

- Joint Exhibits 1 through 3;
- Defendants' Exhibits A through E; and
- Claimant's Exhibits 1 through 11, and 15 through 17.

ISSUES

Under Rule 876 IAC 4.19(3), the parties jointly prepared a hearing report that defines the claims, defenses, and issues submitted to the presiding deputy workers' compensation commissioner. The disputed issues in this case are:

- 1) Whether Kaalberg's alleged hip injury arose out of and in the course of his employment with US Foods.
- 2) What is the nature and extent of permanent partial disability, if any, that Kaalberg sustained due to the alleged injuries?
- 3) With reference to the medical expenses in Claimant's Exhibit 15 for which Kaalberg is seeking reimbursement:
 - a. Whether the treatment was reasonable and necessary.
 - b. Whether the listed expenses are causally connected to the work injury.
 - c. Whether the requested expenses were authorized by the defendants.

STIPULATIONS

In the hearing report, the parties entered into the following stipulations:

- 1) An employer-employee relationship existed between Kaalberg and US Foods at the time of the alleged injury. (Hearing Report page 1)
- 2) Kaalberg sustained an injury to his right lower extremity on March 25, 2014, which arose out of and in the course of his employment with US Foods. (Hrg. Rpt. p. 1)
- 3) Kaalberg's alleged injury is a cause of temporary disability during a period of recovery. (Hrg. Rpt. p. 1)
- 4) Kaalberg's alleged injury is a cause of permanent disability. (Hrg. Rpt. p. 1)
- 5) Whether Kaalberg is entitled to temporary disability or healing period benefits is not in dispute. (Hrg. Rpt. p. 1)

- 6) The commencement date for permanent partial disability benefits, if any are awarded, is December 20, 2014, until September 24, 2015, and re-commencing on November 4, 2015. (Hrg. Rpt. p. 1)
- 7) Kaalberg's gross earnings were \$767.56 per week. (Hrg. Rpt. p. 1)
- 8) Kaalberg was single at the time in question. (Hrg. Rpt. p. 1)
- 9) Kaalberg was entitled to one exemption at the time in question. (Hrg. Rpt. p. 1)
- 10) The defendants waive all affirmative defenses. (Hrg. Rpt. p. 2)
- 11) With reference to the itemized list of disputed medical expenses in Claimant's Exhibit 15, the fees or prices charged by providers are fair and reasonable. (Hrg. Rpt. p. 2)
- 12) Prior to hearing, the defendants paid Kaalberg 12.037 weeks of compensation at the rate of \$469.26 per week. (Hrg. Rpt. p. 2)
- 13) The defendants are not entitled to a credit for payment of sick pay, disability income, or medical or hospitalization expenses. (Hrg. Rpt. p. 2)
- 14) Kaalberg paid the \$100.00 fee for filing the original notice and petition that initiated this contested case proceeding, which he seeks as a specific taxation of costs in this decision. (Hrg. Rpt. p. 2)

The parties verified that the hearing report accurately reflects their stipulations and the disputed issues in this case. (Hrg. Tr. pp. 4–7) All of the parties' stipulations were accepted and are hereby incorporated into this decision, which contains no discussion of any factual or legal issues relative to the parties' stipulations. The parties are bound by their stipulations.

FINDINGS OF FACT

Kaalberg was 56 years old at the time of hearing. (Hrg. Tr. p. 39) He sprained his ankle during his sophomore year of high school. (Cl. Ex. 5, p. 6) But Kaalberg did not experience any ongoing symptoms or physical limitations resulting from the ankle sprain. (Claimant's Exhibit 5, p. 5; Hrg. Tr. pp. 40–41) In 1981, he graduated from Mid-Prairie High School in Wellman, Iowa. (Hrg. Tr. p. 39)

Kaalberg enrolled in classes at Central College in 1982, but he did not complete a semester. (Hrg. Tr. p. 39) He stopped attending classes at Central College because he felt it was not for him. (Cl. Ex. 5, p. 3) Kaalberg has not had any classroom education since then. (Hrg. Tr. p. 39)

From 1976 through 1981, Kaalberg performed construction work for Hoppy Kinsinger. (Hrg. Tr. p. 42; Cl. Ex. 4, p. 7; Cl. Ex. 5, p. 4) His duties primarily consisted of picking up garbage and working concrete with Kinsinger. (Hrg. Tr. p. 42; Cl. Ex. 5, p. 4) Kaalberg constantly walked to set up forms and get material while on the job. (Hrg. Tr. pp. 43–44) He often lifted 50 to 70 pounds when moving steel forms and burn barrels. (Hrg. Tr. pp. 42–43)

Kaalberg next worked for Prairie Farm Supply from 1981 until 1984. (Hrg. Tr. p. 43; Cl. Ex. 4, p. 7) His job duties included delivering sack feed and bulk feed to customers and hauling grain. (Hrg. Tr. p. 43; Cl. Ex. 5, p. 4) His delivery duties included loading bags of feed onto trucks. (Hrg. Tr. p. 43) Kaalberg often lifted 50 pounds while working for Prairie Farm Supply. (Hrg. Tr. p. 43) He often walked in the performance of his duties. (Hrg. Tr. p. 44)

From 1985 to 1989, Kaalberg worked for Mid-America Construction finishing concrete. (Hrg. Tr. p. 44; Cl. Ex. 4, p. 7) He lifted up to 70–80 pounds a lot. (Hrg. Tr. p. 46) His job duties included having to screed concrete, which consisted of pulling concrete and leveling it off to fill the form properly. (Hrg. Tr. pp. 44–45) Kaalberg also had to haul concrete weighing 100 pounds in a wheelbarrow. (Hrg. Tr. p. 45)

Hawkeye Food Systems employed Kaalberg from 1990 until US Foods bought the business in 2012. (Hrg. Tr. p. 46; Cl. Ex. 4, p. 7; Cl. Ex. 5, p. 4) Kaalberg first worked in the warehouse. (Cl. Ex. 5, p. 4) He walked hundreds of yards quite often while working in the warehouse. (Hrg. Tr. p. 46)

In 2013, Kaalberg changed jobs so that he worked in inventory control. (Cl. Ex. 5, p. 3) His work in inventory control entails processing returns, determining whether returned merchandise can go back on the shelves, and returning products that qualify to the proper location. (Cl. Ex. 5, p. 3) Kaalberg must track the returns he processes on spreadsheets for management. (Cl. Ex. 5, p. 3) Working in inventory control can be physically demanding at times, but rarely for the entirety of an eight-hour shift. (Cl. Ex. 5, p. 3)

