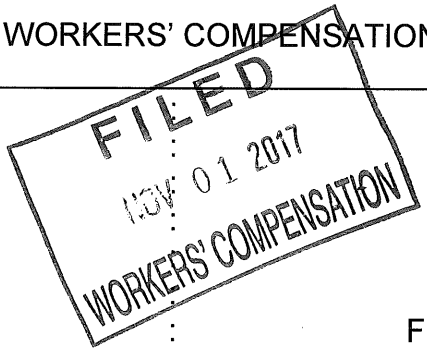
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



TAMMY ROBERSON,

Claimant,

vs.

SEARS HOLDINGS CORPORATION,

Employer,

and

INDEMNITY INSURANCE COMPANY OF NORTH AMERICA,

Insurance Carrier,

and

SECOND INJURY FUND OF IOWA,

Defendants.

File No. 5055975

ARBITRATION

DECISION

Head Notes: 1108, 1108.50, 1801, 2500

STATEMENT OF THE CASE

Tammy Roberson, claimant, filed a petition in arbitration seeking workers' compensation benefits against Sears Holdings Corporation, employer, and Indemnity Insurance Company of North America, insurer, as well as the Second Injury Fund of Iowa, for an accepted work injury date of December 5, 2013.

This case was heard on May 17, 2017, in Des Moines, Iowa. The case was considered fully submitted on June 14, 2017, upon the simultaneous filing of briefs.

The record consists of Claimant's Exhibits 1-17, Defendants' Exhibits A-D, claimant's testimony.

ISSUES

1. Whether claimant is entitled to a running award of healing period benefits beginning November 17, 2015;

2. Whether claimant sustained a permanent disability;

3. Whether that disability is scheduled member or industrial in nature;

4. The extent of claimant's disability;

5. The commencement date of permanent benefits, if any are awarded;

6. Whether there is a causal connection between claimant's injury and the medical expenses claimed by claimant;

7. Whether claimant is entitled to alternate care under Iowa Code section 85.27;

8. Whether claimant is entitled to Second Injury Fund benefits and, if so, the amount of benefits.

STIPULATIONS

The parties agree claimant sustained an injury on December 5, 2013, which arose out of and in the course of her employment. They further agree that this injury was the cause of some temporary disability. Claimant was off work beginning November 17, 2015, to the present.

At all times material here to, claimant was married and entitled to four exemptions. At the time of her injury, her gross weekly wages were $186.10 per week. The minimum average weekly wage per Iowa Code section 85.37 is $270.00. Based on the foregoing numbers, the weekly benefit rate is $197.43.

Prior to the hearing, claimant was paid 22 weeks of compensation at the rate of $197.43.

FINDINGS OF FACT

Claimant was a 53-year-old person at the time of the hearing. She has a high school education and received certification as a nursing aide in 1996 and again in 2008. That license is not active. She also had a certification as a forklift driver. She was uncertain whether the forklift driver certification remained valid at the time of the hearing.

Claimant has a 1987 misdemeanor conviction for non-reporting of income when she was on welfare and working at the same time.

Her past work history includes construction work as a flagger and supervisor of tar pickers, power washers and ropers. (See Exhibit 10:4) At the same time, claimant worked as a part-time bartender, waitress and cook. Following this, she performed this work full time until moving to Iowa Sprinkler Fab as a shipping and receiving clerk. She

continued to work part-time as a bartender, waitress and cook at various establishments.

She then obtained her certified nursing assistant (CNA) license from Western Iowa Community College in 1995, after which, she took a position at Malvern Manor as a CNA.

She began working as a planter at Red Oak Greenhouse and suffered a serious neck injury, which required her to undergo disk fusions at C5, C6, and C7. (Ex. A:6)

Following these surgeries, claimant was given permanent work restrictions of no work above her head, no lifting more than 50 pounds and no repetitious lifting. (Ex. A: 26)

She then started work at Pamida in 1999. She ran the cash register, stocked shelves and worked the customer service desk.

In 2005, she drove a passenger van transporting railroad crews to their next destination. These trips would sometimes be 12 hours long.

She left that position to care for her elderly father. In 2011, claimant began working for the defendant employer. Her job duties included customer service, stocking, inventory, assembly, shipping and receiving and forklift driver.

