BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEVIN MEHAFFY, Claimant, vs. CNH INDUSTRIAL AMERICA, LLC, Employer, and INDEMNITY INS. CO. OF N. AMERICA, Insurance Carrier, Defendants.	File No. 19001764.01 ARBITRATION DECISION Head Notes: 1108.50; 1402.40; 1402.60; 1801; 2501

STATEMENT OF THE CASE

Claimant, Kevin Mehaffy, filed a petition in arbitration seeking worker's compensation benefits against CNH Industrial America, L.L.C., employer, and Indemnity Insurance Company of North America, insurer, for a stipulated work injury date of July 26, 2018. The case came before the undersigned for an arbitration hearing on September 22, 2021. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via CourtCall with all parties and the court reporter appearing remotely. The hearing proceeded without significant difficulties.

The parties filed a hearing report prior to the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 7, Claimant's Exhibits 1 through 3, and Defendants' Exhibits A through E.

Claimant testified on his own behalf. The evidentiary record closed at the conclusion of the evidentiary hearing on September 22, 2021. The parties submitted post-hearing briefs on October 18, 2021, and the case was considered fully submitted on that date.

ISSUES

1. Whether the stipulated injury was a cause of temporary disability;

2. Whether the stipulated injury was a cause of permanent disability;

3. If so, the extent of permanent disability to claimant's left lower extremity; and,

4. Payment of certain medical expenses.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record, and his demeanor at the time of hearing gave the undersigned no reason to doubt his veracity. Claimant is found credible.

At the time of hearing, claimant was a 53-year-old person. (Hearing Transcript, p. 13) He completed the 11th grade in school, and then obtained a GED and advanced welding degree. (Defendants' Exhibit B, p. 3)

Claimant is employed at Case New Holland (hereinafter "CNH") in Burlington, Iowa. He testified that he originally started working at CNH in 1997, until he was laid off in 2000. (Tr., p. 13) He originally worked as a welder. (Def. Ex. B, p. 5) He was then rehired in April of 2004, and has worked there ever since. (Tr., p. 13) Since 2004, claimant has worked for CNH as a professional journeyman assembler. (Tr., p. 16; Def. Ex. B., p. 5)

Claimant was injured while working at CNH on July 26, 2018. (Tr., pp. 13-14) On that day, claimant was working on a bulldozer when he knelt down and hit his left knee on the high cleat of the bulldozer track. (Tr., p. 14) While he immediately felt pain, he thought it was just bruised and would improve with time. (Def. Ex. B, p. 10) His pain did not improve, and he noticed snapping and popping in the knee. As such, he reported to CNH's in-house occupational health providers on August 8, 2018. (Joint Exhibit 2, p. 1) He was treated with moist heat and told to follow up twice a day.

CNH sent claimant to see Rachel Oliverio, D.O., at Great River Business Health on August 24, 2018. (Jt. Ex. 1, p. 1) At that time, claimant complained primarily of a popping and snapping sensation in his left knee, with very little pain or discomfort. He also reported stiffness, tension, and tightness in his knee, made worse when he bends down on his knee. On physical examination, Dr. Oliverio noted tenderness to palpation over the distal medial quadriceps tendinous junction, with a dime-size bruise over the area. (Jt. Ex. 1, p. 2) There was also patellar crepitence palpated. X-ray of the left knee

was normal. Dr. Oliverio diagnosed "unspecified injury of left quadriceps muscle, fascia, and tendon." Dr. Oliverio advised claimant that treatment would be conservative, and the injury self-limited, and released him to return to full duty. She did not believe any further follow up was indicated. (Jt. Ex. 1, p. 2)

Claimant testified that Dr. Oliverio told him to give his knee six months to see if it would get better on its own. (Tr., p. 14) However, he continued to have swelling and was walking with a limp. (Tr., pp. 14-15) Claimant testified that he had never had any problems with his knee prior to the work injury, and that testimony is supported by the lack of any preexisting medical records related to claimant's left knee. (Tr., p. 15)

Because of his ongoing symptoms, claimant requested additional medical care around July 1, 2019. (Def. Ex. D, p. 1) Because of the amount of time that had passed since the injury took place, his request was denied on August 1, 2019. As such, claimant sought care on his own through his primary care providers at Great River Medical Center.