Kaalberg lifted up to 80 or 90 pounds on occasion, with assistance, as part of the performance of his job duties. (Hrg. Tr. p. 46; Cl. Ex. 5, p. 3) Kaalberg typically places heavy items on a pallet and uses a forklift to lift the pallet to the level at which he needs the product. (Cl. Ex. 5, p. 4) He then takes the item off the pallet and puts it on the shelf. (Cl. Ex. 5, p. 4)

On March 25, 2014, Kaalberg was working in inventory control for US Foods. (Hrg. Tr. p. 56–59; Cl. Ex. 5, p. 6) He was putting freight away in the morning in a freezer. (Hrg. Tr. p. 57; Cl. Ex. 5, p. 6) Kaalberg had the freight on a pallet that was suspended about two feet off the ground on a forklift. (Hrg. Tr. p. 57; Cl. Ex. 5, p. 6)

Kaalberg walked around to the front of the forklift, where the pallet was suspended, and picked up a case to shelve it. (Hrg. Tr. p. 57; Cl. Ex. 5, p. 6) A coworker

was driving a forklift with a pallet at a similar height to the pallet Kaalberg was unloading. (Hrg. Tr. p. 57) The coworker drove the forklift around the corner. (Hrg. Tr. p. 57) Kaalberg saw the forklift at the last moment and lifted his left leg up. (Hrg. Tr. p. 57) The forklift his coworker was operating struck Kaalberg's right leg, which drove his leg into the pallet suspended by Kaalberg's forklift. (Hrg. Tr. p. 57–59; Jt. Ex. 1, p. 4) The force of the collision caused Kaalberg's leg to break three boards of the pallet he was unloading. (Hrg. Tr. p. 59)

The forklift crashing into Kaalberg's right leg broke the fibula and tibia. (Tr. p. 59; Jt. Ex. 1) His pain level at the time of the injury was nine on a scale of one to ten, with ten the highest level of pain. (Hrg. Tr. pp. 59–60; Cl. Ex. 5, p. 6) Other US Foods employees carried Kaalberg out of the freezer after the crash and summoned an ambulance. (Hrg. Tr. p. 60; Cl. Ex. 5, p. 6)

Kaalberg went to a hospital that transferred him to the Emergency Department at the University of Iowa Hospitals and Clinics (UIHC). (Joint Exhibit 1, p. 1) UIHC diagnosed him with a displaced proximal tibial fracture with an associated fibular fracture. (Jt. Ex. 1, pp. 1, 4) Kaalberg underwent surgery to debride his tibia and doctors passed a tibial nail to help hold his bone in place while it healed. (Jt. Ex. 1, p. 1) After the surgery, UIHC instructed Kaalberg to use a splint on his right leg and avoid bearing weight on it until after a follow-up examination with John Callaghan, M.D. (Jt. Ex. 1, p. 1)

Kaalberg first experienced hip pain around the time that he started weight-bearing activities on his right leg, including walking. (Cl. Ex. 5, p. 8; Hrg. Tr. pp. 74–75) Kaalberg remained off work for about a month following surgery. On April 21, 2014, Dr. Callaghan saw Kaalberg for a follow-up appointment. (Jt. Ex. 1, p. 10) Kaalberg was using crutches or a cane to get around at the time, but nonetheless desired to return to work. (Jt. Ex. 1, p. 10) Dr. Callaghan advised him to stay on crutches when bearing weight. (Jt. Ex. 1, p. 10) He released Kaalberg to return to work with the restriction of sedentary work. (Jt. Ex. 1, p. 10)

Dr. Callaghan saw Kaalberg on May 15, 2014. (Jt. Ex. 1, p. 15) The exam found him "to have a good pain free range of motion of his right knee and ankle" with "some numbness on the plantar aspect of his foot." (Jt. Ex. 1, p. 15–16) Dr. Callaghan prescribed work restrictions of sedentary work for four hours. (Jt. Ex. 1, p. 16)

On June 5, 2014, Dr. Callaghan referred Kaalberg to Matthew Karam, M.D., out of concern about delayed healing. (Jt. Ex. 1, pp. 18, 21) Kaalberg shared with Dr. Karam that same day that his primary complaint was right foot numbness. (Jt. Ex. 1, p. 21) Dr. Karam concluded that Kaalberg's healing progress was not terribly concerning, especially for a smoker, and decided to increase weight-bearing on the right leg. (Jt. Ex. 1, p. 22)

Kaalberg returned to Dr. Karam on June 27, 2014. (Jt. Ex. 1, p. 26) He reported improvement in the range of motion and strength of his right knee. (Jt. Ex. 1, p. 26) Kaalberg also told Dr. Karam that he continued to experience right-foot numbness and

right-knee pain when he sits for a prolonged period of time. (Jt. Ex. 1, p. 26) Dr. Karam released Kaalberg to perform weight-bearing activities with his right leg as tolerated. (Jt. Ex. 1, p. 26) Kaalberg indicated on a pain drawing that he was experiencing pain at the level of seven on the traditional one-through-ten scale, with a circle below his right knee and a triangle on his right ankle to indicate the location. (Jt. Ex. 3, p. 121)

Kaalberg went to Performance Therapies for physical therapy on July 8, 2014. (Jt. Ex. 2, p. 106) His chief complaints were numbness in his right foot, “twinges” over the screws in his right leg, and occasional ankle pain. (Jt. Ex. 2, p. 106) There is no indication Kaalberg complained of any hip issues. (See Jt. Ex. 2, p. 106–108) The records show he lacked full range of motion in his hip joints and had limitations in his gait. (Jt. Ex. 2, pp. 108–09)

On July 25, 2014, Kaalberg followed up with Dr. Karam. (Jt. Ex. 1, pp. 27–31) He complained of ongoing numbness and pain in his right foot. (Jt. Ex. 1, p. 30) Dr. Karam prescribed continuing physical therapy three times per week and gave him work restrictions consisting of a four-hour workday, a prohibition on climbing ladders, and being able to use a crutch for walking as needed. (Jt. Ex. 1, p. 27) Dr. Karam noted on examination that Kaalberg was not tender with right hip internal and external rotation. (Jt. Ex. 1, p. 27) Kaalberg completed a pain drawing in which he indicated pain below his right knee and on his right foot at the level of six out of ten. (Jt. Ex. 3, p. 122)

Kaalberg had physical therapy on July 31, 2014. (Jt. Ex. 2, p. 110) He reported feeling good even though he was sore in his quads. (Jt. Ex. 2, p. 110) The records identify Kaalberg’s problems as right lower leg pain and decreased range of motion in his hip, knee, and ankle. (Jt. Ex. 2, p. 110)

On August 22, 2014, Kaalberg showed progress in healing. (Jt. Ex. 1, p. 35) He was able to fit his right foot into a work boot again and had stopped using a crutch to get around. (Jt. Ex. 1, p. 32) But he lacked strength in his right leg and was unable to fully extend his right knee, so Dr. Karam continued physical therapy. (Jt. Ex. 1, p. 35) Kaalberg rated his pain as five out of ten and indicated he felt it in his right knee, below his right knee, right ankle, and right foot. (Jt. Ex. 3, p. 123)

