey with flexion contractures of the right foot, great toe, and second toe, secondary to previous partial paralysis of the peroneal nerve. (JE 5:30). Dr. Field kept Mr. Lackey off work until a follow-up appointment on December 27, 2018. (JE 5:32).

Mr. Lackey continued his follow-up visits with Dr. Field on December 27, 2018. (JE 5:35-37). Mr. Lackey recently had a fusion of the IP joint of the right big toe, and a second toe proximal partial phalangectomy. (JE 5:35). He still had a pin in his right great toe. (JE 5:35). He rated his right toe pain 1 out of 10 and his right knee pain 10 out of 10. (JE 5:35). Dr. Field performed an x-ray of the right knee, which showed consolidation of the fracture with no articular abnormality relative to the knee joint. (JE 5:35). Mr. Lackey was to remain off work and return to Dr. Field's office in two weeks. (JE 5:35-37).

Dr. Hunter saw Mr. Lackey again on January 9, 2019, for complaints of a rash around his waist. (JE 4:36-37). The rash was not itchy, but also was not going away. (JE 4:36). Dr. Hunter diagnosed Mr. Lackey with tinea corporis and prescribed Diflucan and clotrimazole. (JE 4:37).

On February 1, 2019, Mr. Lackey continued physical therapy with UnityPoint Health. (JE 7:5-10). Mr. Lackey continued to have right knee pain, muscle weakness, pain, and decreased range of motion. (JE 7:5). His pain was tolerable. (JE 7:5-7). He still had gait deficits due to weakness and balance issues. (JE 7:9).

Dr. Field examined Mr. Lackey again on February 4, 2019. (JE 5:38-39). He had active dorsiflexion, improved peroneal strength, and improved posterior tibial strength. (JE 5:38). Mr. Lackey told Dr. Field that his pain improved over the last two weeks with the bone stimulator and additional physical therapy. (JE 5:38). Dr. Field recommended that Mr. Lackey have an arch support. (JE 5:38). Dr. Field recommended continued use of the bone stimulator, and discussed the potential use of a handicapped shower given Mr. Lackey's right leg issues. (JE 5:38). Dr. Field kept Mr. Lackey off work until an additional follow up appointment. (JE 5:39).

On March 4, 2019, Mr. Lackey visited Dr. Hunter for a six-month check-up. (JE 4:38-39). Mr. Lackey's vertigo remained stable. (JE 4:38). There is no mention made in this record of his leg, or depression issues. (JE 4:38-39). Mr. Lackey also visited Dr. Field on the same date. (JE 5:40-42). Mr. Lackey's right toes and right femur fracture were healing well. (JE 5:40). Dr. Field took x-rays of the right femur, which showed progressive consolidation of the supracondylar area. (JE 5:40). Dr. Field opined that this area responded positively to additional bone stimulation. (JE 5:40). He was free of pain. (JE 5:40). Dr. Field opined that Mr. Lackey should return to work shortly to get comfortable with returning to work. (JE 5:41). Dr. Field was pleased with Mr. Lackey's progress, though Mr. Lackey continued to walk with a limp and used a cane as needed.

(JE 5:40). Mr. Lackey had passed his DOT test and could drive. (JE 5:40). Mr. Lackey was allowed to return to work without restrictions on March 5, 2019. (JE 5:42).

Mr. Lackey continued physical therapy on March 4, 2019. (JE 7:11-15). Mr. Lackey continued to have right knee pain, and muscle weakness. (JE 7:11). He described his pain as throbbing. (JE 7:11). His pain increased with walking and standing. (JE 7:12). He complained of an inability to sleep. (JE 7:12). Mr. Lackey responded well to therapy, and felt like he was ready to discharge to a home exercise plan and return to work. (JE 7:14). The therapist opined that "[m]ost of his goals have been met." (JE 7:14).

The claimant returned to Dr. Field's office on May 6, 2019, for continued follow-up care. (JE 5:43-44). The swelling in Mr. Lackey's right foot had decreased, and the fusion was healing well. (JE 5:43). Dr. Field opined that the lateral screw could be removed in an office setting. (JE 5:43). Upon examination, Dr. Field observed that Mr. Lackey was gaining range of motion in his foot with peroneal strength. (JE 5:43). He could drive his truck comfortably, and only had difficulty on steps or stairs. (JE 5:43). Dr. Field was pleased with Mr. Lackey's progress. (JE 5:43). Mr. Lackey could return to work without restrictions on May 6, 2019. (JE 5:44).

Richard Kreiter, M.D. examined Mr. Lackey on May 21, 2019. (Claimant's Exhibit 2:1-5). Dr. Kreiter reviewed medical records ahead of the examination. (CE 2:1, 3-5). Dr. Kreiter also discussed the history of Mr. Lackey's issues with him before examining him. (CE 3:3). Dr. Kreiter diagnosed Mr. Lackey as follows:

a. Healed distal right femoral, supracondylar fracture with articular irregularity, progressive knee degenerative changes, chronic effusion, limited range of motion, chronic pain and instability with retained plate, screws and pins.
b. Healed right tibial fracture with IM rod and screws and ankle synovitis with limited range of motion.
c. Postop peroneal nerve decompression with neurolysis at the level of the fibular head on the right with improved function, both sensory and motor, this for nerve injury and entrapment.
d. Postop open reduction internal fixation of pubic synthesis [*sic*] separation with 6-hole plate and bilateral sacroiliac screws, doing well and now asymptomatic.
e. Fusion of the IP joint of the right great toe for hammertoe.

(CE 2:1). Dr. Kreiter recommended that the claimant be referred to the University of Iowa or Mayo Clinic for evaluation and treatment, as the knee and ankle issues were complex. (CE 2:1). Dr. Kreiter questioned whether all of the fractures were healed, and noted that Mr. Lackey may require a knee replacement. (CE 2:1). Dr. Kreiter continued by opining that Mr. Lackey had not achieved MMI. (CE 2:1). Dr. Kreiter provided an impairment rating based upon the AMA Guides, Fifth Edition. (CE 2:1). Due to a disturbance in his gait, and use of an AFO brace, Dr. Kreiter opined that Mr. Lackey had "at least a 30 percent whole person impairment." (CE 2:1-2). The nerve deficit issues added on another 5 percent whole person impairment "with the chance of improvement

over the next six months." (CE 2:2). Dr. Kreiter continued by opining that Mr. Lackey had a 5 percent whole person impairment rating due to ankle motion impairment. (CE 2:2). Dr. Kreiter used the combined values chart and provided a "provisional" impairment rating of 37 percent of the whole person. (CE 2:2). Dr. Kreiter provided restrictions of no tarping or flatbed usage for Mr. Lackey. (CE 2:2). He also restricted the claimant from doing "any significant work." (CE 2:2).

On June 10, 2019, Mr. Lackey continued his care with Dr. Field. (JE 5:52-53). Mr. Lackey told Dr. Field that he had ongoing, "perhaps worsening" pain in the right knee. (JE 5:52). Dr. Field indicated that Mr. Lackey continued to recover "progressively but slowly from his peroneal nerve decompression," and still had residual weakness of dorsiflexion of the right ankle. (JE 5:52). He had no pain in his big toe. (JE 5:52). Dr. Field noted that Mr. Lackey's right knee may require additional treatment, or even surgery. (JE 5:52). Dr. Field recommended a CAT scan of the knee, and further opined that at "some future date," all of the metal and screws should be removed from the knee and "then converted to a revision total knee system." (JE 5:52).

Dr. Field drafted a letter dated June 17, 2019, in response to questions posed by defendants' counsel. (JE 5:54). Dr. Field noted that he had not yet placed Mr. Lackey at maximum medical improvement ("MMI") for his injuries, due to his continued issues surrounding the right femur and knee. (JE 5:54). Dr. Field could not predict when Mr. Lackey would achieve MMI because he may require further surgery. (JE 5:54). Dr. Field concluded his letter to defendants' counsel by noting that a second opinion "may be of some benefit" regarding Mr. Lackey's right knee issues. (JE 5:54). Dr. Field also wrote a letter to an insurance adjuster. (JE 5:55). He noted that he could not provide an impairment rating because of the claimant's continued care and condition. (JE 5:55-56). He opined that Mr. Lackey may require additional care for the right knee and femur. (JE 5:55).

On July 22, 2019, the claimant had a second opinion examination with Matthew Bollier, M.D., with regard to his ongoing right knee pain. (JE 9:1-8). Dr. Bollier recounted Mr. Lackey's treatment and surgical history to date. (JE 9:1). At the time of the examination, Mr. Lackey reported pain of 7 out of 10, which was primarily anterior and distal to the femur. (JE 9:1). The pain woke Mr. Lackey at night, and also occurred when he walked. (JE 9:1). Mr. Lackey described a feeling of instability in his knee. (JE 9:1). Since his procedures, he had numbness along his lower leg. (JE 9:1). Finally, he noted occasional cramping in the calf along with throbbing and swelling in his knee as the day progresses. (JE 9:1). Dr. Bollier observed that Mr. Lackey was able to answer questions appropriately and follow commands. (JE 9:2). He also had no emotional instability and no flight of ideas. (JE 9:2). Mr. Lackey had an antalgic gait, and some pain in the right knee. (JE 9:2). Dr. Bollier could feel hardware at the lateral knee with a mechanical snap noted on active and passive knee range of motion. (JE 9:3). X-rays of the right knee showed side plate with screw fixation elements in the femur with an intramedullary rod in the tibia. (JE 9:4). Dr. Bollier also observed narrowing of the patellar dash femoral joint space with evidence of chondromalacia of the patella. (JE 9:4). There was also evidence of "radiopaque joint bodies" in the anterior intercondylar notch portion of the knee joint. (JE 9:4). Dr. Bollier opined that the radiographic

evidence showed nonunion of the distal femur fracture. (JE 9:4). Dr. Bollier discussed a referral for surgical management including a bone graft and revision fixation of the distal femur fracture. (JE 9:4). Dr. Bollier recommended a referral to Dr. Karam for evaluation and surgical management. (JE 9:4). Dr. Bollier expected that the claimant could be issued an impairment rating five to six months after the potential surgery. (JE 9:4).