Initially she was hired as a temporary worker. She was working approximately 15-20 hours per week at the time of her injury as a Merchandise and Customer Assistance Associate. The job description includes only occasional lifting of weights over 10 pounds. Claimant testified that the lifting between 11-20 pounds was constant rather than occasional. Pushing and pulling was also performed at frequent to constant levels at all weights. In addition to lifting, pushing, and pulling, she operated a seated forklift.

Claimant expresses some familiarity with computers.

During the hearing she testified she could not do any of her past jobs. Lifting packages and patients, stocking shelves, standing for long periods of time would be too painful with her damaged knee. She does not believe she could do greenhouse work.

She left her job with defendant on August 14, 2016 but was not officially terminated until October 11, 2016. (Ex. A:13; Ex. 12)

At her deposition on January 24, 2017, claimant was not currently looking for work nor had she applied for any jobs following her last day with defendant employer. (Ex. A: 31) At hearing, she testified that she had applied for secretarial positions, and in her discovery responses, claimant provided a list of places she had contacted looking for work. (Ex. 13) She testified that she had not realized sedentary work existed and therefore did not seek any positions out.

Claimant remains unemployed.

In addition to the neck injury suffered in the 1990s, claimant fell at home in 2008 and sustained a displaced fracture of the radial and ulnar shaft of her left forearm. Using plates and screws, claimant's bones were fixed together. (Ex. 1:1-4) She was released to work with no restrictions approximately three months following the surgery. (Ex. 1:4) At the time of her release, she had full flexion and extension of the elbow and wrist with "little limitation in supination of the forearm." (Ex. 1:4) She was also left with numbness, sensitivity to the cold, and some decrease in strength.

At hearing, claimant testified that she had difficulty holding a cup and cannot lift as much as she used to prior to the fracture.

However, claimant worked full duty with no restrictions as both a driver at Rail Crew Xpress and as a cashier, stocker, loader, and forklift driver for defendant employer. The Fund argues there was some discrepancy as to whether she asked for assistance at work. At hearing, she stated that she self-modified her job to accommodate her left arm injury or, at times, asked for help from co-workers. During her deposition in January 2017, she testified that she never sought accommodations for her left arm while working for defendant employer.

There is a difference between asking for official accommodations from one's employer and seeking occasional assistance from co-workers. It is believable that claimant did not ask for official accommodations, but she received assistance from her eco-workers from time to time.

On or about December 5, 2013, claimant was working with Christmas inventory. She had lifted several pallets that day during her five-hour shift. As she stood up from the forklift seat and turned, she felt her knee pop.

She was initially seen on December 5, 2013, at the Montgomery County Memorial Emergency Department. (Ex. 2) She was discharged home after her pain was under control with a knee immobilizer and instructed to follow up. (Ex. 2:2) She was seen at Methodist Physicians Clinic Red Oak on December 9, 2013. There they concluded claimant had likely torn a ligament or meniscus and instructed her to see a specialist. (Ex. 3:2)

Claimant was seen by Thomas Atteberry, M.D., on December 27, 2013. (Ex 4) The MRI showed a horizontal tear of the medial meniscus along with moderate degenerative changes. (Ex. 1:6) Dr. Atteberry first injected the knee with steroids, and claimant continued to work with restrictions. (Ex. 1:6) After the injection failed to alleviate her symptoms, claimant agreed to go forward with surgery. (Ex. 1:7) Surgery was performed on February 4, 2014. (Ex. 1:8) During surgery, diffuse degenerative changes were seen on the patella, femur, and tibia. There were tears in the posterior horn of the medial meniscus and small radial flap tears in the lateral meniscus. (Ex. 1:8)

Physical therapy began on February 11, 2014. (Ex. 1:10) Initially it appeared that physical therapy was progressing well and Dr. Atteberry anticipated claimant would return to "normal full time work duties" by the beginning of March. (Ex. 1:11)

She returned to Dr. Atteberry on March 18, 2014, with reports that while she was doing well but had seen an increase in symptoms in the past week. At this point, Dr. Atteberry wrote, "I would expect that most of Tammy's symptoms are likely from her degenerative change." (Ex. 1:12) Dr. Atteberry administered another injection and she was placed on sit down duties for four hours. Full duty would not begin until March 24, 2014. (Ex. 1:12)

Claimant testified she felt a pop in the knee during the new exercises and an increase in pain symptoms following. This was not immediately reported to Dr. Atteberry, or at least, it was not recorded in the medical records at any time.