During physical therapy on August 21, 2014, Kaalberg felt pretty good. (Jt. Ex. 2, p. 111) He reported not having any difficulty performing his work tasks and that he had been doing more walking. (Jt. Ex. 2, p. 111) The records document Kaalberg had made progress with his physical therapy, but his right leg remained considerably weaker than his left leg. (Jt. Ex. 2, p. 111) Kaalberg’s problems were identified as right lower leg pain; decreased range of motion in his hip, knee, and ankle; decreased lower extremity strength; impaired gait pattern; and impaired ability to work. (Jt. Ex. 2, p. 111)

On September 2, 2014, Kaalberg returned to physical therapy. (Jt. Ex. 2, p. 111) He had spent all day the Friday prior on his feet, which increased his pain to a level that caused him to choose not to attend the Iowa Hawkeyes football game the day after. (Jt. Ex. 2, p. 111) The records document his problems as right lower leg pain; decreased

range of motion in his hip, knee, and ankle; decreased lower extremity strength; impaired gait pattern; and impaired ability to work. (Jt. Ex. 2, p. 111)

The records from Kaalberg's September 17, 2014 physical therapy visit show that Kaalberg was sore after a busy day at work the day before. (Jt. Ex. 2, p. 113) The records identify his problems at the time as right lower leg pain; decreased range of motion in his hip, knee, and ankle; decreased lower extremity strength; and impaired gait pattern. (Jt. Ex. 2, p. 113) They also state he would benefit from continued strengthening of his right leg. (Jt. Ex. 2, p. 113)

Kaalberg saw Dr. Karam again on September 24, 2014. (Jt. Ex. 1, pp. 41–46) Physical therapy three times per week had helped to improve his right-leg strength. (Jt. Ex. 1, p. 41) Kaalberg continued to experience numbness and tingling in his right foot and right leg. (Jt. Ex. 1, p. 41) At the time, he experienced right-leg stiffness after sitting for a prolonged period of time and after sleeping. (Jt. Ex. 1, p. 41) Dr. Karam continued physical therapy and allowed Kaalberg to work eight hours per day and to occasionally climb ladders. (Jt. Ex. 1, p. 44)

On October 8, 2014, Kaalberg participated in physical therapy. (Jt. Ex. 2, p. 114) He reported feeling "okay" at the time and that he continued to feel sore towards the end of his shift. (Jt. Ex. 2, p. 114) He felt the soreness was normal and noted that he was experiencing less swelling in his right leg. (Jt. Ex. 2, p. 114) The records document Kaalberg continued to demonstrate instability on his right leg, especially with control going down stairs or stepping over an object. (Jt. Ex. 2, p. 114) His problems are recorded as right lower leg pain; decreased range of motion in the hip, knee, and ankle; decreased lower extremity strength; impaired gait pattern; and impaired ability to work. (Jt. Ex. 2, p. 114)

Kaalberg returned to physical therapy on October 23, 2014. (Jt. Ex. 2, p. 115) He reported progress; he was performing almost all of his job duties and working a few longer days. (Jt. Ex. 2, p. 115) The records document significant gains in recent weeks. (Jt. Ex. 2, p. 115) They document Kaalberg's problems as right lower leg pain; decreased range of motion in his hip, knee, and ankle; decreased lower extremity strength; impaired gait pattern; and impaired ability to work. (Jt. Ex. 2, p. 115)

Dr. Karam examined Kaalberg again on October 24, 2014. (Jt. Ex. 1, pp. 47–51) Kaalberg reported continued improvement in the range of motion and strength of his right knee. (Jt. Ex. 1, p. 47) But he continued to experience stiffness in his leg after sitting and did not believe he had all of his strength back. (Jt. Ex. 1, p. 47) Kaalberg indicated on a pain drawing that he was then experiencing pain in his right foot, right ankle, and just below his right knee, at the level of four out of ten. (Jt. Ex. 3, p. 124)

Dr. Karam noted that Kaalberg could jump up and down on his right leg and that he was working between six and eight hours per day. (Jt. Ex. 1, p. 51) He also noted that Kaalberg had some pain with a deep knee bend. (Jt. Ex. 1, p. 51) Dr. Karam released Kaalberg to return to work without any restrictions. (Jt. Ex. 1, p. 50) He

prescribed six more weeks of physical therapy three times per week for improvement of the range of motion in Kaalberg's right knee, strength, balance, gait training, low impact cardiovascular endurance, and quad setting. (Jt. Ex. 1, p. 50)

Kaalberg participated in physical therapy on November 8, 2014. (Jt. Ex. 2, p. 116) He felt good and that his leg continued to get stronger every day. (Jt. Ex. 2, p. 116) The only problem identified in the records for that day is right lower leg pain. (Jt. Ex. 2, p. 116)

On November 10, 2014, Kaalberg saw Dr. Karam. (Jt. Ex. 1, p. 53) Kaalberg reported feeling stronger and that he had been walking better since his prior trip to UIHC. (Jt. Ex. 1, p. 53) He complained of experiencing a mild, dull ache in his right leg and mild right foot numbness. (Jt. Ex. 1, p. 53)

Kaalberg had physical therapy on December 9, 2014. (Jt. Ex. 2, p. 117) He was feeling good and had experienced no flare-ups over the prior weekend. (Jt. Ex. 2, p. 117) He tolerated his strength exercises well, but had difficulty maintaining his balance on the bosu. (Jt. Ex. 2, p. 117) The records document his problems as right lower leg pain; decreased range of motion in his hip, knee, and ankle; decreased lower extremity strength; impaired gait pattern; and impaired ability to work. (Jt. Ex. 2, p. 117)

On December 16, 2014, Kaalberg again had physical therapy. (Jt. Ex. 2, p. 118) He reported good progress. (Jt. Ex. 2, p. 118) The pain had subsided in his ankle, but he complained of a near-constant aching pain in his right leg that he described as similar to a headache. (Jt. Ex. 2, p. 118) The records identify his problems as right lower leg pain; decreased range of motion in his hip, knee, and ankle; decreased lower extremity strength; impaired gait pattern; and impaired ability to work. (Jt. Ex. 2, p. 118)

Kaalberg returned to see Dr. Karam on December 19, 2014. (Jt. Ex. 1, pp. 57–58) He rated his pain as four out of ten below his right knee and in his right foot. (Jt. Ex. 3, p. 125) Dr. Karam notes in the medical records that Kaalberg was “observed ambulating in the clinic with a slight limp but with no assistive device.” (Jt. Ex. 1, p. 57) Kaalberg was still experiencing numbness in the bottom of his right foot at the time. (Jt. Ex. 1, p. 57) Dr. Karam found Kaalberg at maximum medical improvement (MMI). (Jt. Ex. 1, p. 58)