Mr. Lackey had his first visit with Matthew Karam, M.D., on July 30, 2019. (JE 9:8-17). Mr. Lackey told Dr. Karam that he was unable to walk without difficulty and was in near constant daily pain. (JE 9:8). Dr. Karam observed that the claimant had poor lateral range of motion in his right knee. (JE 9:10). He also had minimal mobility in his great toe. (JE 9:10). Dr. Karam ordered a white blood cell scan to rule out an infection. (JE 9:10). He also considered a revision open reduction internal fixation with blade plate and bone grafting. (JE 9:10). Dr. Karam ordered x-rays of the right femur. (JE 9:14). Dr. Karam indicated that Mr. Lackey should remain off work pending a surgical evaluation of his right knee. (JE 9:15-16).

On August 28, 2019, Mr. Lackey had a bone scan of his right femur. (JE 9:18-20). The examination showed no evidence of osteomyelitis. (JE 9:19). It showed "[f]ocally increased bone remodelling [*sic*] at fracture site with mild inflammatory component likely secondary to ongoing stress reaction at side of non-united fracture fragments." (JE 9:19).

Dr. Karam saw Mr. Lackey again on September 3, 2019. (JE 9:22-30). Mr. Lackey noted that he continued to have difficulty and pain with his right knee. (JE 9:22). Dr. Karam summarized the results of the bone scan, especially noting that it showed no evidence of osteomyelitis. (JE 9:22). Dr. Karam opined that Mr. Lackey "was indicated for revision open reduction internal fixation likely with a blade plate, allograft versus autograft with off label BMP we discussed the risk benefits and alternatives which she [*sic*] expressed understanding of and like [*sic*] to proceed…" (JE 9:24). Dr. Karam ordered and reviewed an x-ray in advance of the potential surgery. (JE 9:28). Dr. Karam issued a medical excuse for Mr. Lackey indicating that the claimant should be off work until further notice. (JE 9:21).

On October 10, 2019, Dr. Karam removed hardware in the right distal femur, and performed an open reduction internal fixation with a blade plate with coronal and sagittal correction due to a nonunion of the distal femur fracture. (JE 9:31-32). He was discharged on October 11, 2019. (JE 9:36). Mr. Lackey worked with therapy prior to discharge. (JE 9:37).

Mary Greve, PA-C, examined the claimant on October 25, 2019, as a follow-up to his surgery. (JE 9:46-50). Mr. Lackey had done "very well," and started in physical therapy for range of motion and strength. (JE 9:46). He initially had swelling, but that improved. (JE 9:46). Ms. Greve removed his sutures, and told him to continue working on physical therapy. (JE 9:47). She issued a work excuse which kept Mr. Lackey off work until his next appointment. (JE 9:50).

On November 26, 2019, the claimant had another x-ray of the right femur, at the University of Iowa Hospitals & Clinics. (JE 9:51). The x-ray showed mildly increased

callus formation adjacent to the sclerosed fracture margins in the distal femur. (JE 9:51). Dr. Karam also examined Mr. Lackey. (JE 9:52-57). Dr. Karam opined that he was doing "reasonably well" after the surgery. (JE 9:52). Dr. Karam allowed the claimant to advance to 50 percent weightbearing with his physical therapist, and continue to work on range of motion and strengthening. (JE 9:53). Dr. Karam also kept the claimant off work while he continued to heal. (JE 9:53, 57). The restrictions were to remain in effect until his next follow-up appointment in six weeks. (JE 9:57).

Mr. Lackey followed-up with Dr. Karam again on January 7, 2020. (JE 9:58-64). Dr. Karam noted that the claimant was "doing great" and only had pain when he worked aggressively in physical therapy. (JE 9:58). He continued to be restricted to 50 percent weightbearing, although the claimant admitted to Dr. Karam that he has put full weight on his leg from time to time. (JE 9:58). He felt that this went well. (JE 9:58). Mr. Lackey noted that he had ringing in his ears and joint stiffness. (JE 9:58). Dr. Karam ordered an x-ray. (JE 9:59). The x-ray of the femur showed progressive healing of the comminuted distal femoral fracture and mild degenerative changes to the right knee. (JE 9:63). Dr. Karam allowed Mr. Lackey to return to full weightbearing on his right lower extremity, and also to resume driving. (JE 9:62). Dr. Karam ordered the claimant to continue one to two visits of physical therapy per week. (JE 9:62).

Dr. Karam re-examined the claimant on March 3, 2020. (JE 9:65-71). Mr. Lackey was tolerating full weightbearing until one week prior to the appointment when he fell. (JE 9:65). After he fell, he had increased pain in his right tibia, and was told by another hospital that he had a hairline fracture in the tibial tuberosity. (JE 9:65). He was placed in a knee immobilizer and was no longer bearing weight on his right lower extremity. (JE 9:65). Mr. Lackey denied any other injuries or pain other than to the right lower extremity. (JE 9:65). He did note an issue with ringing in his ears. (JE 9:65). Dr. Karam ordered additional x-rays and found stable alignment of the blade plate with screw fixation in the femur. (JE 9:66, 70). Dr. Karam also reviewed x-rays from another hospital and noted that they showed a tibial tuberosity fracture, a nondisplaced plateau lateral condyle split fracture, and a fractured distal screw on the blade plate. (JE 9:66). Given the recent fall, Dr. Karam recommended a CT of the right knee to evaluate the fracture pattern. (JE 9:66). Dr. Karam wanted him to return in a week. (JE 9:66). Dr. Karam took Mr. Lackey off work until after "further workup." (JE 9:69).

On March 10, 2020, Mr. Lackey returned to Dr. Karam's office for a follow-up examination. (JE 9:72-78). Mr. Lackey made significant progress in bearing weight on his right leg. (JE 9:72). Dr. Karam recommended that Mr. Lackey advance his weightbearing as tolerated and also increase knee range of motion as tolerated. (JE 9:74). Dr. Karam allowed the claimant to return to work full duty, including driving. (JE 9:74, 78).

Mr. Lackey also had a CT scan and x-ray on March 10, 2020. (JE 9:79-82). The CT scan showed postoperative changes of the distal femur. (JE 9:79). The CT also showed minimal cortical disruption of the lateral tibial plateau. (JE 9:80). The x-rays showed unchanged appearance or alignment. (JE 9:81).

Dr. Karam saw Mr. Lackey again on May 18, 2020, for continued care following his work injuries. (JE 9:83-89). Dr. Karam ordered x-rays of the right femur, which showed progressive healing and stable alignment of the distal femoral fracture. (JE 9:88). There were no complications noted with the fracture. (JE 9:88). Mr. Lackey told Dr. Karam that he was doing "okay," but that he had increased pain in the past month after ambulating for long distances. (JE 9:83). He also continued to have swelling in his right knee. (JE 9:83). He also reported difficulty climbing in and out of his semi-truck. (JE 9:83). Sometimes, he noticed his right leg pain radiating into his lower back. (JE 9:83). Dr. Karam recommended that the claimant undergo physical therapy for range of motion and strengthening of the right leg. (JE 9:84-85). Dr. Karam noted that Mr. Lackey had significant atrophy of his right thigh muscles. (JE 9:85). Dr. Karam recommended that Mr. Lackey return in six weeks, at which time, he would have another CT scan. (JE 9:85). Dr. Karam also recommended that Mr. Lackey wear thigh-high compression stockings to address the swelling. (JE 9:85).

The claimant returned to Dr. Karam's office on June 30, 2020, for continued care and examination. (JE 9:90-97). Mr. Lackey told Dr. Karam that he was doing well and was back to full work responsibilities. (JE 9:90). However, he was not performing heavy lifting at work. (JE 9:90). Dr. Karam allowed Mr. Lackey to complete activities as tolerated, provided he was not performing heavy lifting. (JE 9:91). Dr. Karam requested that the claimant return in six months for a repeat evaluation. (JE 9:91). Dr. Karam ordered an x-ray of the right femur. (JE 9:95). The x-ray showed a small amount of lucency around a distal screw, which Dr. Karam opined suggested loosening. (JE 9:95). Overall, the fracture of the femur appeared grossly similar to prior examinations. (JE 9:95). Mr. Lackey was allowed to work full duty, but was not allowed to lift or manipulate heavy tarps at work. (JE 9:97).

On July 20, 2020, Mr. Lackey visited Dr. Field's office for additional follow-up care. (JE 5:60-61). Mr. Lackey complained of some soreness in his right great toe. (JE 5:60). Dr. Field noted that Mr. Lackey likely could feel the screw in his toe both distally and medially. (JE 5:60). X-rays showed that the fusion in the right toe was healing successfully. (JE 5:60). Dr. Field opined that he could remove the screw in an office setting under local anesthesia. (JE 5:60). Dr. Field added that Mr. Lackey had back stiffness and soreness. (JE 5:60). He recommended that Mr. Lackey perform some stretching exercise programs. (JE 5:60). Dr. Field completed a work status report indicating that the claimant could return to work without restrictions on the same day. (JE 5:61).