In April 8, 2014, claimant reported that her knee was "doing great" and "[s]he has been able to advance her activity and do everything that she wants to at this point, notes only occasional soreness with excessive activity." (Ex. 1:13) On examination, she had no tenderness to palpation and exhibited full range of motion equal to her non-injured side. (Ex. 1:13)

Dr. Atteberry released her to full-duty work. (Ex. 1:13)

Claimant did not seek any new medical care until April 1, 2015. (Ex. 1:15) She testified that her pain returned after the first three to four months, gradually worsening.

During the April 1, 2015, medical examination, Dr. Atteberry noted minimal swelling in the knee and tenderness along the medial joint and patellofemoral compartment. She had 5-10 degrees loss of full extension. (Ex. 1:15) Dr. Atteberry administered another injection and placed her on work restrictions of "light duty with no squatting, no kneeling, no lifting, pushing or pulling greater than 30 pounds and no unloading trucks." (Ex. 1:15)

Claimant returned to Dr. Atteberry on April 29, 2015, with renewed complaints of pain. Dr. Atteberry placed her on sit down work and ordered an MRI. (Ex. 1:16) The May 19, 2015, MRI showed extensive lateral meniscus tear involving the anterior root, anterior horn, and body. (Ex. 4:3) Surgery was performed again on June 30, 2015. (Ex. 1:18) Diffuse degenerative changes were seen, progressing from grade 2 from the previous surgery to grade 3. (Ex. 1:18) There were areas such as the tibia that showed a grade 4 degenerative change. (Ex. 1:18)

Physical therapy was to begin again on July 7, 2015, but claimant had issues getting it approved due to the defendants' stance that the new complaints were not work related. (Ex. 1:20; 21)

On August 11, 2015, Dr. Atteberry concluded that claimant's knee was not going to improve. "Her degenerative change is advanced enough that it just continues to be

symptomatic for her." (Ex. 1:22) He recommended she proceed with a total knee replacement and placed her on sit down duty with only one hour of standing. (Ex. 1:22)

Claimant was sent to Ian Crabb, M.D., in Sept 2015. (Ex. B) He agreed that the claimant will need total knee arthroplasty. (Ex. B:6) However, due to the lapse in treatment from April 2014 to April 2015, Dr. Crabb believed that the second tear was due to progressive degenerative arthritis. (Ex. B:6) "The lateral meniscus tear either is a result of a new, but unreported traumatic injury that occurred to the patient, or more likely, just a progressive of degenerative change in the knee itself." (Ex. B:5)

On November 17, 2015, Dr. Atteberry took claimant off work completely. (Ex. 1:24)

Claimant testified that Dr. Atteberry felt that the second set of tears was due to her physical therapy. He did not document this in the records nor did he articulate this in any of his opinion letters.

Claimant returned to Dr. Atteberry on May 6, 2016, bringing a new complaint of lumbar pain. (Ex. 1:26) New MRIs and x-rays were taken which revealed obvious scoliosis of the lumbar spine which "may just be compensatory." The left hip was tilted and her left leg appeared longer than her right.

On May 24, 2016, she saw Dr. Atteberry again. (Ex. 1:27) Historically, her symptoms in the leg and back were unchanged. On examination, she continued to be tender in her low back into her right buttock and had mildly positive straight leg raise. (Ex. 1:27) A review of MRI showed multilevel degenerative changes; however, no significant spinal or neural foraminal stenosis. Dr. Atteberry wrote, "at this point in time, based on no worse findings than they are in her back, I would not recommend an epidural steroid injection yet. We are going to try her on some oral Medrol Dosepak to see if that helps with her symptoms. She will continue with her current work restrictions, which is predominantly sit down duty and no standing longer than one hour at a time." (Ex. 1:27)

Although it is not noted in the records, claimant testified that Dr. Atteberry recommended claimant seek out chiropractic care for her back pain. (Ex. 6:3) She began care with Lynne Mouw, D.C. at Mouw Family Chiropractic on June 30, 2016. (Ex. 6:3) Claimant testified that she treats with Dr. Mouw every two weeks and that the treatment has been beneficial in managing claimant's pain.