On March 2, 2015, Kaalberg saw Jason Powers, M.D., for a physical exam at UIHC. (Def. Ex. A, p. 1) He shared with Dr. Powers that he had “a very difficult year after having a complicated right tibial fracture.” (Def. Ex. A, p. 1) There is no indication in Dr. Powers's notes that Kaalberg complained of any hip issues during the exam. (See Def. Ex. A, pp. 1–4)

Kaalberg went to Carew Chiropractic on March 6, 2015. (Def. Ex. B, p. 33) The notes identify Kaalberg's chief complaint as pain at a level of five out of ten in the cervical spine, the muscles of the posterior neck, the trapezius muscle, the muscles of

the upper back, and the thoracic spine. (Def. Ex. B, p. 33) There is no indication in the notes that Kaalberg voiced complaints relating to his hips. (Def. Ex. B, pp. 33–34)

Dr. Karam issued a letter dated April 23, 2015, containing his opinion on the permanent partial disability to Kaalberg's right leg. (Def. Ex. C, p. 40) Dr. Karam opined:

To the nearest degree of medical certainty he has a permanent partial impairment rating of 5% of the lower extremity according to the Guides to the Evaluation of Permanent Partial Impairment of the AMA, 5th Edition [sic]. This rating is the result of sensory loss in the medial plantar nerve distribution according to table 17-37 on page 552 of the Guides. Mr. Kaalberg had knee and ankle range of motion and strength within normal limits. According to table 17-33 on page 547 his tibial shaft fracture without malalignment results in no impairment. Mr. Kaalberg was released to work without restrictions.

(Def. Ex. C, p. 40)

On June 19, 2015, Kaalberg had a follow-up exam with Dr. Karam. (Jt. Ex. 1, pp. 59–66) Kaalberg was working without any restrictions. (Jt. Ex. 1, p. 59) He rated his pain as five out of ten in his right foot and below his right knee. (Jt. Ex. 3, p. 126) Dr. Karam noted that Kaalberg reported “aching in the right lower leg all the time,” “diminished sensation in the sole of the foot and great toe,” and “being aware of the screw in his knee, especially after he has rested for 20 minutes and then gets up to walk again.” (Jt. Ex. 1, p. 59) Kaalberg shared with Dr. Karam that the following activities were “limited a little”: moderate activities, lifting or carrying groceries, climbing stairs, walking more than a mile, and walking one block. (Jt. Ex. 1, pp. 65–66).

Dr. Karam ordered a CT scan to determine if Kaalberg's tibia had healed enough to allow for removal of the hardware in his leg. (Jt. Ex. 1, p. 63) Kaalberg returned on July 8, 2015. (Jt. Ex. 1, p. 67) The CT scan was consistent with a healed fracture of his tibia. (Jt. Ex. 1, p. 67)

Kaalberg saw Michael Muellerleile, M.D., at UIHC on August 19, 2015, because of chest discomfort and the forthcoming surgery to remove the hardware from his right leg. (Defendant's Exhibit A, p. 6) Dr. Powers did not note any hip issues in the notes from the visit. (Def. Ex. A, pp. 6–10) Dr. Powers opined that Kaalberg should proceed with the surgery to remove the hardware from his injured leg. (Def. Ex. A, p. 6)

On September 23, 2015, Dr. Karam removed the hardware from Kaalberg's right leg. (Jt. Ex. 1, p. 73) Dr. Karam gave Kaalberg a medical excuse to be off work for two weeks following the surgery. (Jt. Ex. 1, p. 74) On October 5, 2015, Kaalberg's right foot was still swollen enough to prevent him from putting on his work boot. (Jt. Ex. 1, p. 79) He indicated he felt aching below his right knee and in his foot, but did not rate the severity. (Jt. Ex. 3, p. 127) At UIHC, Rhonda Dunn, ARNP, instructed him to remain off

work until the swelling subsided. (Jt. Ex. 1, p. 79) Dunn released Kaalberg to return to full-duty work on October 14, 2015. (Jt. Ex. 1, p. 81–82)

Kaalberg followed up with Dunn on November 2, 2015. (Jt. Ex. 1, p. 84) He rated his pain as a three out of ten just below his right knee. (Jt. Ex. 3, p. 128) UIHC refilled his prescription for gabapentin, which provided him with pain relief. (Jt. Ex. 1, p. 87) Dunn informed Kaalberg that Dr. Karam would likely place him at MMI at his next appointment. (Jt. Ex. 1, p. 87) He would have to follow up with his personal physician for prescription management after Dr. Karam finds him to be at MMI. (Jt. Ex. 1, p. 87)

Dr. Karam saw Kaalberg on December 4, 2015. (Jt. Ex. 1, p. 88) He rated his pain as four out of ten in his right leg, from the knee down to the toes. (Jt. Ex. 3, p. 129) Kaalberg was still taking gabapentin for right leg pain and performing a home exercise program at the time. (Jt. Ex. 1, p. 88) Dr. Karam released Kaalberg to return to work without any work restrictions. (Jt. Ex. 1, pp. 88, 93) He also opined that Kaalberg's ongoing medication management of gabapentin should be provided by a local care provider. (Jt. Ex. 1, p. 93) Kaalberg did not seek care for his legs for about two years after Dr. Karam released him from care because his legs were not bothering him. (Hrg. Tr. p. 73)

In 2016, Kaalberg wound up having his circumflex stented. (Def. Ex. A, pp. 11) During a follow-up exam on June 9, 2016, Dr. Muellerleile noted that Kaalberg is "a relatively poor historian." (Def. Ex. A, p. 11) Dr. Muellerleile did not note Kaalberg complained of any issues relating to his hip. (Def. Ex. A, pp. 11–14)

On October 14, 2016, Kaalberg returned to Dr. Powers for an updated physical exam. (Def. Ex. A, p. 15) Kaalberg expressed several concerns to Dr. Powers, including persistent but not severe bilateral knee aches after work. (Def. Ex. A, pp. 15, 18) There is no indication that Kaalberg complained to Dr. Powers about hip pain. (Def. Ex. A, pp. 15–20)

On June 28, 2017, Carew Chiropractic treated Kaalberg. (Def. Ex. B, p. 35) His chief complaint, according to the records, was pain in the lumbar spine and the muscles of the lumbar spine. (Def. Ex. B, p. 35) Kaalberg received electrical stimulation and hot pack treatment to his posterior neck and upper back. (Def. Ex. B, p. 36) He also had mechanical traction applied to his spine. (Def. Ex. B, p. 36) There is no indication that he voiced complaints of any hip issues during the visit. (Def. Ex. B, p. 35–36)