Mr. Lackey returned to Dr. Field's office on August 10, 2020 to follow-up on a failed screw removal from July 28, 2020. (JE 5:62-63). Dr. Field opined that the screw was buried, and that the area of soreness in the right great toe was towards the dorsal medial side of the great toe. (JE 5:62). Dr. Field provided Mr. Lackey with Hapads for the inside part of his foot under his great toe in an effort to take pressure off the toe. (JE 5:62). Dr. Field opined that the claimant may also require an orthotic. (JE 5:62). Dr. Field completed another work status report, indicating that the claimant could return to work on the same day with no restrictions. (JE 5:62).

On December 15, 2020, Dr. Karam examined Mr. Lackey again. (JE 9:98-103). Mr. Lackey was doing well until he had acute cellulitis of the ankle. (JE 9:98). His right femur started to be painful around the same time. (JE 9:98). The pain was mostly stiffness in the morning. (JE 9:98). Dr. Karam ordered x-rays and reviewed them. (JE 9:99). Dr. Karam noted that it was difficult to determine whether the right femur plate was healed. (JE 9:99). Dr. Karam recommended a CT scan of the distal femur and further recommended that he follow-up in four weeks. (JE 9:99).

Mr. Lackey returned to Dr. Karam's office on January 19, 2021, for continued examination. (JE 9:104-110). Mr. Lackey complained of continued low-level discomfort in the femur, including at night. (JE 9:104). He had physical therapy once per week. (JE 9:104). Dr. Karam reviewed imaging studies, which showed a healing distal femoral fracture with no hardware complication. (JE 9:105). Dr. Karam recommended that Mr. Lackey continue therapy once per week, and return in two months. (JE 9:106).

On February 1, 2021, the claimant visited with Delores Fitton, A.R.N.P., at the University of Iowa. (JE 9:111-115). Ms. Fitton recommended that Mr. Lackey quit smoking, reduce his caffeine consumption, and increase the calcium in his diet, in order to promote healing of his fracture. (JE 9:113). She also recommended that he exercise for at least 30 minutes per day to include weightbearing. (JE 9:114).

Kimberly Leman, PA-C, examined Mr. Lackey on July 27, 2021, for his continued right knee and leg issues. (JE 9:116-119). Mr. Lackey had ongoing issues with cellulitis in his right lower extremity. (JE 9:116). He continued to have pain and redness after completing a previous dose of antibiotics, and also had moderate swelling in his foot. (JE 9:116). Ms. Leman prescribed clindamycin and advised him on how to observe for concerning changes of advancing infection. (JE 9:118). She also showed him how to wrap his foot in an ACE wrap in order to control swelling. (JE 9:118).

On August 17, 2021, Dr. Karam saw Mr. Lackey again. (JE 9:120-122). Dr. Karam noted that the femoral blade plate and tibial nail were removed on July 1, 2021. (JE 9:120). Mr. Lackey reported that the prescribed clindamycin improved his cellulitis. (JE 9:120). He had moderate pain with ambulation, and was using a cane for assistance. (JE 9:120). Otherwise, Mr. Lackey was doing well, and was working on physical therapy. (JE 9:120). Dr. Karam ordered and reviewed additional x-rays, which showed "no significant changes compared to past images." (JE 9:121). Dr. Karam recommended that the claimant continue physical therapy to improve his ankle stiffness and reduce his pain while walking. (JE 9:121). Dr. Karam also recommended that Mr. Lackey continue to use his cane, but allowed him to return to work with a 20 pound lifting restriction and also walking only on a level surface with no climbing or ladders. (JE 9:121-122). Dr. Karam issued a medical excuse to the same effect on August 18, 2021. (JE 9:123).

Mr. Lackey continued his visits with Dr. Karam on October 11, 2021. (JE 9:124-128). Mr. Lackey told Dr. Karam that his pain improved since the last visit, and that he was able to do most of his job, except for lifting heavy tarps. (JE 9:124). Mr. Lackey also noted that if he stood for greater than one hour he experienced "difficulty." (JE 9:124). X-rays demonstrated a malunion flexion deformity of the right distal femur along

with posttraumatic arthritis. (JE 9:125). Dr. Karam provided permanent restrictions including no lifting over 50 pounds, and opined that Mr. Lackey achieved MMI. (JE 9:125). Dr. Karam further opined that Mr. Lackey may need future surgeries including a knee arthroplasty. (JE 9:125).

On October 19, 2021, Dr. Karam wrote a letter to an insurance adjuster. (JE 9:129; DE R:57). He opined that, based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Mr. Lackey suffered a 7 percent permanent impairment to the whole person. (JE 9:129; DE R:57). This was due to a mild gait derangement, antalgic limp, and documented moderate to advanced arthritic changes of the hip, knee or ankle following his fractures. (JE 9:129; DE R:57). Dr. Karam also repeated his 50-pound lifting restriction. (JE 9:129; DE R:57).

Mr. Lackey indicated that Dr. Karam's examination was only to his right knee, and that Dr. Karam did a range of motion measurement for that knee. (Testimony). He did not look at Mr. Lackey's pelvis, hips, or toes. (Testimony).

David Segal, M.D., J.D., examined the claimant for an IME on March 26, 2022. (CE 1:1-75). Dr. Segal is a board certified neurosurgeon. (CE 1:76). Dr. Segal entered into a settlement with the Iowa Board of Medicine regarding certain matters. (DE P:39-50). I find this information interesting, but not persuasive.

Dr. Segal generated an IME report on April 14, 2022. (CE 1:1-82). Dr. Segal notes that "[n]eurosurgery is the medical specialty concerned with the evaluation and treatment of disorders of the brain, spine, and central and peripheral nervous system." (CE 1:2). Dr. Segal opines that he is "qualified to discuss the depression diagnosis because psychiatry was a mandatory rotation in my medical education . . ." (CE 1:2). Dr. Segal reviewed the claimant's substantial medical history. (CE 1:37-71).

Mr. Lackey told Dr. Segal that he had back pain, which he rated 2 out of 10 during the examination. (CE 1:3). This pain at its worst reached 5 out of 10. (CE 1:3). Mr. Lackey rated his right pelvis and hip pain 1 out of 10 during the examination. (CE 1:3). This was the average level of pain which he experienced, though at its worst it reached 5 to 6 out of 10. (CE 1:3). Mr. Lackey rated his right leg pain 1-2 out of 10 while taking ibuprofen at the time of the examination. (CE 1:4). At its worst, the pain was 8 out of 10, but his average pain in the right leg was 2 out of 10. (CE 1:4). Mr. Lackey rated his right foot pain 0 out of 10. (CE 1:4). His average pain in the right foot was 3 out of 10, and his highest pain level was 8 out of 10. (CE 1:4). Mr. Lackey opined that his low back pain was "[s]lowly worsening," while the right pelvis, right hip, right leg, and right foot pain were stable. (CE 1:4). He described his low back, right pelvis, and right hip pain as a nagging, deep ache, "like a toothache." (CE 1:4). His right leg pain was described as stabbing, piercing, aching, sore, numbness, and tingling. (CE 1:4). Finally, his right foot pain was described as sharp and stabbing. (CE 1:4). His symptoms were aggravated by using stairs, bending, changing position, activities of daily living, driving, lifting, pulling, pushing, standing, walking, and cold weather. (CE 1:4).

Dr. Segal then reviewed a number of post-concussive symptoms that Mr. Lackey claimed to experience. (CE 1:6). Mr. Lackey noted that he had cognitive issues. (CE

1:6). These include that it "[t]akes him a little bit longer to figure things out," and that he "has some trouble with being able to concentrate." (CE 1:6). Mr. Lackey also indicated that he sometimes second-guesses himself, which was not an issue before the incident. (CE 1:6). Mr. Lackey claimed that he wore out more quickly and easily than he did before the work injury. (CE 1:6). Mr. Lackey stated that he was more emotionally labile after the incident, but lately he was not. (CE 1:6). Mr. Lackey also told Dr. Segal that his depression improved after therapy and improvement in his symptoms. (CE 1:6). He felt that his depression was 10 percent of what it once was, and he no longer took antidepressants. (CE 1:6). Depression no longer slowed him down or affected his thought processes. (CE 1:6). However, Mr. Lackey noted that he still had days where his injuries troubled him. (CE 1:6). He also reported some trouble sleeping. (CE 1:6).

Mr. Lackey told Dr. Segal that he worked more slowly at certain cognitive and physical items, but could continue to do his job. (CE 1:8). He attempted to stop more often in order to stretch his right leg, but his overall time on the job did not make much of a difference. (CE 1:8). He also needed to be more careful and hold onto things getting into and out of his truck. (CE 1:8). Mr. Lackey told Dr. Segal that he wanted to continue working "until his health 'goes out.'" (CE 1:8). Mr. Lackey told Dr. Segal that he had pain and needed to use a cane due to difficulty walking. (CE 1:8). Mr. Lackey also described difficulty with shoveling snow and mowing his lawn, and noted that he had to hire someone to perform those tasks. (CE 1:8). He alleged that his cognitive issues slowed him down, which bothered him. (CE 1:8).

The IME report also shows photos which illustrate scarring and indentation to the right thigh. (CE 1:9). Mr. Lackey displayed decreased sensation in the right lateral thigh. (CE 1:9). Dr. Segal noted that the claimant displayed tenderness to palpation at bilateral L4-S1 and bilateral SI joints. (CE 1:9). Mr. Lackey also had tenderness at the right greater trochanter of the right pelvis/hip. (CE 1:9). Dr. Segal observed tenderness around the right knee cap. (CE 1:9). Mr. Lackey had depressed right knee and ankle reflexes. (CE 1:9). Dr. Segal measured Mr. Lackey's legs and found that his left leg was 35 inches, while his right leg was 33.5 inches. (CE 1:9). Dr. Segal then reviewed the imaging studies and commented on them. (CE 1:10-13). It is unclear what Dr. Segal's qualifications are as a radiologist or orthopedic doctor based upon the report.

