

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

GERALD BEENER,

Claimant,

vs.

CITY OF DES MOINES,

Employer,
Self-Insured,
Defendant.

FILED

JUN 07 2019

WORKERS COMPENSATION

File No. 5063978

ARBITRATION

DECISION

Headnotes: 1402.30, 1402.40,
1803, 1809, 2209

On May 21, 2018, the claimant, Gerald Beener, filed a petition in arbitration against the defendant, City of Des Moines ("City"), alleging he sustained an injury to his right knee, back and body as a whole while working for the City on May 18, 2016. The City filed an answer on June 6, 2018, admitting Beener sustained an injury to his right knee, but denying he sustained a work injury to his back and body as a whole. Beener later amended his petition to assert he sustained injuries to his right knee, shoulder, and body as a whole. Beener amended his petition a second time to assert he sustained a cumulative injury to his right knee. The City denies Beener sustained a cumulative injury to his right knee. Given the late amendment, the City was permitted to obtain a rebuttal report at the close of the hearing.

An arbitration hearing was held on April 19, 2019, at the Division of Workers' Compensation, in Des Moines, Iowa. Attorney John Lawyer represented Beener. Beener appeared and testified. Assistant City Attorney John Haraldson represented the City. Joint Exhibits ("JE") 1 through 7, and Exhibits 1 through 4 were admitted into the record. The record was held open through June 3, 2019, for receipt of an opinion letter from Dr. Ash, Defendant's Exhibit 1, and post-hearing briefs. The letter to Dr. Ash and his response opinion letter were received. To avoid confusion with the claimant's exhibits, the letters were marked as Exhibit A, and admitted into the record. The post-hearing briefs were also received and the record was closed.

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

STIPULATIONS

1. An employer-employee relationship existed between the City and Beener at the time of the alleged injury.

2. Beener sustained an injury on May 18, 2016, which arose out of and in the course of his employment with the City.

3. Although entitlement to temporary benefits cannot be stipulated, Beener was off work from December 20, 2017 through May 14, 2018.

4. If the injury is found to be a cause of permanent disability, the disability is an industrial disability.

5. The commencement date for permanent partial disability benefits, if any are awarded, is February 8, 2017.

6. At the time of the alleged injury Beener's gross earnings were \$1,219.87 per week, he was married and entitled to two exemptions, and the parties believe the weekly rate is \$758.12.

7. Prior to the hearing Beener was paid ten weeks of compensation at the rate of \$758.12 per week.

8. It is stipulated the medical expenses listed in Exhibit 3 are representative of the actual medical bills and shall be considered reasonable, true and accurate as if the bills had actually been submitted.

9. If the knee injury arising out of the May 18, 2016 injury is found compensable, then it is stipulated the City is responsible for the medical expenses set forth in Exhibit 3.

10. Costs have been paid.

ISSUES

1. What is the nature of the injury?

2. Is the alleged injury a cause of temporary disability during a period of recovery?

3. Is the alleged injury a cause of permanent disability?

4. Is Beener entitled to temporary benefits from December 20, 2017, through May 14, 2018?

5. What is the extent of disability?

6. Is Beener entitled to payment of medical expenses?

7. Should costs be assessed against either party?

FINDINGS OF FACT

Beener is a high school graduate. (Transcript, page 10) While in high school Beener earned C and D grades, and reported he struggled with Algebra. (Tr., p. 10) Beener has not taken any classes beyond high school. (Tr., p. 10) He does not have any technology skills and he does not know how to use a computer, or how to access the internet. (Tr., p. 11) Beener does not have any customer service skills. (Tr., p. 11) At the time of the hearing he was sixty-four. (Tr., p. 10) Beener is right-hand dominant. (Tr., p. 65)

After graduating from high school Beener worked for Coca-Cola, loading trucks. (Tr., p. 13) Beener was responsible for picking up twenty-four bottle or can cases of soda pop. (Tr., p. 13) Beener lifted the cases to shoulder level and sometimes higher and stacked the cases in trucks. (Tr., p. 13) Beener estimated each case weighed roughly sixty pounds. (Tr., p. 14) Beener stood most of the day while loading trucks. (Tr., p. 14)

Beener moved to a bottling position with Coca-Cola where he put cartons onto shelves and stacked twenty-five to thirty cases of soda pop onto each pallet. (Tr., p. 14) Beener relayed the position involved a lot of repetitive stacking and lifting up to sixty pounds. (Tr., pp. 14-15)

Coca-Cola discontinued bottling and assigned Beener to a route driver position. (Tr., p. 15) Beener unloaded his truck at stores, lifting cases of soda pop and placing the cases onto a two-wheel dolly, wheeling the cases into the store, lifting the cases, and putting the cases on the store shelving. (Tr., pp. 15-16)

Beener left Coca-Cola and accepted a position with Iowa Paint. (Tr., p. 16) Beener filled fifty-five gallon drums of paint and five gallon buckets of paint. (Tr., p. 16) Beener filled the buckets with paint from a large tank, crimped each bucket, and stacked the buckets onto pallets. (Tr., p. 17) Beener estimated a five gallon bucket weighed sixty-five pounds. (Tr., p. 17) Beener reported the job was repetitive and he would fill, crimp, and stack 400 buckets at a time, standing on his feet. (Tr., p. 17) Beener also filled fifty-five gallon drums of paint, placed a ring around each drum, tightened the ring with a socket, picked up the drum with a dolly, wheeled the dolly to an area, and stacked the drums. (Tr., p. 18) Beener estimated the fifty-five gallon drums weighed 300 to 400 pounds. (Tr., p. 19) Beener also stacked fifty to sixty pound bags of powder to mix paint onto pallets, and he would take the pallet up to the top floor for mixing. (Tr., p. 20) And he emptied tankers with resin by climbing up ladders two to three times per week, and hooking up the hoses to the tankers. (Tr., pp. 20-21)