To Dr. Mouw, claimant complained of pain in the abdomen, left hamstring, left hip, right hip, right knee, right and left foot discomfort (both top and bottom), and low back discomfort. (Ex. 6:9, 12, 15, 82) Claimant's pain levels were nearly always at 9 or 10 on a 10 scale. (Ex. 6) Per Dr. Mouw's records, nearly every part of claimant's back was in pain.

> The patient was evaluated by palpation and observation with the following findings: left cervical, back of neck, right cervical, left upper thoracic, upper thoracic, right upper thoracic, mid thoracic, left lower thoracic, lower thoracic, right lower thoracic, left lumbar, lumbar region, right lumbar, left sacroiliac, right sacroiliac, left pelvic, sacral, right pelvic, left buttock and right buttock, pain, hypertonicity, edema, taut and tender fibers, restricted movement, segmental joint fixation, +3 spasm, +2 spasm, decreased range of motion and myofascial pain and tenderness, severe. This is improved since the last assessment.

(Ex. 6:9-10)

She was going to go forward with the total knee replacement under her own policy but did not have the $8,000.00 for the deductible which was required up front.

Some of claimant's testimony regarding treatment as well as her ongoing complaints of pain appears to be magnified. For over a year of treatment with Dr. Mouw, claimant asserted pain in her low back, hip, knee, and feet in the range of 9 or 10 on a 10 scale. Yet, she is still able to participate in hunting and ATV activities. Claimant's credibility about the extent of her pain is given lower weight as a result.

Claimant was seen in September 29, 2015, by Dr. Crabb, for an independent medical examination (IME). (Ex. B4) Dr. Crabb is an orthopedic surgeon who has published twelve papers on cartilage related arthritis. (Ex. 15:5) During the examination, claimant moved easily about the room. Dr. Crabb documented the following:

> On physical examination the patient stands 5 feet 7 inches and weighs 175 pounds, blood pressure 145/104, pulse is 96. She moves easily about the examination room. She has a 20° flexion contracture of her right knee while walking. Mutual progression angle. 2+ effusion on the right knee, 1+ effusion on the left knee. Flexion is to 100°. She is tender to varus and valgus stress testing. Hip rotation internal and external is approximately 30°, smooth and symmetrical without pain at the limits. She has poor musculature in the lower extremities. Normal neurovascular exam.

(Ex. B:4)

He agreed the appropriate diagnosis was a work-related medial meniscus tear treated with knee arthroscopy and debridement. (Ex. 15:9) He opined the second surgery was not related to the work injury nor was the progressive arthritis. (Ex. B:5)

During his deposition conducted on April 2017, Dr. Crabb explained that the type of tear that was seen on the MRI following the December 5, 2013, incident, is of the type that is frequently seen in knees with the claimant's existing arthritic condition.

Tears occur because the cartilage becomes more brittle as a result of arthritis. (Ex. 15:12)

Given the proximity of the injury and the tear, he gave her the benefit of the doubt in connecting the tear to the work injury rather than to the arthritis. (Ex. 15:10-11)

However, the second set of tears he attributed solely to the arthritis and that claimant's current condition relates to a progressive degenerative arthritis in the knee. (Ex. B:6; Ex. 15:11) Claimant would need to undergo a total knee arthroplasty at some point. (Ex. B:6)

He found her to be at maximum medical improvement (MMI) on April 8, 2014, upon her discharge by Dr. Atteberry and assigned a 2 percent lower extremity impairment rating. (Ex. B:7)

He further opined that claimant could return to work without restrictions from the first injury, but that her significant progression of arthritis limited her functionality. "The Patient will need a knee arthroplasty in order to continue to be a functional worker," he documented. (Ex. B:7)

Claimant takes exception to Dr. Crabb's opinions. During the deposition, he admitted that he took no notes during the examination nor did he measure the claimant's functional capacity. (Ex. 15:16)