Dr. Karam revisited the disability rating he gave Kaalberg on April 23, 2015. In a letter dated August 6, 2017, Dr. Karam noted that Kaalberg returned to his care for removal of surgical hardware. (Def. Ex. C, p. 41) He opined, "To the nearest degree of medical certainty, as a result of the surgical hardware removal, he does not have any additional impairment beyond what was assigned in my April 23, 2015 letter." (Def. Ex. C, p. 41)

Kaalberg saw Dr. Powers on November 2, 2017, to reevaluate his blood pressure control. (Def. Ex. A, p. 20) There is no indication he told Dr. Powers he was experiencing hip pain during the visit. (Def. Ex. A, pp. 20–24) Nor is there any mention of hip issues in the records for Kaalberg’s follow-up appointment with Dr. Powers on November 15, 2017. (Def. Ex. A, pp. 24–28)

Kaalberg returned to UIHC on November 29, 2017. (Jt. Ex. 1, p. 96) Dr. Powers saw Kaalberg, who complained of hamstring tightness and muscle discomfort over time with positional changes moving from seated to standing. (Jt. Ex. 1, p. 97; Jt. Ex. 3, p. 130) He informed Dr. Powers that he was not experiencing any weakness at the time. (Jt. Ex. 1, p. 97)

On January 12, 2018, Kaalberg filed the petition initiating this contested case proceeding. In it, he alleged injuries to his right leg and knee and body as a whole. At the time of filing, Kaalberg paid the one hundred dollar (\$100.00) filing fee under Rule 876 IAC 4.8(2). (Cl. Ex. 17)

On February 12, 2018, Kaalberg returned to Carew Chiropractic, complaining of pain in the lumbar spine and the muscles of the lumbar spine as well as radiating pain into the muscles of the buttocks and the muscles of the posterior thigh. (Def. Ex. B, p. 36) The examination showed pain in the lumbar spine and “[i]ncreased or changed tone in the associated muscles and fascia was identified in the lumbar spine, the sacrum, and the S/I joint.” (Def. Ex. B, p. 36) Thus, Kaalberg’s symptoms extended to his sacrum and sacroiliac joint. (Def. Ex. B, p. 36–37)

Kaalberg’s hip pain grew worse over time. (Hrg. Tr. p. 81) The defendants took his deposition on April 30, 2018. (Cl. Ex. 5, p. 1) Kaalberg said he did not experience a lot of pain, but it was constant. (Cl. Ex. 5, p. 8) It hurt him to bend over and caused him to walk with a limp. (Cl. Ex. 5, p. 8) On November 9, 2018, Kaalberg served answers to interrogatories on the defendants that included allegations of hip pain caused by walking with a limp. (Cl. Ex. 4, pp. 3, 8)

Dr. Powers saw Kaalberg on December 3, 2018, for an updated general physical and “to once again discuss bilateral upper leg pain.” (Jt. Ex. 1, p. 102) Kaalberg described to Dr. Powers bilateral thigh achiness with activities or prolonged standing. (Jt. Ex. 1, p. 102) At the time, resting and sitting did not bother Kaalberg, nor did he experience any leg pain at night. (Jt. Ex. 1, p. 102)

On January 14, 2019, Kaalberg saw Mel Sharafuddin, M.D., at UIHC for evaluation of an abnormal ankle-brachial index study. (Def. Ex. A, p. 29) Dr. Sharafuddin noted:

On discussion of his lower extremities today he states his right leg bothers him but his left does not. His right leg is painful with standing or sitting and is limiting him from being active. He does endorse left calf cramping if he walks a long distance.

(Def. Ex. A, p. 29) Nothing in the medical records from this exam shows Kaalberg complained about hip pain. (Def. Ex. A, pp. 29–32)

Kaalberg returned to Carew Chiropractic on February 6, 2019, with complaints of pain in the lumbar spine and the muscles of the lumbar spine as well as tightness in the muscles of the lumbar spine and the muscles of the buttocks. (Def. Ex. B, p. 37) Kaalberg received electrical stimulation and hot pack treatment to his posterior neck and upper back. (Def. Ex. B, p. 38) He also had mechanical traction applied to his spine. (Def. Ex. B, p. 38) His complaints are summarized as “back pain.” (Def. Ex. B, p. 38) There is no indication that Kaalberg complained of pain relating to his hips during this visit. (Def. Ex. B, p. 37–38)

Richard Kreiter, M.D., is a board-certified orthopedic surgeon. (Cl. Ex. 3, pp. 1–2) On April 10, 2019, Dr. Kreiter performed an independent medical examination (IME) of Kaalberg because Kaalberg believed that Dr. Karam’s permanent disability rating was too low. (Cl. Ex. 1, p. 1; Cl. Ex. 2, p. 1) He opined that Kaalberg had reached MMI with regard to his broken leg “around January 2016, about his last visit to the University of Iowa for his fracture.” (Cl. Ex. 2, p. 1) Dr. Kreiter diagnosed Kaalberg with “[h]ealed proximal right tibia fibula fracture with anterior angulation and prominent anterior proximal tibial fracture site” and “[p]ermanent numbness medial right foot and great toe secondary to injury to the medial branch of the saphenous nerve, a distal sensory branch of the femoral nerve.” (Cl. Ex. 2, p. 1)

Dr. Kreiter opined as follows on the question of Kaalberg’s permanent disability:

There is permanent impairment as a result of the fracture on 03/25/2014. This includes the anterior bowing of his fracture and the numbness in his medial right foot. I will use the 5th Edition of the AMA Guide to Permanent Impairment [sic]. Look at page 546, table 17-33, lower extremity impairments under tibial shaft fractures malalignment with anterior bowing and prominence and the x-ray of 12/04/2015 noted “25% angulation”. I did not have the x-rays and do not understand how they measured that. Perhaps there is a 15% to 19% angulation which would be 12% whole person impairment. The sensory loss of the distal femoral nerve from page 552, table 17-37, is a 1% whole person or 2% lower extremity impairment. Therefore from the combined values chart this is a 13% whole person impairment.

(Cl. Ex. 2, p. 1)

Dr. Kreiter also opined: “I do not wish to give any permanent restrictions. He self-limits at his work place and is able to function. His chronic pain is perhaps more from his hip primarily and thus not related to his tibia.” (Cl. Ex. 2, p. 2)

On the question of what, if any, further treatment Kaalberg required for his work injury, Dr. Kreiter opined that there is “no specific treatment” for his leg injury or foot

numbness. (Cl. Ex. 2, p. 1) However, Dr. Kreiter did note, "The pelvis x-ray on 03/25/2014 noted right hip arthritis and this condition most likely has progressed and should be evaluated. Perhaps return to the University of Iowa for this evaluation." (Cl. Ex. 2, p. 1)

Kaalberg filed a petition concerning application for alternate care seeking authorization for care of his hip condition on May 8, 2019. The defendants filed an answer disputing liability for Kaalberg's hip injury that same day. On May 9, 2019, the agency dismissed Kaalberg's alternate care petition without prejudice.