Claimant saw Amanda Proczak, PA-C, on August 27, 2019. (Jt. Ex. 3, p. 1) He reported left knee pain for the past year, worsening over the prior two months. He continued to describe medial-sided left knee pain, with popping and snapping. He did not report any weakness or instability of the knee, but said by the end of the day he limps and he noticed swelling on a daily basis. On physical exam, claimant was tender to palpation along the MCL (medial collateral ligament), medial joint line, and along the medial proximal tibial plateau. (Jt. Ex. 3, p. 2) PA-C Proczak reviewed the x-ray from 2018, and noted "mild degenerative changes" throughout the knee. She opined that claimant may have an MCL sprain or tear, or perhaps a fracture along the medial tibial plateau. She recommended an MRI of the left knee.

Claimant's MRI took place on September 5, 2019. (Jt. Ex. 4, p. 1) The findings were overall normal, with mild tricompartmental osteoarthritis. There was no evidence of internal derangement. Claimant followed up with PA-C Proczak and had an injection. (Def. Ex. A, pp. 11-12) When his condition did not improve, he was referred to Steindler Orthopedic Clinic.

Claimant saw Taylor Dennison, M.D., on November 20, 2019. (Jt. Ex. 5, p. 1) Dr. Dennison noted claimant's pain was primarily around the medial aspect of the knee, particularly the MCL, with associated swelling. On physical examination, Dr. Dennison found medial swelling and MCL tenderness on palpation. (Jt. Ex. 5, p. 2) Claimant had full range of motion and strength, and his gait was normal with no limp. Dr. Dennison opined that given the lack of any identifiable pathology, it was possible his tenderness was caused by a "very low-grade strain" that would not show on the MRI. He recommended a course of physical therapy.

On January 16, 2020, Dr. Oliverio signed a letter authored by defense counsel. (Jt. Ex. 6, pp. 1-2) Dr. Oliverio indicated agreement with the statements that claimant had been seen in July and August of 2018 for what she diagnosed as a "minor left knee

strain." She agreed that the knee strain did not result in any permanent functional impairment or permanent restrictions. Finally, she agreed that any additional medical treatment would not be directly related to the work incident of July 26, 2018. (Jt. Ex. 6, p. 1)

Claimant returned to Dr. Dennison on February 19, 2020, after completing physical therapy. (Jt. Ex. 5, p. 4) Claimant reported that physical therapy seemed to make things worse, and he continued to have stabbing pain in the medial knee. At that time he also reported difficulty completing his job. Physical examination revealed slightly decreased range of motion and an antalgic gait from the prior visit. (Jt. Ex. 5, p. 5) Dr. Dennison noted that he did not have a good explanation for claimant's pain, as his radiographs were "minimal in the way of degenerative change," and the MRI was without intra-articular pathology. Dr. Dennison referred claimant to see Austin Ramme, M.D.

Dr. Ramme saw claimant on March 3, 2020, and noted a palpable plica over the distal femur that produced a catching sensation during range of motion. (Def. Ex. A, p. 13) He referred claimant to Daniel Jones, M.D., for treatment of the plica. Claimant had a series of injections with Dr. Jones over the course of May and June 2020, which each provided some level of temporary relief but nothing permanent. (Def. Ex. A, p. 13) Dr. Jones eventually referred claimant to Fred Dery, M.D.

Claimant saw Dr. Dery on August 13, 2020. (Jt. Ex. 5, p. 7) Dr. Dery noted that claimant had "fairly pronounced varicosities" on the inside of his knee over the area that was initially bruised in the work incident. Claimant stated those were never present prior to the injury, nor were the snapping, popping, and clicking sensations in his knee. Claimant reported pain at a level 5 or 6 out of 10, made worse with pressure or bending and extending the knee. He further reported Dr. Jones had provided a nerve block of the infrapatellar branch of the saphenous nerve, which provided about ten days of relief. However, the pain had since returned to baseline.