Dr. Segal opined that Mr. Lackey "sustained a significant traumatic injury on February 20, 2018, that affected his entire body and specifically caused injury to his brain, spine, pelvis, and right leg." (CE 1:13). Dr. Segal continued by opining that, ". . . while he did not hit his head, he suffered a concussion and has permanent post concussive symptomatology because of his work-related MVC." (CE 1:13). Dr. Segal explained away the lack of treatment for the alleged head injury by stating that the leg and pelvis injuries were "so significant that they took priority over the brain and lumbar spine injuries and symptoms." (CE 1:13). Dr. Segal continued that Mr. Lackey adapted or assumed that his symptoms were transient. (CE 1:13). He opined that, while Mr. Lackey's symptoms improved, he plateaued in general, and his symptoms were permanent. (CE 1:13).

Dr. Segal continued his IME report by listing a number of diagnoses that he associated with Mr. Lackey's work injury on February 20, 2018. (CE 1:14-15). The

listed diagnoses were as follows: closed head injury with traumatic brain injury and concussion; post-concussion syndrome with cognitive deficits, memory deficits, sleeping disturbance, and psychiatric sequelae of brain injury including depression; pubic symphysis diastases; bilateral sacroiliac joint diastases and fractures; significant angulated, overriding, comminuted, and open distal shaft fracture of the right femur; multiple surgeries complicated by non-fusion and infection; nondisplaced fracture of the proximal tibial and fibular shafts; right peroneal nerve injury post-neurolysis; right femoral neuropathy; right hammertoes on the great and second toes; limb length discrepancy on the right; gait disturbance; fractured L5 transverse process; bilateral traumatic facet arthropathy; multiple, resolved rib fractures; and, asymptomatic left hand injuries. (CE 1:14-15).

Dr. Segal then engaged in a lengthy discussion regarding mechanism of injury for each of the diagnoses. (CE 1:15-22). He begins by discussing his diagnosis of a traumatic brain injury. (CE 1:15-17). Dr. Segal noted the severity of the impact of the accident and noted that this would cause rapid acceleration and deceleration of the head. (CE 1:15). According to Dr. Segal, this rapid acceleration and deceleration caused a concussion and the resulting post-concussive symptoms. (CE 1:15-16). Dr. Segal opined that Mr. Lackey's post-concussive symptoms placed him in a "mild to moderate traumatic brain injury" category. (CE 1:16). Dr. Segal noted that "[t]ypically, symptomatology lasting more than 6 [*sic*] months is considered permanent." (CE 1:17). Dr. Segal continued, by opining that Mr. Lackey's cognitive function was "moderately impaired," which caused "substantial difficulty" in his participation in activities of daily living. (CE 1:17). Dr. Segal continued, "Mr. Lackey's brain injury has made it unlikely he will be able to function in the workforce at his prior level of function, and his functional ability is globally impaired." (CE 1:17). Despite Mr. Lackey's longstanding diagnosis of sleep apnea, Dr. Segal connects his fatigue, sleepiness, and sleep apnea to the work incident. (CE 1:18). Dr. Segal also makes the incorrect statement that the sleep apnea only developed after the motor vehicle crash. (CE 1:18). Dr. Segal uses this to bolster his diagnosis that Mr. Lackey suffered a brain injury. (CE 1:18). Finally, Dr. Segal opines that Mr. Lackey's depression and alleged neurologic deficits were connected to a traumatic brain injury. (CE 1:18).

Dr. Segal next discussed the pelvic injuries and right leg injuries and provides causal connection to the work injury. (CE 1:18-20). He continues by discussing the right hammertoes and limb length discrepancy. (CE 1:21). Dr. Segal notes that the hammertoes were caused by sustained imbalance between flexion and extension forces when applied to the toes. (CE 1:21). According to Dr. Segal's report, limb length discrepancy can cause low back pain, imbalance, nerve palsy, and gait abnormalities. (CE 1:21). Dr. Segal opined that the claimant's abnormal gait was mostly caused by the knee issues. (CE 1:21). Additionally, Dr. Segal opined that Mr. Lackey's gait was deteriorating and his balance was declining. (CE 1:21). It is unclear how he can make such a claim since he only examined Mr. Lackey once.

While the fracture to Mr. Lackey's L1 transverse process was "non-symptomatic" at the time of the examination, Dr. Segal used the presence of the fracture to assert that the claimant's lumbar spine was exposed to great force. (CE 1:21). He also used the

fracture to assert that "the ligaments, joints, and discs in the areas would be injured as well." (CE 1:21). There is no objective study to confirm that the ligaments, joints or discs in the area were injured. Dr. Segal also opined that Mr. Lackey's exam findings of pain with bending, twisting and turning, were consistent with "traumatic facet arthropathy." (CE 1:21). Dr. Segal opines that this independently caused impairment, as Mr. Lackey displayed "significant mechanical low back pain" since his lumbar injury. (CE 1:21). Dr. Segal continued by noting that Mr. Lackey's work injuries caused damage to his ligaments and joint capsules of the facet joints, which caused ongoing pain. (CE 1:21).

Dr. Segal continued his IME report by answering the question: "[a]re Mr. Lackey's current complaints and symptoms attributable to the February 20, 2018, work injury, and are they credible and consistent?" (CE 1:25). Dr. Segal opined that all of Mr. Lackey's current complaints were attributable to the February 20, 2018, work incident. (CE 1:25). He continued by opining that Mr. Lackey's symptoms and impairment were "consistent with the severity of the mechanism of injury, which is consistent with the diagnoses listed . . ." above. (CE 1:25).

Dr. Segal endeavored to provide impairment ratings for Mr. Lackey based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (CE 1:27-31). Dr. Segal placed Mr. Lackey at MMI effective August 17, 2021. (CE 1:27). Dr. Segal then used Table 13-5 to provide an impairment rating based upon the Clinical Dementia Rating scare. (CE 1:27). Based upon this scale, Dr. Segal provided Mr. Lackey with a 7 percent permanent impairment of the whole person for his alleged brain injury, concussion, and post-concussive headaches. (CE 1:27-28).

Based upon decreased range of motion in Mr. Lackey's right knee, Dr. Segal provided permanent impairment ratings for Mr. Lackey. (CE 1:28-29). Dr. Segal assigned Mr. Lackey a 10 percent lower extremity impairment for a loss of flexion in the knee. (CE 1:29). This translated to a 4 percent whole person impairment. (CE 1:29). Dr. Segal assigned the claimant a 20 percent lower extremity impairment for loss of extension in the right knee. (CE 1:29). This equated to an 8 percent whole person impairment. (CE 1:29). Dr. Segal combined these ratings into a 30 percent lower extremity impairment, and/or a 12 percent whole person impairment. (CE 1:29). Dr. Segal also opined that Mr. Lackey had a 40 percent lower extremity impairment based upon decreased ranges of motion in the right hip. (CE 1:28). He equated this to a 14 percent whole person impairment. (CE 1:28). In combining the range of motion ratings for the right hip and right knee, Dr. Segal opined that the claimant has a 21 percent whole person impairment. (CE 1:29). Dr. Segal did not provide an impairment due to lost range of motion in the ankle, as he noted, "[t]he loss of ROM [*sic*] in the ankle is attributable to the peroneal neuropathy and will be rated with that impairment." (CE 1:29). Next, Dr. Segal evaluated Mr. Lackey's permanent impairment based upon the limb length discrepancy between his right and left legs. (CE 1:29). The discrepancy between the right and left leg was 3.8 cm, which Dr. Segal opined caused a 14 percent right lower extremity impairment. (CE 1:29). This translated to a 5 percent whole person impairment rating according to Dr. Segal. (CE 1:29).

Dr. Segal continued his report by discussing impairment he attributed to Mr. Lackey's peripheral nerve injuries. (CE 1:29-30). Dr. Segal noted that, "Mr. Lackey has profound weakness diagnosed as foot drop," which Dr. Segal considered to be a 60 percent motor loss. (CE 1:29-30). Dr. Segal concluded that this presented the claimant with a 25 percent lower extremity impairment rating, which converted to a 9 percent whole person impairment. (CE 1:30). Dr. Segal then discussed the impairment that he attributed to the sensory issues claimed by the claimant. (CE 1:30). Dr. Segal opined that Mr. Lackey had a 3 percent lower extremity impairment based upon sensory issues with the peroneal nerve, which equated to a 1 percent whole person impairment. (CE 1:30). Dr. Segal combined the motor loss and sensory loss ratings to a 10 percent whole person impairment and 28 percent lower extremity impairment based upon issues with Mr. Lackey's peroneal nerve. (CE 1:29-30). Dr. Segal continued by discussing the femoral nerve. (CE 1:30). Dr. Segal opined that the claimant had a 7 percent lower extremity impairment, which converted to a 3 percent whole person impairment, due to motor issues with the femoral nerve. (CE 1:30). Dr. Segal then opined that, due to numbness in the femoral sensory distribution, he classified Mr. Lackey's sensory loss as "class 3" based upon Table 16-10. (CE 1:30). This equated to a 1 percent lower extremity and whole person impairment, according to Dr. Segal. (CE 1:30). Dr. Segal combined the ratings for the femoral nerve issues and provided an impairment rating of 8 percent to the lower extremity and 4 percent of the whole person. (CE 1:30). Dr. Segal combined the peripheral nerve impairment measurements to equal 14 percent of the whole person. (CE 1:30). Dr. Segal took the whole person impairment ratings pertaining to the range of motion, peripheral nerve issues, leg length discrepancy, and ankylosis in the toes, and arrived at a 38 percent whole person impairment rating. (CE 1:30).