Kaalberg returned to UIHC regarding his hip on May 9, 2019. (Cl. Ex. 7, p. 1) Dr. Powers described Kaalberg's complaints as "increasing symptoms of bilateral posterior leg pains, and increasing right hip pain." (Cl. Ex. 7, p. 2)

He describes the posterior thighs having recurrent burning pains, stiffness sensations, right greater than left. Occurs with prolonged standing and with attempts to walk. Unpredictable when it may be worse. He denies a sensation of muscle cramping. Pain does not radiate below the knees.

No diffuse muscle pain or cramping. Rare cramps in the calf[ve]s overnight. No prior history of known statin intolerance.

Also complaining of increasing right hip pain. More limping over time. He notices more anterior hip pain with attempts to flex the hip. Denies any recollection of injury.

(Cl. Ex. 7, p. 2)

UIHC performed x-rays of his hips and lumbar spine. (Cl. Ex. 7, p. 1) They showed osteophytes with superior narrowing of the acetabulum signifying grade 4 osteoarthritis of the right hip and grade 3 osteoarthritis of the left hip. (Cl. Ex. 7, pp. 8–9) Dr. Powers opined that the "[h]ip x-rays prove that he has severe R hip arthritis and moderate L hip arthritis," and "[t]he lumbar spine x-rays show moderate degenerative arthritis." (Cl. 7, p. 1)

Dr. Powers observed that Kaalberg walked with a mild limp, favoring his right hip. (Cl. Ex. 7, p. 6) He also noted Kaalberg's right-hip range of motion was more limited than his left-hip range of motion and that Kaalberg experienced right-hip discomfort with internal rotation. (Cl. Ex. 7, p. 6) Dr. Powers assessed Kaalberg as having chronic hip pain. (Cl. Ex. 7, p. 6) Dr. Powers recommended specialized care for Kaalberg's hip issues and referred him to see an orthopedic specialist and physical therapist. (Cl. Ex. 7, pp. 1, 7)

Kaalberg's attorney drafted and sent Dr. Powers a check-box letter. (Cl. Ex. 8, pp. 1–2) The letter included the question, "Assuming Mr. Kaalberg had osteoarthritis before his 3/25/14 injury, do you think it is more likely than not that his right lower extremity injury of 3/25/14 substantially accelerated the osteoarthritis processes in his

left and right hips, leading to an earlier end-stage osteoarthritic disease process?” (Cl. Ex. 8, p. 2) In response, Dr. Powers checked, “Yes,” and explained, “The former injury altered his gait and very likely added stress to the hip joints. This would accelerate the progression of arthritis.” (Cl. Ex. 8, p. 2)

Defense counsel consulted with Dr. Karam on July 25, 2019, and authored a check-box letter regarding his opinion on whether Kaalberg’s current hip condition is related to his March 25, 2014 work injury. (Def. Ex. E) The letter asks that Dr. Karam respond to the question after reviewing Kaalberg’s medical records. (Def. Ex. E, p. 51) It is unclear, based on the letter, what records Dr. Karam might have reviewed or whether Dr. Karam reviewed the x-rays that UIHC performed when Kaalberg saw Dr. Powers with complaints of hip pain or the records relating to Dr. Powers’s care for the hip pain. (Def. Ex. E, pp. 51–52)

Defense counsel asked Dr. Karam to indicate whether he agreed or disagreed with the statement, “More likely than not, Mr. Kaalberg’s current hip condition is a natural progression of his preexisting arthritis and not related to his March 24, 2014 work accident.” (Def. Ex. E, p. 51 (underline emphasis in original)) Dr. Karam indicated he agrees with the statement, signed below, and dated his signature August 6, 2019. (Def. Ex. E, p. 51) He did not provide any additional comments. (Def. Ex. E, p. 52).

At the time of hearing, Kaalberg worked at US Foods without any work restrictions. (Hrg. Tr. p. 71) Kaalberg has had no reduction in his work hours at US Foods due to his work injury and resulting disability. (Tr. p. 71) US Foods was not providing him any accommodations for his physical limitations. (Hrg. Tr. p. 71) Kaalberg self-accommodates at work by doing the following: getting assistance when lifting cases of boxed beef (which he estimated weigh between 80 and 90 pounds); positioning boxes at chest level so he does not have to bend over when working with them; and alternating between standing and sitting while performing tasks to prevent soreness. (Cl. Ex. 5, pp. 9–10; Hrg. Tr. p. 82)

At the time of hearing, Kaalberg had a second job in addition to working for US Foods. Kaalberg was employed at a convenience store named Depot. (Hrg. Tr. p. 71) He was working about ten hours per week at Depot. (Hrg. Tr. p. 71) Kaalberg had no work restrictions for his work at Depot. (Hrg. Tr. p. 71) The employer provided him no accommodations when he was working there. (Hrg. Tr. p. 71)

Kaalberg testified at hearing that he was still experiencing symptoms in his right lower extremity. (Hrg. Tr. p. 47) He has limited range of motion in his right knee; it takes him five or six steps to get his knee loosened up after sitting. (Hrg. Tr. p. 47; Cl. Ex. 4, p. 8) Kaalberg has lost strength in his knee, foot, and ankle. (Hrg. Tr. p. 47; Cl. Ex. 4, p. 8) His ankle gives out on him once in a while after removal of the hardware that was inserted to help his broken leg heal. (Hrg. Tr. p. 47; Cl. Ex. 4, p. 8) Kaalberg’s healthcare providers believe one of his nerves may have been cut in surgery, so it feels like he is walking on a pillow. (Hrg. Tr. p. 47; Cl. Ex. 4, p. 8)

As a result of the forklift crash, Kaalberg is limited in his ability to walk. He walks with a limp that causes him pain in his hips and low back. (Hrg. Tr. pp. 47–48; Cl. Ex. 4, p. 8) Whereas he used to be able to regularly walk hundreds of yards, such activity is no longer possible. Post-injury, Kaalberg is able to walk about 20 yards and then must lean up against something for a couple of minutes to give his body respite. (Hrg. Tr. pp. 48–49; Cl. Ex. 4, p. 8)

Kaalberg experienced constant soreness in his injured leg at the time of hearing. (Hrg. Tr. pp. 49–50; Cl. Ex. 4, p. 8) Walking, bending, and picking up objects increase his pain. (Hrg. Tr. p. 50) Remaining in the same position worsens it as well. (Hrg. Tr. p. 50) Sometimes Kaalberg achieves a degree of lessening in his pain by getting up and walking, but it is minimal. (Hrg. Tr. p. 50) He does not treat his pain with medication, heat, ice, or elevation. (Hrg. Tr. p. 72)