Beener left Iowa Paint and accepted a position with All American Freight, where he loaded car tires at Armstrong Tire onto a tractor trailer. (Tr., p. 21) At the beginning of his shift Beener would climb up into an eighteen wheel semi-trailer and check to make sure the mechanicals were operating correctly. (Tr., p. 22) He then drove the

tractor trailer to Armstrong Tire. (Tr., p. 22) The plant workers brought tires to Beener on the dock and he would walk each tire up to the trailer and stack the tires from the nose of the trailer all the way to the back and all the way up the ceiling, approximately ten feet up. (Tr., pp. 21-22) Beener estimated each tire weighed between ten and fifteen pounds. (Tr., p. 22) The position required Beener to stand on his feet most of the day. (Tr., p. 24) When the trailer was full Beener would take it back and drop it off at the lot and park the tractor. (Tr., p. 24) When he was not loading tires Beener also used a forklift to load and unload boxes of freight weighing over fifty pounds in and out of trailers. (Tr., p. 24) Beener stacked the boxes, which required squatting, bending, and lifting, including some lifting above shoulder level. (Tr., pp. 25-26)

After leaving All American Freight Beener accepted a rib bones position with Swift Packing where he sliced meat off the side of the bones, tossed the bones above his head, and the meat would go on another conveyor belt with an opening in the table. (Tr., pp. 26-27) Beener testified the position required him to stand all day, cutting meat between his belt line and chest level. (Tr., p. 26) Beener also worked in ground beef, where he put tubes of meat into a scale, lifted the meat up with a hoist and placed it into an auger, added fat, turned on the auger, and pushed the meat, if needed, by climbing stairs and pushing the meat with a six foot steel rod to move it into the auger. (Tr., pp. 28-30) Beener next worked in box storage where he lifted twelve boxes of meat weighing up to 100 pounds from a conveyor onto a plate, pushed a lever, and the plate went down on wheels. (Tr., pp. 30-32)

Beener left Swift Packaging and accepted a position with the City in 1989 or 1990. (Tr., p. 32) Beener testified he worked for the City for twenty-eight years. (Tr., p. 32) Beener first worked as a part-time casual employee, filling in where he was needed. (Tr., pp. 32-33) Beener loaded trucks, picked trash off curbs, and picked up yard debris from curbs. (Tr., p. 33)

Beener accepted a full-time position with the City, again filling in as needed, performing the same duties. (Tr., p. 33) When a route opened, he bid on it, and he operated a garbage truck with another employee, and the two took turns switching from driving to picking up trash and yard debris every twenty minutes. (Tr., p. 33) When he was picking up trash and debris Beener would climb up on a step and hold onto the back of the truck, and climb off the truck with each stop. (Tr., pp. 33-34) Beener also performed bulk where he picked up couches, mattresses, chairs, and other bulk items, where he had to get off the truck and physically pick up the items. (Tr., p. 43) Lifting the items required a lot of squatting. (Tr., p. 43)

Beener left the garbage route and moved to recycling, where he worked with smaller green bins. (Tr., p. 41) Beener had to sort through the recycling, separating glass, cardboard, and tin cans into separate bins. (Tr., p. 41) Beener had to lift the bins while doing the sorting while standing. (Tr., p. 42)

In approximately 2005, the City switched to automated garbage trucks. (Tr., p. 37) The City assigned Beener to an automated garbage truck. (Tr., p. 46) Beener

used a joystick and buttons to operate an arm that would grab a hold of a garbage toter, lift it up, empty it, and set the toter back down. (Tr., p. 39) Beener reported the one-arm truck position required less standing than the green bin recycling position. (Tr., p. 42)

In the morning Beener would walk around the truck, put chains on the tires in the winter, and climb in and out of the truck for specials. The City does not require individuals with disabilities to put their trash on the curb, and refers to such a stop as a special. (Tr., p. 34-37) Beener had to climb stairs, and carry and drag toters weighing more than fifty pounds from decks, and from the backyards of homes for specials. (Tr., pp. 34-37) The number of specials would vary based on the route, and a typical day could include ten to twenty-five specials. (Tr., p. 38) Beener testified he always had at least one special per day. (Tr., p. 38) If a toter tipped over before he arrived, or when he was operating the joystick Beener would have to get out of the truck and pick up the garbage. (Tr., p. 40) Beener continued to also work on bulk some days. (Tr., p. 45)

The City later moved to toter recycling bins, and in 2009 or 2010 Beener bid on a position in recycling where he operated a one-arm recycling truck that operated similar to the one-arm garbage truck, but he continued to do specials with recycling also like the one-arm garbage truck. (Tr., pp. 42-47) Beener relayed the recycling work was a little lighter and a lot cleaner. (Tr., p. 43)

In approximately 2014 or 2015, Beener moved to a toter job. (Tr., p. 47) Beener loaded garbage, recycling, and yard waste toters onto a trailer and delivered the toters to homes in Des Moines. (Tr., p. 48, 50) He also retrieved toters, including crushed toters and lifted the toters into the trailer. (Tr., pp. 48, 53) Beener reported the toters weighed twenty-five to forty pounds when the toters were empty. (Tr., p. 50)

Beener put the toters together by putting on the lids with screws in the handles or on the hinges with a cordless drill, and by installing the wheels on the axle and putting on the caps so the wheels would stay on. (Tr., p. 51) In the morning Beener would receive a list of toters to be delivered that day, he would go out and load the toters, and/or put together the toters, load the toters, and label the toters. (Tr., pp. 50-51) Beener drove to each residence, and he would open a gate on the trailer, remove the toter, and lift the toter onto the ground. (Tr., p. 49) At times Beener ran out of room on the trailer and he would also have to lift the toters into the back of the pickup truck. (Tr., pp. 49-50) When Beener had to retrieve the toters they were often full. (Tr., p. 52) For specials he would have to walk up porches and decks and move toters from backyards. (Tr., p. 52)