On physical examination, Dr. Dery noted a palpable mobile mass type lesion under the skin over the medial joint line area that was extremely painful, consistent with the infrapatellar branch of the saphenous nerve. (Jt. Ex. 5, p. 8) He had normal knee extension strength, but there was audible and palpable clicking over the painful areas with resisted knee extension. Dr. Dery's diagnosis was knee pain from contusion to the infrapatellar branch of the saphenous nerve. He discussed a variety of treatment options with claimant, and it was decided that he would return for three additional infrapatellar saphenous nerve branch blocks with Dr. Jones, each spread apart by ten to twelve days, and then return to see Dr. Dery.

Claimant had an independent medical examination (IME) at his attorney's request with Marc Hines, M.D., on September 2, 2020. (Cl. Ex. 1, p. 1) Dr. Hines reviewed medical records and examined claimant. (Cl. Ex. 1, pp. 1-9) He noted at that time claimant was having difficulty kneeling on the left knee, as well as problems with

standing or sitting for a long period of time. (Cl. Ex. 1, p. 9) He was in the process of receiving his series of injections with Dr. Jones at the time of Dr. Hines's examination.

On physical examination, Dr. Hines found that consistent with claimant's difficulty of sitting for long periods, he had more of a limp when leaving the office than when entering. Dr. Hines opined that claimant's knee condition was the result of the July 26, 2018 injury. (Cl. Ex. 1, p 10) He noted that claimant was still undergoing treatment, but since it had been two years since the initial injury, he found the condition to be permanent. Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, he provided a 7 percent whole person impairment rating due to gait derangement. Specifically, he found that claimant had an antalgic limp with a shortened stance. Finally, Dr. Hines noted that claimant may need re-evaluation if his ongoing treatment resulted in a "significant alteration of his function." While the examination took place on September 2, 2020, it was not signed by Dr. Hines until January 2, 2021. However, it does not appear Dr. Hines reviewed any additional medical records or changed his opinions prior to signing the report.

Claimant had the three separate nerve blocks with Dr. Jones, which each provided about ten days of relief. (Jt. Ex. 5, pp. 10-12) He returned to Dr. Dery on November 11, 2020, at which time his pain had returned to a level 6 out of 10, along with clicking, throbbing, popping, and aching. (Jt. Ex. 5, p. 13) Claimant expressed interest in speaking with a surgeon to explore surgical options, so Dr. Dery referred him to Thomas Ebinger, M.D.

Claimant saw Dr. Ebinger on December 18, 2020. (Jt. Ex. 5, p. 15) At that time, claimant reported ongoing popping and clicking in his medial knee with each step, as well as pain. On physical examination, Dr. Ebinger also noted the varicosities along the medial knee. (Jt. Ex. 5, p. 16) Claimant had good range of motion, but pain with palpation along the medial joint line. Dr. Ebinger reviewed the 2019 MRI and agreed there were no anatomic abnormalities in the region of claimant's symptoms. His impression was medial-sided joint pain and clicking following the 2018 injury. He opined the possibilities included plica, infrapatellar scarring, intra-articular pathology not identified by the MRI, or injury to the infrapatellar branch of the saphenous nerve. Given that claimant had extended nonsurgical treatment over the course of two years, Dr. Ebinger thought surgery would be reasonable, but noted it would be exploratory in nature. (Jt. Ex. 5, pp. 16-17) As such, he would discuss with Dr. Ramme prior to scheduling surgery. (Jt. Ex. 5, p. 17)