Kaalberg walks with a limp due to the injuries he sustained in the forklift crash while on the job at US Foods on March 25, 2014. (Hrg. Tr. p. 50; Cl. Ex. 4, p. 8) Walking with a limp causes him pain in his hips and low back. (Hrg. Tr. p. 50)

Kaalberg loses his balance on occasion when stopping, turning quickly, or going up steps. (Hrg. Tr. p. 51) He is able to kneel on his right leg, but it is very painful. (Hrg. Tr. p. 63) He has problems climbing ladders because of weakness on his right side due to the injury of March 25, 2014. (Hrg. Tr. pp. 79–80)

Kaalberg also bears weight differently because of his injuries resulting from the forklift crash. (Hrg. Tr. pp. 50–51) When standing, Kaalberg puts all of his weight on his left side and uses his right leg for balance. (Hrg. Tr. p. 51) He has been doing it long enough that it has become his natural posture when standing. (Hrg. Tr. p. 51)

At the time of hearing, Kaalberg did not treat his symptoms with any over-the-counter medication, heat, ice, or elevation. (Hrg. Tr. pp. 72–73) He has no difficulty cooking, washing dishes, vacuuming, sweeping, doing laundry, pressure-washing his trailer, taking out the trash, shoveling snow (though it takes him a little longer than before March 25, 2014), driving, or running errands. (Hrg. Tr. pp. 77–79)

CONCLUSIONS OF LAW

1. Causal Connection.

An employer must pay workers' compensation benefits to an employee for disability resulting from an injury that arises out of and in the course of employment with the employer. Iowa Code § 85.3(1).

The words “in the course of” refer to the time, place, and circumstances of the injury. The term “arising out of” refers to the cause and origin of the injury. The two tests are separate and distinct and both must be satisfied in order for an injury to be deemed compensable.

Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996) (internal citations omitted).

“The injured employee has the burden of proving by a preponderance of the evidence that the injuries arose out of and in the course of employment.” Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 254 (Iowa 2010) (citing Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 150 (Iowa 1996)). “Preponderance of the evidence is evidence that is more convincing than opposing evidence.” Iowa State Bar Ass’n, Iowa Civ. Jury Instructions § 100.3 (June 2019). For the claimant to satisfy the burden of proof, “A possibility is insufficient; a probability is necessary.” Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845, 849 (Iowa 1995) (quoting Anderson v. Oscar Mayer & Co., 217 N.W.2d 531, 535 (Iowa 1974)).

The parties stipulated that Kaalberg sustained an injury to his right leg arising out of and in the course of his employment with US Foods on March 25, 2014. However, they disagree on whether the stipulated injury accelerated Kaalberg’s hip osteoarthritis.

“[W]here an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident.” Oldham v. Shofield & Welch, 266 N.W. 480, 482 (1936). If an employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable. Id. at 481. A sequela can be a secondary effect on the claimant’s body stemming from an original injury. Aalbers v. Pioneer Hi-Bred Int’l, File No. 5042600, p. 6 (App. Mar. 24, 2016). “For example, where a leg injury causing shortening of the leg in turn alters the claimant’s gait, causing mechanical back pain, the back condition can be found to be a sequela of the leg injury.” Id. (citing Fridlington v. 3M, File No. 788758 (Arb. Nov. 15, 1991)).

A claimant is not entitled to compensation for the results of a preexisting disease such as osteoarthritis, but the existence of such a disease is not a defense to liability under Iowa workers’ compensation law. Rose v. John Deere Ottumwa Works, 76 N.W.2d 756, 760–61 (Iowa 1956); see also Powell v. Smith Fertilizer & Grain, File No. 5055682, p. 4 (App. Jun. 13, 2018). If a claimant had a preexisting condition or disability aggravated, accelerated, worsened or lighted up by an injury which arose out and in the course of employment resulting in disability found to exist, the claimant is entitled to recover. Musselman v. Cent. Tel. Co., 154 N.W.2d 128, 132 (Iowa 1967) (citing Nicks v. Davenport Produce Co., 115 N.W.2d 812, 815 (Iowa 1962)); see also Parrish v. ABCM Corp. d/b/a Southfield Wellness Comty., File No. 5053102, p. 2 (App. Sep. 26, 2018).

“Employers may raise any number of arguments to contest an employee’s assertion that an injury arose out of and in the course of employment.” Xenia Rural Water Dist. v. Vegors, 786 N.W.2d 250, 254 (Iowa 2010). Such contestations do not shift the burden of proof on causation, which the claimant retains. Id. According to the defendants here, Kaalberg’s complaints of hip issues lack veracity because he made no such complaints to care providers for over four years but nonetheless voiced such

complaints for purposes of litigation in his petition, in discovery responses, and during his IME exam with Dr. Kreiter.

“Whether an injury has a direct causal connection with the employment or arose independently thereof is essentially within the domain of expert testimony.” Dunlavey v. Economy Fire & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995) (citing Deaver v. Armstrong Rubber Co., 170 N.W.2d 455, 464 (Iowa 1969)); Ayers v. D & N Fence Co. Inc., 731 N.W.2d 11, 16 (Iowa 2007). In a workers’ compensation case, the fact-finder may reject an expert opinion in whole or in part. Sherman v. Pella Corp., 576 N.W.2d 312, 321 (Iowa 1998) (citing Sondag v. Ferris Hardware, 220 N.W.2d 903, 907 (Iowa 1974)). The weight given to expert opinions “depends on the accuracy of the facts relied upon by the expert and other surrounding circumstances.” Id. (citing Sondag, 220 N.W.2d at 908).

Both Drs. Karam and Powers have directly addressed whether Kaalberg’s hip condition is causally connected to the stipulated work injury to his right leg. Both doctors are treating physicians of Kaalberg’s. Dr. Karam treated Kaalberg for his broken leg, beginning on or about June 5, 2014, through December 4, 2015. The records show Dr. Powers provided care to Kaalberg beginning as early as March 2, 2015, through May 9, 2019. Both physicians are therefore familiar with Kaalberg’s work injury and treatment history.

Kaalberg’s attorney wrote and sent a check-box letter to Dr. Powers. The check-box letter included the question, “Assuming Mr. Kaalberg had osteoarthritis before his 3/25/14 injury, do you think it is more likely than not that his right lower extremity injury of 3/25/14 substantially accelerated the osteoarthritis processes in his left and right hips, leading to an earlier end-stage osteoarthritic disease process?” Dr. Powers checked, “Yes.” Dr. Powers also provided the following explanation of his causation opinion: “The former injury altered his gait and very likely added stress to the hip joints. This would accelerate the progression of arthritis.”