Beener testified on May 18, 2016, he was washing toters with a Hosty machine, which required him to flip each toter upside down to clean it. (Tr., pp. 55-56) Beener reported "[he] ended up taking a Toter that day – and, oh, what was it? It was right when I just grabbed the Toter to move it, and the next thing I know I'm laying flat on my back." (Tr., p. 56) Beener relayed he did not know what happened at first and he was lying in water on the cement floor of the garage. (Tr., p. 56) Boxes of lids had fallen on

top of Beener, striking him down his right side down his right shoulder, his left thumb, and his right knee and he fell to the ground. (Tr., p. 57) Beener's supervisor, John Peek found him. (Tr., p. 58) Beener continued to work and he did not seek any medical treatment that day. (Tr., pp. 58-59)

Beener testified before his work injury he experienced every day aches and pains, and reported he would take over-the-counter medication occasionally. (Tr., pp. 66-67) Beener testified Dr. Misol removed cartilage from his right knee forty years ago. (Tr., pp. 67, 81-82) Beener also admitted on cross-examination that he was having problems with his knees when walking before his work injury. (Tr., p. 89) Beener relayed he was used to having aches and pains. (Tr., p. 93) Beener testified after his work injury his pain was different in that he developed knee pain that has never gone away. (Tr., p. 67) Beener testified he had not treated with a physician for knee pain since he started with the City in 1989 or 1990, until the May 18, 2016 work injury, when his knee pain changed. (Tr., p. 94)

On May 20, 2016, Beener attended an appointment with UnityPoint Health Methodist Occupational Medicine reporting he injured his left thumb, right knee, and right shoulder on May 18, 2016. (JE 3, p. 1) Richard McCaughey, D.O., examined Beener. (JE 3, pp. 2-3) Dr. McCaughey documented Beener reported "he was stacking some boxes of tote lids. The highest one tipped back on him, striking his right shoulder, left thumb, and right knee," causing an abrasion to his right knee, and complaining of tenderness of his right shoulder and right knee. (JE 3, p. 2) Dr. McCaughey ordered x-rays, which he documented showed some mild degenerative changes in the left thumb with nothing acute, no acute abnormalities in the right shoulder, and severe degenerative joint disease with no acute abnormalities in the right knee. (JE 3, p. 2) Dr. McCaughey opined Beener sustained a contusion of the right shoulder, left thumb, and right knee, with a concurrent small superficial abrasion to the left knee, and noted Beener "has severe non-work related underlying degenerative joint disease of right knee." (JE 3, p. 2) Dr. McCaughey documented Beener told him he believed his right knee degenerative joint disease was due to his years at work and Dr. McCaughey replied he "thought that it was more likely secondary to having too many birthdays." (JE 3, p. 3)

Beener returned to Dr. McCaughey on May 25, 2016, complaining of mild achiness and stiffness in his right knee, tenderness in his left thumb, and tenderness in his right shoulder. (JE 3, p. 4) Dr. McCaughey again opined Beener's right knee degenerative changes were not related to his work, and released him to return to full duty. (JE 3, pp. 5-6)

Beener continued to complain to Dr. McCaughey of right shoulder and right knee achiness and stiffness. (JE 3, pp. 7-8) Dr. McCaughey recommended a referral to orthopedics. (JE 3, p. 8)

On June 23, 2016, Beener attended an appointment with Stephen Ash, M.D., an orthopedic surgeon with Iowa Ortho. (JE 5, pp. 1-2) Beener complained of aching and

sharp pain following a direct blow at work, noting the pain is aggravated by lifting, movement, and lying on his right side, and relieved by rest, with associated weakness. (JE 5, p. 1) Beener complained of right knee pain that is constant and stable, aching and sharp. (JE 5, p. 1) Beener reported he sustained an injury at work and the pain is aggravated by climbing and descending stairs and walking, and relieved by rest. (JE 5, p. 1) Beener also reported popping and weakness in his right knee. (JE 5, p. 1) Dr. Ash documented Beener denied having past significant right shoulder problems or right knee pain, and reported a remote history of a surgery on his right knee by Dr. Misol. (JE 5, p. 1) Dr. Ash examined Beener, reviewed his x-rays, and assessed him with unilateral primary osteoarthritis of the right knee, pain in the right shoulder, pain in unspecified limb, and severe morbid obesity due to excess calories. (JE 5, p. 2) Dr. Ash documented Beener had right knee degenerative joint disease with a recent exacerbation after a work injury and a right cuff strain with possible impingement syndrome. (JE 5, p. 2) Dr. Ash ordered physical therapy and released Beener without restrictions. (JE 5, p. 2)

Beener attended an appointment with Scott Shumway, M.D., an orthopedic surgeon with Iowa Ortho, on July 20, 2016, complaining of left thumb pain following his work injury. (JE 5, p. 3) Dr. Shumway assessed Beener with left thumb osteoarthritis, severe morbid obesity, and he administered a Kenalog injection. (JE 5, p. 4) Beener reported relief following the injection. (JE 5, p. 7) No permanent impairment was assigned to the thumb injury.

On July 29, 2016, Beener returned to Dr. Ash complaining of right shoulder pain that is worse with reaching and lifting, with numbness and tingling in the right upper extremity when lying on his arm, and right knee pain with mechanical symptoms. (JE 5, p. 5) Dr. Ash assessed Beener with a strain of the tendon of the right rotator cuff, unilateral primary osteoarthritis of the right knee, and severe morbid obesity. (JE 5, p. 5) Dr. Ash recommended right shoulder magnetic resonance imaging to rule out a rotator cuff tear, and documented he explained to Beener his right knee problem is primarily pre-existing arthritis, but he had a work-related exacerbation. (JE 5, p. 5) Dr. Ash recommended a cortisone injection for his right knee, but stated "further treatment is not work-related," and he released Beener to return to work without restrictions (JE 5, p. 5)

Beener underwent right shoulder magnetic resonance imaging on August 18, 2016. (JE 4, p. 1) The reviewing radiologist listed an impression of:

1. Extensive articular sided tearing involving the supraspinatus tendon predominantly restricted to the articular 75% of the tendon over a 17 x 23 mm segment. The bursal lining is predominantly intact although small foci are indistinct and a tiny full-thickness component may be present. Lack of joint fluid accumulation in the subacromial subdeltoid bursa argues against this possibility. There is no atrophy of the cuff musculature.