Dr. Segal then provided an impairment rating based upon the claimant's muscle atrophy. (CE 1:30). Based upon Table 17-6, Dr. Segal opined that Mr. Lackey had mild calf atrophy, which resulted in a 3 percent lower extremity rating. (CE 1:30). This equated to a 1 percent whole person impairment rating. (CE 1:30).

Dr. Segal continued his impairment rating by discussing ankylosis of Mr. Lackey's right great and second toes. (CE 1:30). Dr. Segal opined that Mr. Lackey's surgery caused ankylosis of the toes. (CE 1:30). Dr. Segal noted that the toes were "ankylosed in a neutral position of function," which Dr. Segal indicated resulted in an 11 percent lower extremity impairment and 4 percent whole person impairment. (CE 1:30).

Dr. Segal continued his impairment analysis by opining that Mr. Lackey had a 24 percent whole person impairment based upon his pelvic injuries. (CE 1:31). Dr. Segal cited to the claimant's pubic symphysis, pain and tenderness in the pelvis, and permanent deformities caused by the pins in his pelvis. (CE 1:31). Based upon Mr. Lackey's L1 transverse process fracture, Dr. Segal assigned him a lumbar DRE II impairment category. (CE 1:31). Based upon DRE II, Dr. Segal opined that Mr. Lackey sustained a 5 percent impairment of the whole person. (CE 1:31).

Dr. Segal then combined the impairment ratings provided for the brain injury, lower extremity injuries, pelvic injuries, and lumbar spine injuries, to arrive at a total combined impairment rating for Mr. Lackey. (CE 1:31). Dr. Segal combined the ratings

to arrive at a 58 percent whole person impairment rating based upon his examination and review of the medical records. (CE 1:31).

Dr. Segal continued his report by discussing permanent work restrictions which he felt were necessary for Mr. Lackey. (CE 1:32). Dr. Segal opined that, should Mr. Lackey's position be terminated, "it would be very difficult for him to find alternate placement." (CE 1:32). Dr. Segal notes:

Specific permanent restrictions are as follows:

- Walking: 45 minutes consecutive, sit for 10 minutes, then can walk again (1 hours/day) – should have walking cane available
- Sitting: 2 hours with shifting then take break
- Standing: 30 minutes consecutive with shifting
- Bending, 1-2 times: Occasionally
- Bending, repetitive: Never
- Lifting/carrying 1-20 pounds: Frequently
- Lifting/carrying 21-30 pounds: Occasionally
- Lifting/carrying 41-50 pounds: Rarely
- Lifting/carrying over 50 pounds: Never
- Pushing up to 75 pounds on wheels: Occasionally
- Pulling up to 30 pounds without wheels: Occasionally
- Squatting: Never
- Stairs, 2-4 flights Occasionally, Over 4 flights never
- Kneeling: Rarely
- Crouching/Squatting: Rarely
- Ladders: Rarely to Never

(CE 1:32).

Dr. Segal recommended additional care that Mr. Lackey needed "now and/or that can be expected to become necessary in the future. . ." (CE 1:33). His treatment recommendations included: periodic x-rays, CT scans, and MRIs, pain medication, a TENS unit, physical or occupational therapy, cortisone or PRP injections, an EMG, an NCV, a neuropsychological evaluation, neuropsychological therapy, depression or anxiety medication, psychotherapy, biofeedback therapy, a discography, lumbar epidural steroid injections, lumbar facet injections, radiofrequency ablation, evaluation by a neurosurgeon or orthopedic spine surgeon, a lumbar discectomy, a lumbar fusion, a spinal cord stimulator, orthotics, a back brace, aquatic therapy, foot orthotics, an "AFO" for foot drop, and continued follow-up with an orthopedic doctor. (CE 1:33-34). Dr. Segal also recommended additional care for post-traumatic arthritis. (CE 1:34-35).

According to the claimant, Dr. Segal performed a very thorough examination, which included issues with memory and concentration. (Testimony). Dr. Segal also examined Mr. Lackey's lower back, leg length disparity, range of motion, and gait. (Testimony).

Since the accident, the claimant has had 11 to 12 surgeries. (Testimony). Mr. Lackey continues to have problems with his right leg. (Testimony). Pain in his right leg is dependent on the day, the nature of his activities undertaken that day, and the weather. (Testimony). There are times when his whole leg swells during the day, and then his toes begin to bother him. (Testimony). He then will walk oddly due to his toe issues. (Testimony). Pain in his upper leg comes and goes. (Testimony). He testified that he continued to take prescription strength ibuprofen for his pain to "take the edge off." (Testimony). He indicated that the muscles in his upper right leg have atrophied, which also contributes to numbness in his upper right leg. (Testimony).

Mr. Lackey testified that he has foot drop on his right side, and that he cannot move his ankle in a normal way. (Testimony). He further testified that his right leg is three inches shorter than his left, and now has a curve to it. (Testimony). This causes him to limp. (Testimony). He wears a shoe insert and build up to help with his foot drop and toe issues. (Testimony). Mr. Lackey testified that he has two toes on one foot that "don't cooperate" because they were hammertoes. (Testimony). His toes give him issues depending on how much walking he does. (Testimony). He also walks with a cane, although a doctor has not prescribed it, and he is not dependent on it. (Testimony).

On some days, the claimant also experiences right hip pain. (Testimony). He has a slight range of motion issue with the right leg, as well. (Testimony). He also testified to issues with his pelvic range of motion due to pins inserted in the bones. (Testimony). The pelvic range of motion issues cause him to have problems cleaning himself after using the lavatory. (Testimony).

Mr. Lackey testified that he continues to experience low back problems. (Testimony). He has pain if he does a lot of bending or climbing. (Testimony). He also has issues with range of motion. (Testimony).

At times, Mr. Lackey had issues with sleeping if he does not take ibuprofen. (Testimony). He also has longstanding sleep apnea, for which he uses a CPAP machine when he sleeps. (Testimony).

Mr. Lackey testified that he had treatment for depression. (Testimony). He also has nightmares of the accident, wherein he awakens in a sweat. (Testimony). His wife testified that Mr. Lackey now has memory issues, and temper issues that he did not have prior to the accident. (Testimony). Ms. Lackey testified that the claimant is an entirely different person after the accident. (Testimony). She further noted that Mr. Lackey used to be jovial and a person who enjoyed joking around, and now he is angry and forgetful. (Testimony). He did not recall if any of his treating doctors ever diagnosed him with any brain injury or mental health issues, nor does he recall them recommending medical care for the same. (Testimony). Mr. Lackey did not think he had any brain issues until his appointment with Dr. Segal. (Testimony). The claimant also noted that he never brought up his alleged mental issues and/or brain injury on a DOT physical because no doctors ever brought it up to him until Dr. Segal. (Testimony). Mr. Koppes testified that he never observed any issues with Mr. Lackey's memory, and that Mr. Lackey has had no issues filling out his mileage logs or being

away from home. (Testimony). Of note, Mr. Lackey's initial discovery responses made no mention of his alleged mental health or traumatic brain injury issues. (DE I:21-22). It was not until after his IME with Dr. Segal that he mentioned, by reference only, his alleged traumatic brain injury issues. (DE J:23-24).

Mr. Lackey testified to increased bouncing around in the truck causing him pain in his leg. (Testimony). He also reported difficulty getting into and out of his truck. (Testimony). He testified that he has to climb on his trailer in order to sweep wood chunks after the logs are unloaded. (Testimony).

Since the work accident, Koppes no longer requires him to place tarps or chains on the loads. (Testimony). Dave Koppes testified that the claimant also operates a trailer that is lower to the ground in order to accommodate his issues. (Testimony). Koppes also recently began to provide the claimant with additional days off in order to provide him with some pain relief. (Testimony). Mr. Lackey opined that he could not have returned to his job with Koppes without the accommodations provided. (Testimony). He also noted that he is making more money now than he was at the time of the work incident. (Testimony).

Mr. Lackey testified that he can no longer mow his yard and cannot snow blow his driveway. (Testimony). He also had to have a wheelchair ramp installed on his camper. (Testimony). Mr. Lackey and his wife moved his bedroom to the first floor of their two-story home. (Testimony). They also installed a walk-in shower on that level because Mr. Lackey could not climb into a bathtub. (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).

Permanent Disability

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 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.

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

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 Co. v. MacIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.1d 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. MacIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.1d 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., 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' hearing report indicates that there is a dispute as to whether the claimant sustained a scheduled disability versus an industrial disability. At the outset of the hearing, the undersigned confirmed that permanent disability should be evaluated via a functional disability analysis pursuant to Iowa Code section 85.34(2)(v). (Transcript). The claimant also tacitly acknowledged this in their posthearing brief wherein they argue solely about which functional impairment rating should be applied. (Claimant's Posthearing Brief, page 10). The parties discussed at the hearing that the claimant is working for a higher wage post-injury. Further, the claimant, and Mr. Koppes both agreed that the claimant is earning more than he was at the time of the work injury. (Testimony). Additionally, there is no information to indicate that the claimant is working less hours than prior to the injury. Therefore, the claimant should be compensated for his functional impairment only.