Claimant had left knee surgery on January 26, 2021, which consisted of left knee arthroscopy with plica debridement and open left knee mass excision. (Jt. Ex. 7, p. 1) Dr. Ramme performed the surgery with Dr. Ebinger's assistance. Dr. Ramme first performed a left knee arthroscopy with debridement. He notes that during the diagnostic portion of the arthroscopy, there were no degenerative changes in any area of the patella other than very mild, grade 1 degeneration in the medial tibial plateau and the lateral tibial plateau. (Jt. Ex. 7, p. 2) There was a large plica, which was "extremely thick" in nature over the medial compartment, which correlated with claimant's

mechanical findings. As such, a debrider was used to remove the plica. After the arthroscopy, there was still a palpable mass over the medial aspect of the knee, so an open excision was performed in order to remove the mass. Dr. Ramme stated that it seemed to be a fibrous fatty mass, "which would correspond to his history of trauma." (Jt. Ex. 7, p. 2)

Following surgery, claimant followed up with Dr. Ramme on February 10, 2021. (Jt. Ex. 5, p. 18) At that time, claimant reported his pain was well controlled, and that he no longer had the sensation of the mass within his knee. His range of motion and swelling was improving over time, and he had started physical therapy. He was to continue to do physical therapy, and was allowed to return to work. At his next follow up on March 12, 2021, claimant continued to report improvement in his pain, but he still had some swelling. (Jt. Ex. 5, p. 20) He was still working on motion and strength with physical therapy, and had returned to work. Overall he felt he was "greatly improved."

On April 23, 2021, Dr. Ramme responded to a letter authored by claimant's attorney on March 15, 2021, in which he agreed that the need for claimant's surgery was causally related to the work injury. (Jt. Ex. 5, p. 22)

Claimant's final follow up with Dr. Ramme took place on April 23, 2021. (Jt. Ex. 5, p. 23) Dr. Ramme noted that claimant's pain had resolved since surgery, and his motion had drastically improved. He continued to work on quadriceps strength. His only complaint was in deep flexion positions while kneeling he had continued tightness. Overall, claimant was very satisfied with his treatment. He had completed physical therapy. Dr. Ramme released claimant from care, to follow up on an as-needed basis. (Jt. Ex. 5, p. 23)

Claimant attended an independent medical evaluation at defendants' request on July 29, 2021, with Peter Matos, D.O. (Def. Ex. A, p. 3) Dr. Matos provided a very brief description of claimant's injury and treatment. He noted that claimant rated his knee pain at six out of ten at worst, and zero out of ten at best. (Def. Ex. A, p. 3) On physical examination, he observed full extension and flexion of the left knee with some pain. (Def. Ex. A, p. 4) In response to questions posed by defense counsel, Dr. Matos opined that claimant did not have any permanent functional impairment related to the "original left knee injury" of January 26, 2018. (Def. Ex. A, p. 6) He opined that claimant reached maximum medical improvement (MMI) for the unauthorized knee surgery on April 23, 2021. (Def. Ex. A, p. 7) He provided a 7 percent impairment rating for claimant's "present" left knee condition, which he opined is "personal in nature and related to degenerative changes of the knee due to aging." (Def. Ex. A, p. 7) He opined that claimant will need further treatment in the future due to the "degenerative nature of his knee pathology." Finally, he assigned no permanent restrictions related to the July 26, 2018 injury. He then provided a list and brief summary of medical records and imaging that support his opinions. (Def. Ex. A, pp. 8-17)

Claimant testified that he was supposed to return to Dr. Ramme for an impairment rating in July of 2021, but ended up contracting COVID-19 and had to

reschedule that appointment for a date after the arbitration hearing. (Tr., p. 16) However, defense counsel wrote to Dr. Ramme for an impairment rating on August 12, 2021, and Dr. Ramme replied the same day. (Jt. Ex. 5, pp. 25-26) Dr. Ramme noted at the time of his last examination on April 23, claimant's pain had resolved and he had regained his full motion. (Jt. Ex. 5, p. 26) He placed claimant at maximum medical improvement (MMI) as of that date. Using the AMA Guides, Dr. Ramme provided a zero percent permanent impairment rating. This was based on symmetric and full range of motion, normal gait, and full strength.