2. SLAP type II tear. There is no para labral cyst. The suprascapular and spinoglenoid notch are both clear.

(JE 4, p. 1)

On August 25, 2016, Beener returned to Dr. Ash, complaining of right shoulder and right knee pain. (JE 5, p. 8) Dr. Ash examined Beener, reviewed the imaging report, and assessed Beener with a right rotator cuff tear, right knee osteoarthritis, and severe morbid obesity. (JE 5, p. 8) Dr. Ash administered a right knee cortisone injection and discussed treatment options for Beener's right shoulder. (JE 5, pp. 8-9) Beener elected to proceed with surgery. (JE 5, p. 9)

On November 21, 2016, Dr. Ash performed a right shoulder exam under anesthesia, right shoulder arthroscopy, arthroscopic subacromial decompression, and arthroscopic rotator cuff repair on Beener. (JE 6, p. 1) Dr. Ash listed a post-operative diagnosis of articular-side 75 percent supraspinatus partial tear and grade 3 chondromalacia of the humeral head. (JE 6, p. 1)

Beener returned to Dr. Ash on November 22, 2016, and Dr. Ash instructed Beener on home exercises. (JE 5, p. 10) Dr. Ash opined Beener could return to work on November 28, 2016, with no use of the right arm and a ten-pound lifting restriction with the left arm. (JE 5, p. 10)

Beener testified when he returned to work the City assigned him to sit at a table in the locker room for eight hours. (Tr., p. 63) Eventually the City had him put screws in hinges with a cordless drill. (Tr., p. 63)

On November 29, 2016, Beener returned to Dr. McCaughey reporting his right shoulder was still painful and he was wearing a sling on his right arm. (JE 3, p. 13) Dr. McCaughey released Beener to return to modified duty to follow the restrictions from Dr. Ash. (JE 3, p. 14)

Beener attended a follow-up appointment with Dr. Ash on February 3, 2017. (JE 5, p. 11) Dr. Ash documented Beener had decreasing pain in his right shoulder with no new complaints. (JE 5, p. 11) Dr. Ash released Beener to return to work with a two-pound lifting restriction with the right upper extremity next to his body and below shoulder level, and ordered Beener to continue working with the physical therapist on passive and active motion with no strengthening. (JE 5, p. 11)

On March 3, 2017, Beener returned to Dr. Ash, reporting he still had some right shoulder pain. (JE 5, p. 12) Dr. Ash released Beener to return to work with a five-pound lifting restriction with the right upper extremity next to his body and below shoulder level, and ordered him to work on stretching and strengthening in physical therapy. (JE 5, p. 13)

Beener attended an appointment with Dr. Ash on June 1, 2017, reporting he did not believe he could perform his normal job. (JE 5, p. 16) Dr. Ash found Beener

reached maximum medical improvement on June 1, 2017, recommended a functional capacity evaluation, and continued Beener on a ten-pound lifting restriction pending the results of the evaluation. (JE 5, p. 16)

Beener underwent a functional capacity evaluation on July 11, 2017 with Amy Pohlman, PT. (JE 7) Pohlman noted the evaluation was valid, and that Beener demonstrated the ability to function at the heavy physical demand level, and noted he demonstrated “the physical capabilities and tolerances to perform all of the essential functions of the job” (JE 7, pp. 1-2, 15)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) (“AMA Guides”), Dr. Ash issued an impairment rating on July 12, 2017, as follows:

Mr. Gerald Beener has a 3% right upper extremity impairment status post rotator cuff repair. One percent of this rating is derived from Figure 16-40 on page 476 of the Guides because of his limitation in flexion. Two percent of this rating is derived from Figure 16-46 on page 479 of the Guides because of his limitation in internal rotation. Again, this totals a 3% right upper extremity impairment. This converts to a 2% whole person impairment from Table 16-3 on page 439 of the Guides. He reached maximal medical improvement on June 1, 2017. At that time, I ordered a functional capacity evaluation to help decide on permanent restrictions at work.

(JE 5, p. 17)

Beener testified after the functional capacity evaluation he returned to full duty without restrictions. (Tr., p. 64) Beener reported he tried to be more careful when loading totes onto the trailer, and tried to use his left arm more than his right. (Tr., p. 65) Beener testified after the surgery he had a loss of strength and weakness, and he had a hard time lifting or reaching over his head, and reaching around his back to put on a belt. (Tr., p. 66)

Beener reported the pain in his knee made his work more difficult because of the standing, walking, and climbing in and out required for his job. (Tr., p. 67) Beener reported he never worked on totes exclusively, and sometimes operated the one-arm truck, which required him to climb in and out of the truck. (Tr., p. 68)

On August 18, 2017, Beener attended an appointment with Dr. McCaughey. (JE 3, p. 15) Beener complained of minimal residual tenderness over the anterior right shoulder. (JE 3, p. 15) Dr. McCaughey noted he could return to full duty without restrictions per Dr. Ash. (JE 3, p. 15)

On August 31, 2017, Beener attended an appointment with Devon Goetz, M.D., an orthopedic surgeon with Des Moines Orthopaedic Surgeons, P.C., complaining of

bilateral knee pain upon a referral from Beener's attorney. (JE 1, p. 1) Beener reported having intermittent pain in both knees for years, but reported the pain had become worse since a May 2016 work injury. (JE 1, p. 1) Beener stated he underwent right rotator cuff surgery and he was off duty for seven months, and reported his right knee claim had been denied due to preexisting osteoarthritis. (JE 1, p. 1) Beener reported he underwent a right knee open meniscectomy approximately forty years before the appointment, and he had also received a steroid injection once to his right knee following the May 2016 injury. (JE 1, p. 1) Dr. Goetz examined Beener, reviewed his imaging, and assessed him with "[v]ery severe bilateral knee osteoarthritis with disabling symptoms on the right," status post bilateral rotator cuff repair, and multiple medical problems including morbid obesity and neurodermatitis. (JE 1, pp. 1-4) Dr. Goetz discussed treatment options with Beener and Beener requested to proceed with a right total knee replacement. (JE 1, p. 4) Dr. Goetz released Beener to return to work "carefully without restriction." (JE 1, p. 4)