During the deposition, claimant also challenged Dr. Crabb's competence by bringing up an "Assurance of Compliance" document that had been filed with the Nebraska Board of Medicine in January 9, 2015. (Ex. 15:24) The document alleges Dr. Crabb performed a wrong site surgery on a patient in March of 2016 and failed to properly document the patient's medical records. He corrected the patient record a week later. (Ex. 15:42)

Dr. Crabb's opinions rely in large part on his examination of claimant's medical records, her treatment history, and his knowledge and experience treating arthritis. The examination itself had little impact on his opinions. He agreed claimant needed a total arthroplasty and did not dispute any of claimant's current conditions. Instead, he was largely influenced by her nearly one year of no symptoms as well as the new tears that appeared after her initial MRI.

Whether he took notes of the examination or whether he was cited for failing to appropriately document one patient encounter holds very little bearing on whether claimant's need for a total knee arthroplasty is related to her work.

He testified during direct examination that he had reviewed the medical records prior to treatment. (Ex. 15:17) Claimant asserted at hearing that Dr. Crabb had not read through her records prior to examination. Given that Dr. Crabb referred to claimant's medical records in his report and detailed parts of her medical history, his

testimony is credible despite the one incident recorded with the Nebraska Board of Medicine. I decline to discount his opinion.

Dr. Atteberry gave three opinion letters. Both were checkmark letters drafted by the attorneys. (Ex. 1:25, 29; Ex. D)

On March 4, 2016, he agreed to the following:

> After having reviewed the medical records and examined Ms. Roberson, you believe that Tammy's right knee arthritis was materially and substantially aggravated by her traumatic work injury which occurred on 12-5-13 through her job at Kmart/Sears Holding.
>
> Agree ___√___ Disagree _____
>
> You believe that because of her work injury aggravation at Kmart Ms. Roberson will need a total knee replacement of her right knee.
>
> Agree ___√___ Disagree _____
>
> You believe that because of the work injury Ms. Roberson has the following temporary restrictions:
>
> No work until further notice.
>
> Agree ___√___ Disagree _____

(Ex. 1:25)

On May 16, 2017 he agreed that claimant's current need for a total knee replacement was due to her arthritic condition and that "What caused Claimant's arthritis to become symptomatic in April of 2015 [was] not as [sic] causation determination as arthritis symptoms tend to wax and wane." (Ex. D:12)

He further agreed that "[t]he fact that Claimant reported doing well until a recent onset in April 2015 gives you pause when asked to state within a reasonable degree of medical certainty that Claimant's acute injury of December 5, 2013 caused Claimant's arthritis to become symptomatic." (Ex. D:13)

On November 8, 2016, Dr. Atteberry further agreed that the low back complaints were related to the altered gait that arose out of claimant's knee injury and thus the lumbar complaints were related to the original December 2013 work injury. (Ex. 1:29)

On March 30, 2017, claimant underwent an IME with Mark Taylor, M.D. Dr. Taylor's physical examination revealed claimant's weakness in the left forearm with pronation and supination and decreased light touch over the left pinky finger and

decreased pinprick over the ulnar aspect of the left hand and over the pinky finger. (Ex. 7:7)

She walked with an obvious limp and had difficulty squatting due to her right knee. (Ex. 7:7) Lumbar flexion was reduced, but her leg lengths were normal when positioned correctly. She had decreased range of motion in her right knee, moderate swelling and moderate crepitus. There was pain along the medial and lateral joint lines, over the anterior knee and along the medial patellar facet.

On the pain drawing, she included her feet. Dr. Taylor wrote, "the etiology of that issue is unclear." (Ex. 7:7)

He made the following diagnoses:

1. Right knee injury with medial and lateral meniscal tears.

2. Status post partial medial and lateral meniscectomy on February 4, 2014.

3. Additional lateral meniscectomy on June 30, 2015.

4. Persistent knee arthralgia and effusion with arthritis.

5. Low back pain with now resolved radicular complaints in the right lower extremity.

(Ex. 7:8)

He concluded that based on claimant's history of no prior right knee pain as well as the medical records, claimant's right knee meniscus injuries were directly and causally related to her December 5, 2013, injury. While not an osteopathic doctor, he opined that the surgeries "altered the dynamics of her knee and more than likely accelerated the underlying degenerative process." (Ex. 7:8) He further wrote, "At no point did she return to her baseline, which was a completely asymptomatic right knee." (Ex. 7:8)