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

> In all cases of permanent partial disability less than that specifically described in the schedule 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 to only consider the functional disability ratings issued by the various medical providers.

The claimant alleges permanent disability to various parts of his body as a whole. This rating is based upon alleged permanent disability to four major areas, as evaluated by Dr. Segal: brain injury, lower extremity, pelvis, and lumbar spine. The parties discuss each of these areas in depth in their post-hearing brief. I will divide the analysis of impairment by body system as outlined in the report of Dr. Segal. I will then provide a final body as a whole impairment rating, if applicable, at the conclusion of that discussion.

Brain Injury

Upon arrival, EMS evaluated Mr. Lackey based upon the Glasgow Coma Scale ("GCS"). The GCS was first published in 1974, and is used to objectively describe the extent of impaired consciousness in trauma patients. See Shobhit Jain and Lindsay Iverson, Glasgow Coma Scale, NIH (July 27, 2022, 8:27 AM), http://www.ncbi.nlm.nih.gov/books/NBK513298/. A patient's GCS score is based upon three categories. Id. The categories are: best eye response, best verbal response, and best motor response. Id. The lowest possible score is 3, and the highest is 15. Id. Mr. Lackey's GCS was noted as 15 by the EMS providers. This means that his eyes opened spontaneously, that he was orientated, and that he obeyed commands. Id.

Mr. Lackey was then taken to the emergency department at Carle Foundation Hospital. At Carle Foundation Hospital, he had a CT of his brain. The CT of his brain was noted to be normal.

Eventually, Mr. Lackey was transferred to an inpatient rehabilitation facility in Iowa. During some of his initial evaluations at the rehabilitation facility, it was recommended that he have a psychologic follow-up due to his strange, vivid dreams. He also became tearful when discussing the accident.

When he had some of his first therapy visits, he became tearful when discussing the accident because of the gravity of the situation. The therapist noted that the claimant did not have a documented traumatic brain injury. The claimant also noted on several occasions that he did not feel foggy or disoriented.

By early June of 2018, Mr. Lackey's mood worsened. Dr. Hunter diagnosed him with major depressive disorder. He offered to refer the claimant for therapy, but the claimant declined. Dr. Hunter prescribed antidepressants. By late June, Mr. Lackey's mood had "significantly improved," according to both Dr. Hunter's observation and Ms. Lackey. During this same visit, Dr. Hunter noted the plan to keep Mr. Lackey on antidepressants for six months to one year.

By September of 2018, Dr. Hunter noted that Mr. Lackey's mood and depression issues were "stable and improved." Shortly after this, Mr. Lackey completed a repeat DOT physical. During the DOT physical examination, Mr. Lackey noted his previous issues with anxiety, depression, nervousness, and mental health. Of note, Mr. Lackey made no mention of head or brain injuries, such as a concussion, during his DOT physical examination.

There was then no mention of Mr. Lackey's mental health, depression, anxiety, or nervousness, during his treatment between October of 2018, and his IME with Dr. Segal in March of 2022. Mr. Lackey mentioned to Dr. Segal that he experienced issues with his cognitive functioning. These included that it took him longer to "figure things out," and that he had "some trouble with being able to concentrate." He also told Dr. Segal that he second-guessed himself, and that there were days where his injuries troubled him. Dr. Segal concluded that Mr. Lackey suffered a concussion and sustained permanent post-concussive symptoms. Dr. Segal opined that Mr. Lackey's brain injuries were not treated because his leg and pelvic injuries were so significant that they

took priority over his other symptoms. Dr. Segal diagnosed the claimant with a closed head injury with traumatic brain injury and concussion, post-concussion syndrome with cognitive deficits, memory deficits, sleeping disturbance, and psychiatric sequelae of a brain injury including depression. Dr. Segal opined that Mr. Lackey had a mild to moderate traumatic brain injury, and that his cognitive function was moderately impaired. Dr. Segal continued by opining that Mr. Lackey's brain injury made it unlikely that he could function in the workforce at his prior level of function. Dr. Segal connected Mr. Lackey's diagnosis of sleep apnea to the work incident, despite the fact that this diagnosis predated the work incident. Dr. Segal recommended future treatment for the claimant including: a neuropsychological evaluation, neuropsychological therapy, depression or anxiety medication, psychotherapy, biofeedback therapy. Dr. Segal concluded his IME report by assigning the claimant a 7 percent whole person impairment for brain injury, concussion, and post-concussive headaches. It is interesting, as Mr. Lackey made no mention of headaches to his prior providers.

Mr. Lackey testified that his sleep issues are caused by his pain, and that if he does not take ibuprofen, he has problems sleeping. He testified that he sometimes has nightmares of the accident from time to time. He awakens from these nightmares in a cold sweat, and he has problems falling back to sleep. His wife testified that Mr. Lackey's personality has changed since the accident, and that he is more angry and forgetful. She opined that he was no longer the same person after the accident as he was before the accident. The claimant's boss, Mr. Koppes, testified that he never observed Mr. Lackey experiencing any memory lapses, and that Mr. Lackey had no issues filling out his required mileage logs.

Interestingly, Mr. Lackey did not think he had any brain issues until his appointment with Dr. Segal. He never brought up his alleged mental health issues and/or brain injury with any provider because no doctor mentioned it to him until Dr. Segal did so. He also made no mention of it in his initial discovery responses. He only made the claim in amended discovery responses after his IME with Dr. Segal.

The only provider to indicate that Mr. Lackey had permanent impairment based upon an alleged head injury is Dr. Segal. There are a number of issues with Dr. Segal's report. First, Dr. Segal indicates that the claimant's sleep apnea was caused by his head injury sustained in the work incident. This is not true, as the claimant had sleep apnea prior to the work injury. Dr. Segal also makes mentions of post-concussive headaches. The record of Mr. Lackey having post-concussive headaches is little to none. The Guides also note that a mini-mental examination may be completed in order to provide a permanent impairment rating relating to cognitive impairment; there is no express evidence that Dr. Segal completed a mini-mental examination.

Mr. Lackey had a normal CT scan. He had initial issues of being tearful when describing his accident due to the gravity of the situation. He eventually was diagnosed with depression. He took medication for this condition, and eventually noted that he was feeling much better. By the time of his IME with Dr. Segal, he opined that his depression was 10 percent of what it was at its worst.

While the parties agreed that the claimant suffered a permanent disability, I do not find adequate evidence in the record that Mr. Lackey sustained a permanent disability due to the brain injury diagnosed only by Dr. Segal. As discussed above, Dr. Segal's report contains a number of inconsistencies pertaining to Mr. Lackey's mental health conditions and alleged impairment due to an alleged brain injury. The record shows that Mr. Lackey suffered from depression for a short time. He took medication, and reported feeling much better. By September of 2018, his records from Dr. Hunter made no mention of depression. I acknowledge that the testimony of the claimant and his wife indicate that he may be more forgetful and/or his personality may have changed since the accident. However, the claimant made no mention of these issues to his providers, including Dr. Hunter, who treated him for depression, until after his IME with Dr. Segal. He also made no mention of cognitive issues on his DOT physical. The claimant failed to prove by a preponderance of the evidence that the February 20, 2018, work incident caused a permanent impairment based upon a traumatic brain injury.

Lumbar Spine

Mr. Lackey testified that he has low back problems. These problems include pain if he performed a lot of bending or climbing. He also testified to range of motion issues with his lower back.

A CT scan of the lumbar spine showed small avulsion injuries to the bilateral SI joint diastases. The CT scan also showed a left L5 transverse process tip fracture, and a nondisplaced left lower sacral fracture. This is the only mention of back issues in the medical records until Dr. Segal's IME. Of note, Dr. Kreiter performed an IME on Mr. Lackey in May of 2019. Dr. Kreiter made no mention at all of lumbar complaints in his IME report.

Mr. Lackey told Dr. Segal that he had back pain of 2 out of 10. Dr. Segal re-interprets the CT scan, with no mention as to his radiologic or orthopedic qualifications, to determine that the claimant had "some" displacement with his L1 transverse process fracture. He also opined that the claimant's lumbar spine was exposed to great force. Because of this force, Dr. Segal opined regarding Mr. Lackey's lumbar spine that "the ligaments, joints, and discs in the areas would be injured as well." Dr. Segal continued by opining that Mr. Lackey displayed "significant mechanical low back pain" since the lumbar injury.

Dr. Segal used the Guides to provide an impairment rating to Mr. Lackey's lower back. Dr. Segal used the DRE II category to rate Mr. Lackey's lower back impairment. He opined that Mr. Lackey sustained a 5 percent whole person impairment due to his transverse process fracture.

Dr. Segal's opinions are not reinforced by any objective medical study or record. Additionally, there is little to no mention of Mr. Lackey having "significant mechanical low back pain" since his work injury. In fact, Dr. Segal admitted that the transverse process fracture was "non-symptomatic" at the time of the IME. Dr. Segal used Table 15-3 of the Guides to provide an impairment rating. Table 15-3 provides for three different possible ratings for the lumbar spine under DRE II. These are:

> Clinical history and examination findings are compatible with a specific injury; findings may include significant muscle guarding or spasm observed at the time of the examination, asymmetric loss of range of motion, or nonverifiable radicular complaints, defined as complaints of radicular pain without objective findings; no alteration of the structural integrity and no significant radiculopathy
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> or
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> individual had a clinically significant radiculopathy and has an imaging study that demonstrates a herniated disk at the level and on the side that would be expected based on the previous radiculopathy, but no longer has the radiculopathy following conservative treatment
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> or
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> fractures: (1) less than 25% compression of one vertebral body; (2) posterior element fracture without dislocation (not developmental spondylosis) that has healed without alteration of motion segment integrity; (3) a spinous or transverse process with displacement without a vertebral body fracture, which does not disrupt the spinal canal.