Dr. Goetz issued an addendum to his note from August 31, 2017, on causation, as follows:

[w]ith respect to work relationship, I agree that the work injury in May of 2016 had little or no impact on his need for a total knee replacement. His knees were very severe well prior to that date. On the other hand the medical literature is quite clear in documenting that patients who work at a heavy manual labor job for a long period of time are more likely than not to have more rapid progression of the [sic] their osteoarthritis. This is especially true for the knee joint. If his description to me is correct then his job as a garbage collector for the city of Des Moines for 27 years does qualify as heavy manual labor for a long period of time.

(JE 1, p. 5)

Dr. Goetz performed a right complex total knee replacement on Beener on December 20, 2017. (JE 1, p. 6; JE 2, pp. 1-3) During an appointment on January 4, 2018, Beener reported he was doing "okay" with his knee, he had not started physical therapy, he was walking with a walker, and he was doing home exercises. (JE 1, p. 6) Beener developed pneumonia. (JE 1, p. 6) Dr. Goetz examined Beener, reviewed his home exercise program, prescribed hydrocodone and oxycodone, and ordered physical therapy to resume the following week. (JE 1, pp. 6-7)

On February 1, 2018, Beener returned to Dr. Goetz, reporting his right knee pain was much less than before surgery, but he was still tender along the medial and lateral knee. (JE 1, p. 8) Dr. Goetz documented Beener could walk for about an hour with the use of crutches and walker as an aid, and stairs foot over foot with a railing, but he was having difficulty with housework and yardwork. (JE 1, p. 8)

Sunil Bansal, M.D., an occupational medicine physician, conducted an independent medical examination for Beener on February 5, 2018, and issued his report

on April 5, 2018. (Ex. 1) Dr. Bansal reviewed Beener's medical records and examined him. (Ex. 1) Beener told Dr. Bansal he was experiencing constant aching pain in his right shoulder, he was experiencing sharp pain when he raises his arm over shoulder level, he has experienced a loss of strength in his arm and shoulder, he experiences popping and numbness when moving his arm and twitching in his biceps, occasional numbness and tingling in his bilateral hands, including all fingers, and he cannot lie on his right side. (Ex. 1, p. 8) Beener also complained of constant, aching right knee pain. (Ex 1, p. 8)

Dr. Bansal diagnosed Beener with a right rotator cuff tear and SLAP type 2 tear, status post right shoulder surgery. (Ex. 1, p. 11) Dr. Bansal opined the mechanism of falling with direct impact to the shoulder, coupled with his clinical presentation of immediate right shoulder pain, is consistent with an acute rotator cuff and SLAP tear. (Ex. 1, p. 12) Using the AMA Guides, Dr. Bansal opined:

specifically Figures 16-40 through 16-46 and comparing to the left shoulder, we find that M. Beener is assigned:

	RANGE OF MOTION	% UE Impairment
Flexion:	167, 166, and 164 degrees	1
Abduction:	157, 154, and 155 degrees	1
Adduction:	32, 29, and 30 degrees	1
External Rotation:	72, 75, and 76 degrees	0
Extension:	41, 40, and 38 degrees	1
Internal Rotation:	57, 59, and 56 degrees	2

(Ex. 1, p. 12) Dr. Bansal found Beener sustained a six percent upper extremity impairment, which he converted to a four percent impairment to the body as a whole. (Ex. 1, p. 13) Dr. Bansal recommended permanent restrictions for the right arm of no lifting over twenty pounds occasionally, no lifting over ten pounds frequently, no lifting five pounds above shoulder level occasionally, no frequent shoulder lifting, and no reaching. (Ex. 1, p. 13)

With respect to the right knee, Dr. Bansal opined Beener sustained "an acute on chronic injury" on May 18, 2016. (Ex. 1, p. 13) Dr. Bansal opined Beener's employment for the City over the course of twenty-eight years was a "significant accelerating factor for his severe right knee osteoarthritis," finding the May 18, 2016 acute injury "lit up" and aggravated his severe right knee osteoarthritis from the fall to the ground." (Ex. 1, p. 13) Dr. Bansal found the cumulative work performed by Beener as a garbage collector was also a significant, contributing factor in the acceleration of his bilateral knee degenerative joint disease, noting significant aspects of his job included repetitive

squatting and rapidly getting in and out of his garbage truck hundreds of times per day. (Ex. 1 p. 13) Using Table 17-35 of the AMA Guides, Dr. Bansal assigned Beener a thirty-seven percent lower extremity impairment, or a fifteen percent whole person impairment for his total knee replacement, and recommended permanent restrictions of no frequent kneeling, squatting, or twisting, no prolonged standing or walking more than thirty minutes at a time with his cane, and use of a cane at all times when ambulating to prevent fall risk. (Ex. 1, p. 14)

On February 15, 2018, Beener requested the City accommodate Dr. Bansal's restrictions so he could perform his job safely. (Ex. 2, p. 3) On February 22, 2018, Beener submitted a reasonable accommodation request form to the City, stating he sustained a work injury to his shoulder and knee, and since his work injury he cannot lift more than twenty pounds occasionally, or ten pounds frequently with his right arm, lift over five pounds above shoulder level, lift over his head with his right arm on a frequent basis, reach with his right arm on a frequent basis, climb in and out of the truck on a frequent basis, squat or kneel on a frequent basis, or stand longer than thirty minutes. (Ex. 2, p. 1) Beener attached a copy of work restrictions listed by Dr. Bansal dated February 14, 2018. (Ex. 2, p. 2) Beener testified he tries to abide by Dr. Bansal's restrictions. (Tr., p. 12) The City agreed to follow Dr. Bansal's restrictions.