He believed that "had the right knee injury not occurred, it is highly unlikely that Ms. Roberson would have presented to Dr. Atteberry for a knee replacement when she did." (Ex. 7:8)

He also agreed with Dr. Atteberry that claimant's low back pain arose out of the knee injury due to her altered gait. (Ex. 7:8)

He assigned her a 10 percent right lower extremity impairment rating based on her surgeries but felt that additional impairment would be appropriate from Table 17-31 of the AMA Guides. (Ex. 7:9) He was unwilling to assign any further impairment without additional x-rays.

As for the left arm, Dr. Taylor assigned a 3 percent left upper extremity (LUE) rating related to "decrements in her strength, specifically referring to the supination and pronation." (Ex. 7:10)

He recommended the following work restrictions:

> I do not disagree that Ms. Roberson should be assigned to sitting work only. Based on her evaluation at the time of her IME, it is unlikely that she could easily stand for an hour. I would recommend standing for up to no more than 30 to 40 minutes at a time before she can sit. However, as far as work tasks, she should generally engage in sitting duties only. She should not be carrying significant amounts of weight other than on a rare basis for light weights and for short distances. I would recommend that she avoid squatting and kneeling activities. She should avoid ladders other than a stepladder for a step or two. I would recommend stairs on a rare basis with a handrail and minimal added weight. I would recommend only occasional bending and twisting activities as far as her back. She should avoid crawling. She can travel occasionally but should have the ability to stop and get out of the vehicle as needed.
>
> As far as the left arm, she will not likely tolerate frequent or repetitive forceful gripping and grasping activities or frequent/forceful forearm rotation (supination/pronation).

(Ex. 7:10)

Claimant testified that she has to wear flip flops or slides with memory foam. Her feet swell, and wearing any kind of binding around them is painful. In the past, she was very active engaging in hiking, biking, leatherwork, volleyball, hunting, horseback riding and ATV excursions. She is unable to do many of her hobbies other than hunting and riding the ATV side saddle.

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to

the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

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

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

The claimant urges the undersigned to disregard the opinions of Dr. Crabb. His is the primary opinion that separates the claimant's current symptomatology from her

work injury. Dr. Atteberry, claimant's treating surgeon, and Dr. Taylor, her IME physician, both opined that claimant's injury was a substantial factor in bringing about claimant's current symptoms and her need for a total knee replacement.

From April 2014 through April 2015, claimant had almost no problems with her knee. She did not receive or seek out any treatment. The surgical reports of Dr. Atteberry show a degenerative condition that worsened over time. During the 2014 surgery, claimant's degenerative condition was grade 2 or 3. In 2015, her degenerative condition was grade 3 and 4.

As Dr. Atteberry treated claimant, he came to the conclusions that she had healed from her original injury but that her degenerative change led to the need for the total knee replacement. She returned to Dr. Atteberry on March 18, 2014, with reports that she was doing well but had seen an increase in symptoms in the past week. At this point, Dr. Atteberry wrote, "I would expect that most of Tammy's symptoms are likely from her degenerative change." (Ex. 1:12) On August 11, 2015, Dr. Atteberry concluded that claimant's knee was not going to improve. "Her degenerative change is advanced enough that it just continues to be symptomatic for her." (Ex. 1:22)

He would later issue opinions contrary to this.

This is a challenging causation determination. The one-year interruption on treatment weighs heavily on defendants' side. Neither Dr. Taylor nor Dr. Atteberry addressed this one-year interruption. Further, between 2014 and 2015, claimant was able to advance to regular activities, regular work duties, with only occasional soreness with excessive activity.

Dr. Crabb is an expert in arthritis. He has authored twelve published articles on the subject and concluded that claimant's tears were of the type to occur as a result of her degenerative condition. His opinion is most consistent with the medical evidence. Claimant injured herself in December 2013. She underwent surgery in February 2014, progressed through physical therapy and was released to full-duty work on April 8, 2014.