Guides, Table 15-3, pg. 384. There is no mention in the initial CT scan report of displacement of the transverse process fracture. Dr. Segal is not a radiologist, nor is he an orthopedic physician. It is unclear what his qualifications are to interpret a CT scan relating to the transverse process. While Dr. Segal is a former neurosurgeon, I find the opinions of the original interpreting radiologist and physicians to be more persuasive. The claimant could still be considered a DRE II impairment based upon examination findings consistent with muscle guarding or spasm, asymmetric loss of range of motion or radicular complaints. Once again, it is difficult to find Dr. Segal's opinions convincing. However, his examination did reveal findings that were consistent with traumatic facet arthropathy. Despite a lack of objective studies indicating disc, ligament, or joint issues in the lumbar spine, the claimant did undergo a significant impact. There is a lack of evidence in the record that this caused a permanent impairment. The claimant failed to prove by a preponderance of the evidence that the February 20, 2018, work incident caused a permanent impairment based to his lumbar spine.

Pelvis

Mr. Lackey was involved in a heavy impact accident. Upon arrival at Carle Foundation Hospital, x-rays showed right SI joint diastases with significant pubic symphysis diastases. He also had widening in the right SI joint. A CT scan showed a fracture of the left iliac bone and a nondisplaced left lower sacral fracture. The doctors at Carle Foundation Hospital diagnosed Mr. Lackey with a closed fracture dislocation of the pubic symphysis with diastasis. Doctors at Carle Foundation Hospital performed an open reduction internal fixation of the pubic symphysis with bilateral sacroiliac screws.

For a time after the accident, Mr. Lackey remained totally nonweightbearing. He moved to a rehabilitation unit at Finley Hospital in Dubuque, Iowa. In the rehabilitation

unit, he underwent physical therapy and occupational therapy. Through March of 2018, x-rays of his pelvis remained normal, showing good alignment. He eventually started weightbearing with a walker, and progressed to weightbearing with a cane. Subsequent to his discharge from the hospital, there was little to no mention of his hips or pelvis being painful.

In May of 2019, Dr. Kreiter examined Mr. Lackey for an IME. Dr. Kreiter noted that Mr. Lackey was "[p]ostop open reduction internal fixation of pubic synthesis [*sic*] separation with 6-hole [*sic*] plate and bilateral sacroiliac screws, doing well and now asymptomatic." Dr. Kreiter provided no impairment rating for issues related to the pelvis.

Dr. Karam provided an impairment rating based upon mild gait derangement, antalgic limp, and documented moderate to advanced arthritic changes of the hip, knee, or ankle following his fractures. Dr. Karam only examined Mr. Lackey for his right knee and leg, according to Mr. Lackey and the medical records.

Dr. Segal examined Mr. Lackey as part of an IME. Dr. Segal noted that Mr. Lackey had tenderness at the bilateral SI joints, and tenderness at the right greater trochanter of the right pelvis/hip. Dr. Segal diagnosed Mr. Lackey with pubic symphysis diastases and bilateral sacroiliac joint diastases and fractures. Dr. Segal also made note of Mr. Lackey's permanent deformities caused by the pins in his pelvis. Dr. Segal opined that the pubic symphysis diastasis was separated and still symptomatic. Using Table 15-19 on page 428 of the Guides, Dr. Segal provided an impairment rating. Dr. Segal noted that Mr. Lackey had a 15 percent whole person impairment due to the displaced symphysis pubis with deformity and residual signs. He continued by providing an impairment rating of 10 percent to the whole person due to a displaced fracture of the sacrum into the SI joint with deformity and residual symptoms. These combined to a 24 percent whole person impairment rating.

Mr. Lackey testified that he has right hip pain. He also has issues with his pelvis and range of motion due to the pins still present in his pelvis. He testified that his reduced pelvic range of motion causes him to have issues cleaning himself after using the toilet.

The claimant argues that Dr. Segal's opinions are more persuasive. The defendants argue that Dr. Karam nor Dr. Kreiter provided an impairment rating to the pelvis, and that Dr. Segal's rating and examination are inconsistent with these ratings. The defendants further argue that, at the time of his examination with Dr. Kreiter, the claimant reported that his pelvis was doing well and asymptomatic.

On the issue of his pelvis, I find that the claimant was credible. He noted that he continued to have range of motion issues with the pelvis. He also testified to having pain and soreness. He suffered fractures which required the placement of plates and screws into his pelvis. Based upon the preponderance of the evidence, I find Dr. Segal's opinions more convincing on this issue. The claimant sustained a 24 percent impairment to the whole person based upon his pelvic injuries.

Right Lower Extremity

Mr. Lackey sustained a serious injury to his right leg. When he struck the bridge with his truck, there was a "severe intrusion" into the cab. Upon arrival at the emergency room, the doctor noted that Mr. Lackey had an "obvious gross deformity" of his right lower extremity. EMS noted that six inches of his femur bone were protruding from his right leg, along with a "large chunk of bone lying under" his right leg. X-rays of his right leg showed a significant, angulated, overriding and comminuted, open distal shaft fracture of the right femur. Debris was also noted in the soft tissues of his thigh. Mr. Lackey also had closed fractures of his tibia and fibula. Mr. Lackey was taken to the operating room where an external fixator was placed on his right distal femur. He was placed in a medically-induced coma for a time after this surgery. Eventually, he had internal fixation for the femur and tibia.

Mr. Lackey was eventually transferred to the inpatient rehabilitation unit at Finley Hospital in Dubuque, Iowa. He initially began moving with a wheelchair. He progressed to being nonweightbearing on the right, but allowed to bear some weight on the left. He moved with a walker. He continued inpatient therapy. He complained of pain in his right knee. This was persistent. Mr. Lackey also noted some numbness in his right leg. By April 4, 2018, his tibial fracture showed progressive consolidation; however, his femoral fracture was not properly healing. A bone growth stimulator was used to help Mr. Lackey's femur healing progress. An EMG showed some neuropathy in his right thigh.

In May of 2018, Dr. Field performed an open decompression of the peroneal nerve. He found that the results of the surgery correlated to the results of the EMG. Dr. Field opined that the peroneal nerve was somewhat flattened and softened in the leg. Subsequent to the surgery, Mr. Lackey noted improvement in the dorsiflexion of his right foot, and a diminishment of numbness in his right toes. X-rays at that time showed better consolidation of his femur fractures. During this time, Mr. Lackey had therapy for his right ankle. An injection was given to Mr. Lackey during this time that provided him with some relief.

Eventually, Mr. Lackey began wearing a brace for his right foot. He passed his DOT physical. He also completed therapy in September of 2018, having achieved 100 percent of his goals. At that time, he still had right knee and ankle stiffness, but he had reduced swelling. The therapist observed that Mr. Lackey ambulated with an antalgic gait, but walked well without his cane.

Mr. Lackey developed hammertoes in his right great toe and second toe. He eventually had surgery to repair these toes. Mr. Lackey had another round of physical therapy due to continued right knee pain, muscle weakness, and decreased range of motion. In February of 2019, Dr. Field recommended continued use of the bone stimulator. During this time, Mr. Lackey continued to walk with a limp and used a cane.

Dr. Kreiter performed an IME in May of 2019. Dr. Kreiter diagnosed Mr. Lackey with a healed distal right femoral, supracondylar fracture with articular irregularity, progressive knee degenerative changes, chronic effusion, limited range of motion, chronic pain and instability with retained plate, screws and pins. He also diagnosed Mr.

Lackey with a healed right tibial fracture with IM rod and screws and ankle synovitis with limited range of motion. Dr. Kreiter noted that the claimant had a peroneal nerve decompression with neurolysis at the level of the fibular head on the right with improved function, both sensory and motor, this for nerve injury and entrapment. Finally, Dr. Kreiter noted the fusion of the IP joint of the right great toe due to hammertoe. Dr. Kreiter recommended a referral of the claimant to the University of Iowa or the Mayo Clinic for evaluation and treatment. He also provided an impairment rating. The impairment rating was based upon a disturbance in Mr. Lackey's gait, and use of an AFO brace. Dr. Kreiter added on a 5 percent whole person impairment for nerve deficit issues. He also added on a 5 percent impairment for ankle motion impairment. Considering the foregoing, Dr. Kreiter issued a 37 percent of the whole person impairment rating based upon Mr. Lackey's right leg issues.

In June of 2019, Mr. Lackey had worsening pain in his right knee. Dr. Field recommended a CAT scan of the knee, and opined that the metal and screws may need to be removed from the knee.

Mr. Lackey's care was transferred to Dr. Bollier in July of 2019. Mr. Lackey recounted his pain issues and also told Dr. Bollier that he had occasional cramping and numbness in his lower leg. Dr. Bollier ordered imaging, and upon studying the images opined that Mr. Lackey had a nonunion of his distal femur fracture. Dr. Bollier referred Mr. Lackey to Dr. Karam for evaluation and surgical management.

Dr. Karam ordered a bone scan, which ruled out infection as a cause of Mr. Lackey's issues. In October of 2019, Dr. Karam removed the hardware in Mr. Lackey's distal femur, and performed an open reduction internal fixation with a blade plate. Dr. Karam allowed the claimant to slowly begin progressive weightbearing by late 2019. X-rays of the femur in January of 2020 showed progressive healing of the fractured femur. At that time, Dr. Karam allowed the claimant to return to full weightbearing.