Claimant testified that he continues to have problems with kneeling and has to wear knee pads, and that he cannot bend his knee much past 90 degrees. Given that claimant is left-handed, it is more difficult for him to depend on his right knee to kneel. (Tr., pp. 16-17) He also continues to have some problems with going down stairs, and his knee has not fully recovered with respect to strength. (Tr., p. 17) Overall, he testified that while the surgery helped his knee and it has improved, it is not totally healed. (Tr., pp. 21-22)

With respect to causation, I find Dr. Ramme's opinion to be the most convincing. Dr. Ramme was able to see inside of claimant's knee when he performed the surgery on January 26, 2021. Most notably, he did not find any significant degenerative changes. (Jt. Ex. 7, p. 2) Further, when he identified the mass over the medial aspect of claimant's knee, he noted it corresponded to claimant's history of trauma. He later specifically agreed that claimant's work injury caused the need for surgery. (Jt. Ex. 5, p. 22)

To the contrary, I do not find the opinions of Dr. Oliverio or Dr. Matos to be as convincing. Dr. Oliverio only saw claimant one time, on August 24, 2018. (Jt. Ex. 1, p. 2) There is no evidence that she reviewed any updated medical records or reexamined claimant prior to responding to defense counsel's letter on January 16, 2020. (Jt. Ex. 6, p. 1) With respect to Dr. Matos, he opined that claimant's knee condition was related to degenerative changes in the knee due to aging. However, this opinion is not supported by the medical records. There are no records of any significant degenerative changes in claimant's knee. The initial x-rays in 2018 did not show significant degenerative changes. (Def. Ex. A, p. 11) The MRI in 2019 showed only mild tricompartmental osteoarthritis. (Jt. Ex. 4, p. 1) Repeat x-rays in 2020 were unchanged. (Jt. Ex. 5, p. 5) And again, most significantly, during surgery, Dr. Ramme did not find any significant degenerative changes. (Jt. Ex. 7, p. 2) When the medical records are reviewed as a whole, Dr. Matos's opinion that claimant's condition is related to degenerative changes is not credible. As such, I find that claimant's left knee condition and all related treatment was causally related to the work injury on July 26, 2018.

With respect to permanent impairment, there are three ratings to consider. Dr. Hines provided an impairment rating prior to claimant's surgery, which is problematic. Additionally, he used Table 17-5 of the AMA Guides and provided a 7 percent whole body impairment rating based on mild gait derangement. (Cl. Ex. 1, p. 10) However, the section he used provides that the patient's signs to qualify for that rating requires

antalgic limp with shortened stance "and documented moderate to advanced arthritic changes of hip, knee, or ankle." (AMA Guides, p. 529)(emphasis added) As discussed above, claimant does not have any documented moderate to advanced arthritic changes. As such, I do not find Dr. Hines's rating to be supported by the medical evidence.

Dr. Matos also provided a 7 percent rating. (Def. Ex. A, p. 7) However, Dr. Matos did not provide any details regarding which specific section of the AMA Guides he used, whether the rating was to the body as a whole or the lower extremity, or the basis for the rating other than it was related to claimant's personal degenerative condition. In his report, he did find claimant to have normal gait and full flexion and extension of the knee, although with some pain.

Dr. Ramme provided a zero percent rating. His rating was based on his final examination of claimant on April 23, 2021, at which time he noted full range of motion, no gait derangement, and full muscle strength. (Jt. Ex. 5, p. 26) Claimant testified that contrary to Dr. Ramme's report, he still has limitations with respect to range of motion and strength. (Tr., pp. 16-17) However, whether those limitations rise to the level of permanent functional impairment is something to be determined by the rating physician in a scheduled member case. It is not clear what Dr. Matos's rating is based upon, and like Dr. Ramme he found full range of motion and no gait derangement on examination. Based on that, I find that claimant has not sustained any permanent functional impairment related to his left knee injury at this time.

CONCLUSIONS OF LAW

Claimant argues that the left knee injury he sustained on July 26, 2018 was the cause of both temporary and permanent disability, and resulted in the need for additional medical care at Steindler Orthopedic Clinic. Defendants deny that the injury resulted in any temporary or permanent disability, or any treatment beyond that provided by Dr. Oliverio.