Dr. Atteberry is an expert in the field of osteopathic medicine as well. He was intimately involved in claimant's care and performed both surgeries. He saw the degenerative condition in her knees and the advancement of the degenerative conditions from one surgery to the next. However, he still maintained that the claimant's need for a total knee replacement arose out of her December 5, 2013, injury. Even in his checkmark letter penned by the defendants, Dr. Atteberry would not disavow this opinion. He agreed that the one-year period gave him "pause" and that arthritic symptoms wax and wane, but he would not change his mind that the need for the knee replacement was due to a work injury and not merely degenerative changes as Dr. Crabb suggested.

Dr. Atteberry went on to opine that the low back complaints of the claimant were the result of her altered gait and thus related to the original December 2013 injury. Dr. Taylor opined that the degenerative condition was lit up, or, at the very least, accelerated by the original work injury and the subsequent surgery.

Based primarily on Dr. Atteberry's opinions, slightly bolstered by Dr. Taylor's opinions and the claimant's testimony, it is determined that claimant sustained a work-related injury on December 5, 2013, which gave rise to the need for a total knee replacement. She also has lumbar and hip pains associated with the work injury.

Her other complaints such as her foot problems are not related.

Because it is determined that claimant has sustained an industrial disability, claimant is not entitled to recover benefits from the Second Injury Fund of Iowa. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467, 471 (Iowa 1990)

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant has not returned to work, nor is she medically capable of returning to substantially similar employment, and because she is in need of a total knee replacement, she is not at MMI.

Claimant is awarded a running healing period award until one of the above three elements are satisfied.

Claimant seeks payment of medical expenses including those for the chiropractic care.

Iowa Code section 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such

alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Claimant testified that Dr. Atteberry recommended she obtain chiropractic treatment. Dr. Atteberry is an authorized treating physician, and his opinions should not be disregarded. However, there is no medical evidence that Dr. Atteberry made the recommendations, and claimant's testimony about Dr. Atteberry's recommendations is given low weight. Dr. Mouw is not an authorized treating physician. Therefore, entitlement to reimbursement of this medical bill is examined according to the Bell Bros. Heating v. Gwinn standard. Under Bell Bros. Heating v. Gwinn, 779 N.W.2d 193 (Iowa 2010), an employee can recover expenses for unauthorized medical care if the unauthorized care is "reasonable and beneficial under all the surrounding circumstances, including the reasonableness of the employer-provided care, and the reasonableness of the decision to abandon the care furnished by the employer in the absence of an order from the commissioner authorizing alternative care."

There is also no medical evidence supporting that the chiropractic care was for the treatment of claimant's work injuries. In fact, several of claimant's complaints during chiropractic care appear to be for left knee and feet issues which are not causally connected to her work injury. The chiropractic treatment is not awarded.

Claimant is entitled to Dr. Atteberry's ongoing care as well as any other care that is reasonable in the treatment of claimant's right knee, low back, and hip problems.

ORDER

THEREFORE, it is ordered:

Defendants Sears Holding Corporation, employer, and Indemnity Insurance Company of North America:

That defendants are to pay unto claimant a running award of healing period benefits at the rate of one hundred ninety-seven and 43/100 dollars ($197.43) per week from November 17, 2015.

That defendants shall pay or reimburse the medical expenses of Miller Orthopedic Specialists, Radiology Consultants, and CHI Health-Alegent Creighton Health itemized in Exhibit 14.

That defendants shall furnish reasonable services and supplies to treat claimant including, but not limited to, treatment with Dr. Atteberry.

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

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

That defendants are to be given credit for benefits previously paid.

That defendants shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

That defendants shall pay the IME as they agreed to in the hearing.

Second Injury Fund of Iowa:

Claimant shall take nothing.

Signed and filed this 1st day of November, 2017.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Siobhan M. Schneider
Attorney at Law
PO Box 157
Newton, IA 50208
Siobhan@walklaw.com

Caitlin R. Kilburg
Attorney at Law
10665 Bedford Ave., Ste. 101
Omaha, NE 68134
ckilburg@mvplaw.com

Eric Lanham
Attorney at Law
PO Box 171300
Kansas City, KS 66103
elanham@mvplaw.com

Amanda R. Rutherford
Assistant Attorney General
Dept. Justice
Hoover State Office Bldg.
Des Moines, IA 50319
amanda.rutherford@iowa.gov

JGL/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.