Beener attended a follow-up appointment with Dr. Goetz on March 1, 2018, reporting he had some persistent soreness and slowly progressing range of motion. (JE 1, p. 11) Beener reported his physical therapy was painful but helped with range of motion. (JE 1, p. 11) Dr. Goetz noted Beener's range of motion progression was slow, but not unexpected, and he discussed additional physical therapy versus manipulation under surgery, and Dr. Goetz continued his physical therapy and pain medications. (JE 1, p. 11)

On April 12, 2018, Beener attended an appointment with Dr. Goetz reporting some mild persistent stiffness in his right knee and some lateral pain that is worse at night, and reporting his left knee was bothering him worse with "persistent back pain." (JE 1, p. 13) Beener requested a right knee manipulation under anesthesia as opposed to additional physical therapy. (JE 1, p. 14) Dr. Goetz noted there was no light duty at work, and he planned Beener would return to full duty in two weeks. (JE 1, p. 14)

On April 12, 2018, Beener wrote a note to the City, stating, "I appreciate the City allowing me to attempt to come back to work under my permanent restrictions including use of a cane. I don't feel I can do my job safely under those restrictions. Because of that I must retire." (Ex. 2, p. 4) Beener was sixty-three when he retired. (Tr., p. 80)

Beener testified he never returned to work after his knee surgery. (Tr., p. 71) Beener relayed he believed the City was going to return him to the toter job, and he would have difficulty performing his job using a cane. (Tr., p. 71)

Beener underwent a right knee manipulation under anesthesia on April 30, 2018. (JE 1, p. 15; JE 2, pp. 4-5) Beener reported his pain was less than before surgery and

he believed the manipulation helped. (JE 1, p. 15) Dr. Goetz encouraged Beener to continue his home exercises, and scheduled a left total knee replacement for August 22, 2018, as well an exam under anesthesia of the right knee. (JE 1, p. 15)

On April 19, 2019, the City sent Dr. Ash a letter asking him,

1. Do you believe within a reasonable degree of medical certainty that the right knee injury on 05/18/16 was work related either from 05/18/16 or through a cumulative work injury?
2. Do you believe within a reasonable degree of medical certainty that the right knee arthritis is a cumulative trauma work injury, an injury from 05/18/16 or from a personal condition due to his prior knee surgery, his extensive pre-existing degenerative arthritis, and his weight?
3. Do you believe within a reasonable degree of medical certainty that the need for the right knee replacement would have been needed regardless of the injury on 05/18/16 and/or regardless of his job?

(Ex. A, p. 1) Dr. Ash responded on May 17, 2019, as follows:

Answer #1: Mr. Beener's right knee symptoms upon presentation, based on his history given to me, were from a work-related exacerbation of his right knee degenerative arthritis from the injury on May 18, 2016.

Answer #2: I think that it is most likely that his right knee degenerative arthritis is a result of his previous surgery and obesity rather than of cumulative trauma from work.

Answer #3: I think it is likely that even without the work injury sustained on May 18, 2016, that Mr. Beener would have developed symptoms in the knee that would have caused him to consider arthroplasty.

(Ex. A, p. 2)

During the hearing Beener testified he has continued to use a cane since his right knee replacement surgery. (Tr., pp. 69-70) Beener reported he uses his cane when he leaves his home for security from falling. (Tr., p. 70) Beener reported he planned to work until age 70, but he retired in 2018. (Tr., p. 73) Beener testified his quality of life has improved with retirement. (Tr., p. 72) Beener has not looked for work since he retired. (Tr., pp. 72-73)

Since his work injury Beener has been unable to mow his lawn or shovel snow. (Tr., p. 74) Beener struggles to do laundry, dusting, and mopping. (Tr., pp. 74-75)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves several issues, including temporary benefits, extent of disability, recovery of medical bills, and interest under Iowa Code sections 85.27, 85.33, 85.34, and 535.3. In March 2017, the legislature enacted changes (hereinafter “Act”) relating to workers’ compensation in Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code sections 85.33 and 85.34 apply to injuries occurring on or after the effective date of the Act. This case involves an acute injury occurring before July 1, 2017, and an alleged cumulative injury which manifested before July 1, 2017, therefore, the changes in the new statute to Iowa Code sections 85.33 and 85.34 do not apply to this case. The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant’s Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

II. Nature of the Injury

Beener alleges he sustained temporary and permanent impairments to his right knee and right shoulder while working for the City. The City admits Beener sustained a temporary and permanent impairment to his right shoulder, but denies he sustained a temporary and permanent impairment to his right knee arising out of and in the course of his employment with the City.

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

it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in

furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

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

The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, "[i]t only needs to be one cause." Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The deputy commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

Beener alleges he sustained both a traumatic injury to his right knee on May 18, 2016, while working for the City, and alternatively, a cumulative injury to his right knee while working for the City. A cumulative injury is an occupational disease that develops over time, resulting from cumulative trauma in the workplace. Baker v. Bridgestone/Firestone, 872 N.W.2d 672, 681 (Iowa 2015); Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842, 851 (Iowa 2009); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368, 372-74 (Iowa 1985). "A cumulative injury is deemed to have occurred when it manifests – and 'manifestation' is that point in time when 'both the fact of the injury and the causal relationship of the injury to the claimant's employment would have become plainly apparent to a reasonable person.'" Baker, 872 N.W.2d at 681.

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

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

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

Four physicians have provided opinions on causation in this case, Dr. McCaughey, a treating occupational medicine physician, Dr. Ash, a treating orthopedic surgeon, Dr. Goetz, a treating physician selected by Beener who performed surgery on Beener's right knee, and Dr. Bansal, an occupational medicine physician who performed an independent medical examination for Beener.