Mr. Lackey was doing well until he fell in early 2020. At that time, he sustained a tibial tuberosity fracture, a nondisplaced plateau lateral condyle split fracture, and a fractured distal screw on the blade plate. Dr. Field eventually tried to remove a screw from the claimant's toe; however, he concluded it was buried, and provided the claimant with pads for his shoes. Dr. Karam removed the femoral blade plate and tibial nail on July 1, 2021. On October 11, 2021, Dr. Karam opined that the claimant achieved MMI and provided him with restrictions that included no lifting over 50 pounds. At that time, Mr. Lackey had already returned to work with Koppes. Koppes accommodated Mr. Lackey by providing him with a position that included no lifting heavy tarps.

Dr. Karam opined that the claimant suffered a 7 percent whole person impairment. This rating was due to mild gait derangement, an antalgic limp, and documented moderate to advanced arthritic changes of the hip, knee or ankle, following his fractures.

As noted in other portions of the opinion, Dr. Segal conducted an IME on March 26, 2022. Mr. Lackey told Dr. Segal that he took ibuprofen to control his pain. He rated his leg pain 1-2 out of 10 at the time of the examination, but at worst it was 8 out of 10. His average pain in his right leg was 2 out of 10. His right foot had no pain, but his

average pain in his right foot was 3 out of 10. He told Dr. Segal that his right leg and foot pain were stable. The nature of the pain was stabbing, piercing, aching, sore, numbness, and tingling. He also noted that his right foot pain was sharp and stabbing. Dr. Segal's IME report includes photos of Mr. Lackey's right thigh. The photos show scarring and indentation.

Upon examination, Dr. Segal noted that Mr. Lackey had decreased sensation in his right lateral thigh. He also had tenderness around the right kneecap and reduced reflexes in the right knee and ankle. Dr. Segal noted that Mr. Lackey had a leg length discrepancy of 3.8 cm between his right leg and left leg. Dr. Segal opined that the hammertoes were caused by the sustained imbalance between flexion and extension forces when applied to the toes. Dr. Segal further opined that the claimant's abnormal gait was mostly caused by his right knee issues. Dr. Segal continued by noting that the claimant's gait and balance were deteriorating.

Dr. Segal then endeavored to provide an impairment rating for Mr. Lackey's right lower extremity. Dr. Segal first considered the decreased range of motion in Mr. Lackey's right knee. Dr. Segal assigned Mr. Lackey a 10 percent lower extremity impairment for a loss of flexion in the knee. This translated to a 4 percent whole person impairment. Dr. Segal assigned the claimant a 20 percent lower extremity impairment for loss of extension in the right knee. This equated to an 8 percent whole person impairment. Dr. Segal combined these ratings into a 30 percent lower extremity impairment, and/or a 12 percent whole person impairment. Dr. Segal also opined that Mr. Lackey had a 40 percent lower extremity impairment based upon decreased ranges of motion in the right hip. He equated this to a 14 percent whole person impairment. In combining the range of motion ratings for the right hip and right knee, Dr. Segal opined that the claimant has a 21 percent whole person impairment.

Dr. Segal provided a 14 percent right lower extremity impairment based upon the 3.8 cm leg length discrepancy. This equated to a 5 percent whole person impairment rating.

Dr. Segal continued his IME report by providing impairment ratings that he attributed to Mr. Lackey's peripheral nerve injuries. Dr. Segal opined that Mr. Lackey's leg had "profound weakness" that was diagnosed as foot drop. Based upon this, Dr. Segal considered Mr. Lackey to have a 60 percent motor loss. This caused the claimant to have a 25 percent lower extremity impairment, or a 9 percent whole person impairment. Dr. Segal opined that the claimant had a 3 percent lower extremity impairment based upon the sensory issues experienced by the claimant. This equates to a 1 percent whole person impairment. Dr. Segal combined the motor loss and sensory loss ratings to arrive at a 10 percent whole person impairment or a 28 percent lower extremity impairment based upon the peroneal nerve issues.

Dr. Segal continued by evaluating the claimant's permanent impairment based upon issues with the claimant's femoral nerve. Dr. Segal assigned the claimant with a 7 percent lower extremity impairment or a 3 percent whole person impairment due to motor issues with the femoral nerve. Dr. Segal then evaluated the claimant based upon numbness in the femoral sensory distribution. Dr. Segal classified Mr. Lackey's

numbness and sensory loss as "class 3" based upon Table 16-10. This caused a 1 percent lower extremity and 1 percent whole person impairment, according to Dr. Segal. Dr. Segal combined the ratings for the femoral nerve and arrived at an impairment rating of 8 percent to the right lower extremity or 4 percent of the whole person. Dr. Segal then took all of the impairment ratings concerning the peripheral nerve issues and arrived at a 14 percent whole person impairment.

Dr. Segal opined that the claimant had ankylosis of his right great and second toes that was caused by his surgery to repair the hammertoes. Dr. Segal opined that the claimant's toes were "ankylosed in a neutral position of function," which resulted in an 11 percent lower extremity impairment or a 4 percent whole person impairment.

Mr. Lackey also had a mild calf atrophy, which resulted in a 3 percent lower extremity impairment. This equated to a 1 percent whole person impairment rating.

Dr. Segal took the range of motion impairment, peripheral nerve impairment, leg length discrepancy, and ankylosis in the toes, and arrived at a 38 percent whole person impairment rating for all of the impairments of the right lower extremity.

As of the hearing, Mr. Lackey continued to have problems with his right lower extremity. He had pain in his right leg that varied depending on his activities undertaken that day. His pain also varied based upon the weather. Mr. Lackey indicated that he still has foot drop on his right side and that he has range of motion issues with his right ankle. Mr. Lackey testified that his leg sometimes swells and causes him to walk in an altered pattern. This causes pain to his right toes. Mr. Lackey wears an insert in his right shoe in order to account for the leg length discrepancy. It also helps with his foot drop and toe issues. Mr. Lackey testified further that bouncing around in his truck caused increased pain. He has difficulty climbing in and out of his truck. However, he continues to work and drive 2,200 to 2,300 miles per week. His boss indicated that he has no issues with working, and Mr. Lackey testified that he can continue to work within the accommodations provided by Mr. Koppes.

Based upon the information in the record, I find that the claimant has proven, by a preponderance of the evidence, that he suffered a 38 percent whole person impairment due to injuries to his right lower extremity. While Dr. Segal's opinions with regard to other body parts are not credible, the rating with regard to the leg, is. It also is in line with the rating provided by Dr. Kreiter, which was a preliminary impairment rating. I decline to use Dr. Karam's rating because it is very simplistic and does not take into consideration the claimant's nerve issues or atrophy, among other things.

Total Impairment

I found that the claimant sustained a permanent impairment to his right lower extremity. This would qualify as a scheduled member impairment pursuant to Iowa Code section 85.34(2)(p). However, the claimant's impairment also involved the pelvis. The pelvis and/or hip are not considered part of the leg, and are not listed in Iowa Code section 85.34(2)(a)-(u) as a scheduled member. Therefore, the claimant shall be compensated for an injury to the body as a whole pursuant to Iowa Code section

85.34(2)(v). Compensation shall be based upon the percentage of impairment out of 500 weeks.

Dr. Segal took all of the impairment ratings provided for the brain injury, lower extremity injuries, pelvic injuries, and lumbar spine injury to arrive at a total combined impairment rating of 58 percent of the whole person based upon his examination. Since I only found that the claimant had permanent impairment to the right lower extremity and pelvis, I do not adopt Dr. Segal's 58 percent whole person impairment.

When using the combined values chart on page 604 of the Guides, I combined the impairment for the pelvis with the impairment for the right lower extremity. This provides a whole body impairment of 53 percent. This amounts to 265 weeks of compensation. (0.53 x 500 weeks = 265 weeks).

Reimbursement of IME Expenses Pursuant to Iowa Code section 85.39

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.
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> . . .
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> 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. The 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).

Dr. Karam provided an impairment rating on October 19, 2021. Subsequent to that examination, the claimant arranged an IME with Dr. Segal.

Claimant's Exhibit 3 contains Dr. Segal's invoice, which bills four thousand five hundred and 00/100 dollars ($4,500.00) for about six hours of work.

I find that Dr. Segal's charges are reasonable. Additionally, Dr. Karam provided an impairment rating prior to the IME of Dr. Segal. Accordingly, I award the claimant four thousand five hundred and 00/100 dollars ($4,500.00) for the costs of Dr. Segal's IME.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 3. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 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.

The claimant requests reimbursement for the filing fee of one hundred and 00/100 dollars.

In my discretion, I award costs for the filing fee in this matter. The defendants shall reimburse the claimant one hundred and 00/100 dollars ($100.00) related to the filing fee.

ORDER

THEREFORE, IT IS ORDERED:

That the defendants shall pay the claimant two hundred sixty-five (265) weeks of permanent partial disability benefits at the stipulated rate of eight hundred seventeen and 92/100 dollars ($817.92) per week commencing on the stipulated date of October 11, 2021.

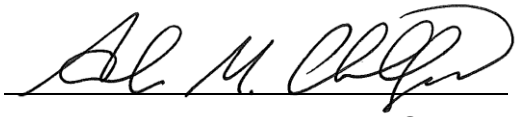
That the defendants shall reimburse the claimant four thousand five hundred and 00/100 dollars ($4,500.00) for the reasonable costs of Dr. Segal's IME.

That the defendants shall reimburse the claimant one hundred and 00/100 dollars ($100.00) 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 29th day of August, 2022.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Thomas Wertz (via WCES)

Coreen Sweeney (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.