The party who would suffer loss if an issue were not established ordinarily has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3)(e).The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is

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

In this case, I found the opinions of Dr. Ramme to be the most convincing with respect to causation. He was the only physician to offer an opinion who had the opportunity to see inside of claimant's knee during surgery. He did not find any significant degenerative changes, and did find a mass consistent with claimant's history of trauma. Dr. Oliverio only saw claimant on one occasion, and Dr. Matos's opinion that claimant's knee condition was related to degenerative changes is not supported by the medical evidence. As such, I find that claimant's knee injury and all related treatment obtained at Steindler Orthopedic Clinic is related to the work injury on July 26, 2018.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). If the employee establishes the compensability of the injury at a contested case hearing, then the statutory duty of the employer to furnish medical care for compensable injuries emerges to support an award of reasonable medical care the employer should have furnished from the inception of the injury had compensability been acknowledged. Id.

After defendants denied liability for ongoing treatment on August 1, 2019, claimant was entitled to seek treatment on his own with providers of his choosing. He did so at Steindler Orthopedic Clinic. As I have found claimant's treatment there to be causally related to the work injury, defendants are responsible for reimbursement of those expenses, as well as any reasonable, causally related medical treatment in the future.

Claimant also seeks 11 weeks of temporary total disability benefits (TTD), from January 26, 2021 through April 12, 2021. When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

Defendants stipulated that claimant was off work during that period of time. (See Hearing Report). Medical records show that claimant was taken off work by his medical providers following knee surgery during this time. As such, claimant is entitled to TTD benefits from January 26, 2021 through April 12, 2021. The parties also stipulated that defendants are entitled to a credit under Iowa Code section 85.38(2) for payment of sick pay/disability income in the amount of $1,161.20.

Finally, claimant seeks permanent partial disability benefits as a result of the work injury. Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(u) or as an unscheduled injury pursuant to the provisions of section 85.34(2)(v). Claimant's injury was limited to his left lower extremity, which is a scheduled member, meaning Iowa Code section 85.34(2)(p) applies.

The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

Iowa Code section 85.34(x) states:

> x. In all cases of permanent partial disability described in paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs "a" through "u", or paragraph "v" when determining functional disability and not loss of earning capacity.

Iowa Code section 85.34 (x).

This agency has adopted The Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association for determining the extent of loss or percentage of impairment for permanent partial disabilities. See 876 IAC 2.4. While all three physicians in this case who provided impairment ratings used the proper version of the AMA Guides, I found Dr. Ramme's rating to be the most reliable. Dr. Hines's rating was based on an examination that took place prior to claimant's surgery. Additionally, he used gait derangement as the basis for his rating, yet claimant had no documented moderate to advanced arthritic changes, as that section of the AMA Guides requires. Dr. Matos did not provide any basis for his rating, other than it was related to claimant's personal degenerative condition. However,

like Dr. Ramme, he found claimant to have normal gait and full flexion and extension of the knee, although with some pain.

While claimant testified that he still has limitations with respect to range of motion and strength, Iowa Code section 85.34(x) provides that functional disability shall be determined solely by utilizing the AMA Guides, and lay testimony and agency expertise are not allowable when determining permanent impairment. As such, based on Dr. Ramme's opinion, claimant has zero percent permanent partial impairment as a result of the work injury on July 26, 2018.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant eleven (11) weeks of temporary total disability benefits, commencing January 26, 2021, at the stipulated rate of seven hundred seventy-one and 21/100 dollars ($771.21) per week.

Defendants shall be entitled to a credit, pursuant to Iowa Code section 85.38(2), in the amount of one thousand one hundred sixty-one and 20/100 dollars ($1,161.20) as stipulated by the parties.

Defendants shall pay accrued weekly benefits in a lump sum together with interest 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.

Defendants are responsible for all causally related medical care claimant obtained at Steindler Orthopedic Clinic, as represented by claimant's Exhibit A attached to the approved hearing report.

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

The parties shall bear their own costs.

Signed and filed this ____11th____ day of February, 2022.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Hoffman (via WCES)

Timothy Wegman (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.