Dr. McCaughey treated Beener from May 20, 2016 through August 18, 2017. (JE 3) During Beener's first appointment on May 20, 2016, Dr. McCaughey documented Beener told him he believed his right knee degenerative joint disease was caused by his years of work for the City. (JE 3, p. 3) Dr. McCaughey documented he "thought it was more likely secondary to having too many birthdays." (JE 3, p. 3) During a follow-up appointment on May 25, 2016, Dr. McCaughey again opined Beener's right knee degenerative changes were not related to his work. (JE 3, pp. 5-6)

During Beener's initial appointment with Dr. Ash on June 23, 2016, Dr. Ash documented Beener had a remote history of right knee surgery with Dr. Misol and found Beener had right knee degenerative joint disease with a recent exacerbation after a work injury. (JE 5, p. 2) During a follow-up appointment on July 29, 2016, Dr. Ash recommended a cortisone injection for Beener's right knee, and stated, "further treatment is not work-related." (JE 5, p. 5) Dr. Ash continued to treat Beener's accepted shoulder condition, but he did not provide any additional treatment for his right knee. (JE 5)

On August 31, 2017, during Beener's initial appointment Dr. Goetz diagnosed Beener with "[v]ery severe bilateral knee osteoarthritis with disabling symptoms on the right." (JE 1, p. 4) With respect to causation, Dr. Goetz issued an addendum opinion, as follows:

[w]ith respect to work relationship, I agree that the work injury in May of 2016 had little or no impact on his need for a total knee replacement. His knees were very severe well prior to that date. On the other hand the medical literature is quite clear in documenting that patients who work at a heavy manual labor job for a long period of time are more likely than not to have more rapid progression of the [*sic*] their osteoarthritis. This is especially true for the knee joint. If his description to me is correct then his job as a garbage collector for the city of Des Moines for 27 years does qualify as heavy manual labor for a long period of time.

(JE 1, p. 5)

Dr. Bansal examined Beener on February 5, 2018, and opined Beener sustained “an acute on chronic injury” on May 18, 2016. (Ex. 1, p. 13) Dr. Bansal opined Beener’s employment with the City over the course of twenty-eight years was a “significant accelerating factor for his severe right knee osteoarthritis,” finding the May 18, 2016 acute injury “‘lit up’ and aggravated his severe right knee osteoarthritis from the fall to the ground” and also opined the cumulative work Beener performed as a garbage collector was a significant, contributing factor in the acceleration of his bilateral knee degenerative joint disease, noting significant aspects of his job included repetitive squatting, and rapidly entering and exiting a garbage truck hundreds of times per day. (Ex. 1, p. 13)

On April 19, 2019, without examining Beener again, Dr. Ash responded to a letter from the City regarding causation. (Ex. A) Dr. Ash opined Beener’s right knee symptoms were from a work-related exacerbation of his right knee degenerative arthritis from the injury on May 18, 2016. (Ex. A, p. 2) Dr. Ash opined “it is most likely that his right knee degenerative arthritis is a result of his previous surgery and obesity rather than of cumulative trauma from work,” and he believed “it is likely that even without the work injury sustained on May 18, 2016, that Mr. Beener would have developed symptoms in the knee that would have caused him to consider arthroplasty.” (Ex. A, p. 2) Dr. Ash did not respond to the opinions of Dr. Bansal or Dr. Goetz regarding the medical literature conclusions on the acceleration of degenerative joint disease with heavy work.

I find the opinion of Dr. Bansal, as supported by Dr. Goetz, to be the most persuasive on the issue of causation. While Dr. Bansal incorrectly reported Beener had no prior problems with his right knee, Dr. Bansal reviewed Dr. Ash’s note from June 23, 2016, and Dr. Goetz’s note from August 31, 2017, documenting a remote history of a surgery performed by Dr. Misol on Beener’s right knee. (JE 1, p. 1; JE 5, p. 1; Ex. 1, p. 7) And while Beener also admitted on cross-examination during the hearing he was having problems with his knees when walking before his work injury, there was no evidence presented at hearing Beener connected his right knee condition with his work until the May 2016 work injury. (Tr., p. 89) Before his work injury Beener performed his heavy job as a garbage collector for many years without restrictions. There was no

evidence presented at hearing Beener complained of right knee pain prior to his work injury, or that he sought treatment for his right knee before the May 2016 work injury.

Drs. Goetz and Ash have superior training to Dr. Bansal as orthopedic surgeons. Dr. Ash also briefly treated Beener's right knee before he underwent a total right knee replacement, but he has not examined Beener's knee for several years. Dr. Goetz examined Beener more recently than Dr. Ash, and he performed a right total knee replacement on Beener. (JE 1, p. 5)

Dr. Goetz opined the May 2016 work injury had little or no impact on the need for a total knee replacement, but also opined the medical literature is clear in documenting that patients who work in heavy manual labor jobs for long periods of time are more likely than not to have more rapid progression of their osteoarthritis, noting "[t]his is especially true for the knee joint," and that if Beener's description to him was correct his job as a garbage collector for the City for twenty-seven years qualifies as heavy manual labor for a long period of time. (JE 1, p. 5) This supports Dr. Bansal's finding Beener sustained "an acute on chronic injury" on May 18, 2016. Beener has met his burden of proof that he sustained an injury arising out of and in the course of his employment with the City.

III. Extent of Disability

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u).

"Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

Permanent partial disabilities are divided into scheduled and unscheduled losses. Iowa Code § 85.34(2). If the claimant's injury is listed in the specific losses found in Iowa Code section 85.34(2)(a)-(t), the injury is a scheduled injury and is compensated by the number of weeks provided for the injury in the statute. Second Injury Fund v. Bergeson, 526 N.W.2d 543, 547 (Iowa 1995). "The compensation allowed for a scheduled injury 'is definitely fixed according to the loss of use of the particular member.'" Id. (quoting Graves v. Eagle Iron Works, 331 N.W.2d 116, 118 (Iowa 1983)). If the claimant's injury is not listed in the specific losses in the statute, compensation is paid in relation to 500 weeks as the disability bears to the body as a

whole. Id.; Iowa Code § 85.34(2)(u). “Functional disability is used to determine a specific scheduled disability; industrial disability is used to determine an unscheduled injury.” Bergeson, 526 N.W.2d at 547.

While I find Dr. Bansal’s causation most persuasive on the issue of causation regarding Beener’s right knee condition, I find Dr. Ash’s opinion on permanency regarding his right shoulder most persuasive. Dr. Ash treated Beener over a period of time, and performed surgery on his right shoulder. Dr. Ash also ordered a functional capacity evaluation, the results of which are inconsistent with Dr. Bansal’s restrictions. Dr. Ash did not assign any permanent restrictions to Beener after the functional capacity evaluation when he issued his permanent impairment rating.

Dr. Ash found Beener reached maximum medical improvement on June 1, 2017, and assigned a three percent upper extremity impairment which he converted to a two percent whole person impairment. (JE 5, p. 17) Dr. Bansal opined Beener had sustained a fifteen percent whole person impairment for his right knee following surgery. I find his restrictions for Beener’s right knee consistent with the record evidence.

Beener worked in the sanitation department for the City for many years as a garbage collector, handling garbage, recycling, and toters, until he retired in 2018. Prior to joining the City Beener worked as a laborer unloading and loading cartons of soda pop bottles, handling paint, loading tires and freight, and in meat packing. The restrictions for Beener’s right knee condition are not consistent with his past work before he joined the City.

Beener returned to his job with the City performing his regular duties, until his right knee surgery on December 20, 2017. (Tr., p. 64) Beener reported he tried to be more careful when loading toters onto the trailer, and tried to use his left arm more than his right. (Tr., p. 65) Beener is right-hand dominant. (Tr., p. 65) Beener testified after the shoulder surgery he had a loss of strength and weakness, and he had a hard time lifting or reaching over his head, and reaching around his back to put on a belt. (Tr., p. 66) The City agreed to accommodate Beener’s work restrictions from Dr. Bansal. Beener chose to resign and retired from the City. He has not worked since he retired from the City or looked for work. I do not find Beener motivated to work.

At the time of the hearing Beener was sixty-four. (Tr., p. 10) Beener graduated from high school with C and D grades. (Tr., p. 10) Beener has not received any training beyond high school. (Tr., p. 10) Beener has no experience in customer service or working with computers. (Tr., p. 11) While Beener did not receive any permanent restrictions, Beener has sustained a permanent impairment to his dominant upper extremity that interferes with his ability to work. Considering all of the factors of industrial disability I find Beener has sustained a thirty percent industrial disability. Given this finding, pursuant to the agreement of the parties, the City is responsible for the \$976.84 in out-of-pocket medical bills Beener paid for his right knee condition, and for all future care necessitated by the work injury.

IV. Temporary Benefits

Beener seeks to recover healing period benefits from December 20, 2017 through May 14, 2018, while he was off work for right knee surgery. Iowa Code section 85.33 governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). As a general rule, “temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition.” Clark v. Vicorp. Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to “partially reimburse the employee for the loss of earnings” during a period of recovery from the condition. Id. An award of healing period benefits or total temporary disability benefits is not dependent on a finding of permanent impairment. Dunlap, 824 N.W.2d at 556. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Id. As analyzed above, I found Beener sustained a permanent impairment to his right knee caused by his work injury. If Beener is entitled to additional temporary benefits, he is entitled to healing period benefits.

“[A] claim for permanent disability benefits is not ripe until maximum medical improvement has been achieved.” Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 201 (Iowa 2010). “Stabilization of the employee’s condition ‘is the event that allows a physician to make the determination that a particular medical condition is permanent.’” Dunlap, 824 N.W.2d at 556 (quoting Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 200). If the employee has a permanent disability, then payments made prior to permanency are healing period benefits. Id. If the injury has not resulted in a permanent disability, then the employee may be awarded temporary total benefits. Id. at 556-57. Temporary total, temporary partial, and healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986); Stourac-Floyd v. MDF Endeavors, File No. 5053328 (App. Sept. 11, 2018); Stevens v. Eastern Star Masonic Home, File No. 5049776 (App. Dec. Mar. 14, 2018).

The parties stipulated Beener was off work from December 20, 2017 through May 14, 2018. The evidence presented at hearing establishes Beener was off work for this period following right knee surgery. Beener is entitled to healing period benefits from December 20, 2017, through May 14, 2018, at the stipulated weekly rate of \$758.12.

V. Costs

Beener seeks to recover \$100.00 for the filing fee and \$6.77 for the cost of service. (Ex. 4) Iowa Code section 86.40, provides, “[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.” Rule 876 IAC 4.33(6), provides

[c]osts taxed by the workers’ compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or

presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

The administrative rule expressly allows for the recovery of the costs requested by Beener. Beener is entitled to recover the costs he seeks.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay the claimant one hundred fifty (150) weeks of permanent partial disability benefits at the stipulated weekly rate of seven hundred fifty-eight and 12/100 dollars (\$758.12), commencing on the stipulated commencement date of February 8, 2017.

Defendant shall pay the claimant healing period benefits from December 20, 2017 through May 14, 2018, at the stipulated weekly rate of seven hundred fifty-eight and 12/100 dollars (\$758.12).

Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

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

Defendant shall reimburse the claimant nine hundred seventy-six and 84/100 dollars (\$976.84) in out-of-pocket medical bills Beener paid for his right knee condition, and is responsible for all future care necessitated by the work injury

Defendant shall reimburse claimant one hundred and 00/100 dollars (\$100.00) for the filing fee, and six and 77/100 dollars (\$6.77) for the cost of service.

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

Signed and filed this 7th day of June, 2019.



HEATHER L. PALMER
DEPUTY WORKERS'
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HLP/sam

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.