Defense counsel authored a check-box letter on the issue of causation, which Dr. Karam filled out and signed on August 6, 2019. Dr. Karam indicated that he agreed with the following sentence, which was written by defense counsel: “More likely than not, Mr. Kaalberg’s current hip condition is a natural progression of his preexisting arthritis and not related to his March 25, 2014 work accident.” He left the comments section of the check-box letter blank. Dr. Karam provided no further explanation of his opinion.

The surrounding circumstances and nature of the documents containing the expert opinions on causation make Dr. Powers’s opinion more convincing than Dr. Karam’s.

The record shows that Dr. Karam last saw Kaalberg on December 4, 2015. Powers performed an examination of Kaalberg on May 9, 2019. Therefore, Dr. Powers based his opinion in part on a firsthand physical examination that took place much

closer to the date of hearing than what the record shows was Dr. Karam's most recent firsthand physical examination of Kaalberg.

Further, the record establishes that Dr. Powers based his opinion in part on x-rays taken of Kaalberg's hip on May 9, 2019. However, the record provides an insufficient basis from which to conclude what medical records Dr. Karam reviewed included the most-recent x-rays and medical records relating to Dr. Powers's firsthand examination of Kaalberg. While the check-box letter asks, "Dr. Karam, after review of Mr. Kaalberg's medical records, could you please respond to the following within a reasonable degree of medical certainty," it is nonetheless unclear whether Dr. Karam reviewed the UIHC x-rays and records from May 2019 before indicating that he agreed with the conclusory statement on causation in the check-box letter. This is important because of the years that passed between Dr. Karam's last examination of Kaalberg and his marking an "X" on, signing, and dating the check-box letter on August 6, 2019. And while it is also true that the evidence does not establish what past records and x-rays, if any, Dr. Powers might have reviewed before issuing his causation opinion, the effect is mitigated by Dr. Powers's ongoing doctor-patient relationship with Kaalberg from March 2, 2015, through the time of hearing, which gave him familiarity with Kaalberg's physical condition over that time, and the fact that Dr. Powers physically examined Kaalberg and reviewed x-rays of his hip in May 2019, before rendering his opinion on causation.

The means by which the doctors expressed their causation opinions lends additional credence to Dr. Powers's opinion. Dr. Karam placed an "X" next to "Agree" to indicate he was adopting the statement on causation authored by defense counsel in the check-box letter. (Def. Ex. E) Dr. Powers's causation opinion also comes in the form of a check-box letter, this one authored by Kaalberg's attorney. But Dr. Powers did more than write an "X" next to "Agree." He explained the rationale behind indicating his belief that Kaalberg's hip condition was accelerated by the stipulated work injury to his right leg. Dr. Powers opined, "The former injury altered his gait and very likely added stress to the hip joints. This would accelerate the progression of arthritis." In contrast, Dr. Karam's opinion is conclusory and does not address Kaalberg's altered gait.

Further, Dr. Powers's opinion regarding causation reflects the evolution of Kaalberg's symptoms and complaints thereof. Dr. Powers opined that Kaalberg's leg injury caused him to walk with a limp, which placed stress on his hip and accelerated the arthritis in his hip. The records in Joint Exhibit 2 from Performance Therapies document limited range of motion in Kaalberg's hip and an impaired gait pattern as early as July 8, 2014, and as recently as December 16, 2014. Kaalberg testified that he first experienced hip pain after starting to walk again following surgery and after he returned to work. In his April 30, 2018 deposition, he described his hip pain as constant, but not bad, unless he bent over. He also testified credibly that his hip pain worsened over time. Thus, while Kaalberg might not have complained of hip pain to care providers, the physical therapy records document the altered gait that formed the basis of Dr. Powers's opinion on causation.

The worsening over time of Kaalberg's hip pain is also in line with the gradual worsening of leg pain, as shown by the records. The evidence establishes that Kaalberg did not voice complaints about his right leg for about two years after Dr. Karam released him from care. Then he complained on occasion about leg pain to care providers. The symptoms in his right leg were worse at the time of hearing than on the day Dr. Karam released him to return to work. It is more likely than not that Kaalberg's worsening leg symptoms had an effect on his gait.

Ultimately, Kaalberg complained of hip and leg pain during Dr. Kreiter's IME. Then he saw Dr. Powers for a hip examination at the recommendation of Dr. Kreiter. And at hearing, Kaalberg provided credible testimony regarding his symptoms. Thus, the totality of the evidence establishes it is most likely that walking with a limp caused Kaalberg's hip condition to worsen over time until the pain became bad enough for him to assert a hip injury in his petition, truthfully describe the symptoms during discovery, share legitimate complaints to Drs. Kreiter and Powers, and give credible testimony about his symptoms at hearing.

The nature and substance of the expert opinions along with the surrounding circumstances establish that Dr. Powers's opinion on the causal connection between Kaalberg's March 25, 2014 work injury and his hip condition is more persuasive than Dr. Karam's. Kaalberg has therefore proven by a preponderance of the evidence that the work injury he sustained in the employment of US Foods is a proximate cause of the accelerated progression of his hip arthritis.

2. Medical Expenses.

Under Iowa Code section 85.27, the employer must provide reasonable care and services for all injuries and conditions compensable under Iowa Code chapters 85 and 85A, and hold the injured employee harmless for the associated costs. Typically, the employer has the right to choose care for an employee's work-related injury. See Iowa Code § 85.27(4). However, an employer loses the right to choose care if the employer denies liability for the alleged injury. Winnebago Indus., Inc. v. Haverly, 727 N.W.2d 567, 575 (Iowa 2006) (citing Trade Prof'ls, Inc. v. Shriver, 661 N.W.2d 119, 124 (Iowa 2003)). After the employer denies liability for an injury or condition, the claimant may obtain reasonable care from any provider for the alleged injury, at the claimant's expense, and seek reimbursement for such care using regular claim proceedings before this agency. See Trade Prof'ls, 661 N.W.2d at 121–25 (affirming on judicial review an agency decision ordering the payment of medical expenses for unauthorized care because the defendants denied liability for the alleged injury and therefore lost the right to control care).

In the current case, Kaalberg filed a petition concerning application for alternate care seeking authorization to obtain treatment for his hip condition. The defendants denied liability for Kaalberg's hip condition. The agency consequently dismissed Kaalberg's petition without prejudice under Rule 876 IAC 4.48(7).

After the dismissal of his petition due to the defendants' denial of liability, Kaalberg was free to choose a doctor to provide care for his hip condition at his own cost. Kaalberg chose Dr. Powers and UIHC. Kaalberg's care at UIHC for his hip condition included a physical examination and x-rays.

The parties stipulated that the fees or prices charged for this care were fair and reasonable. However, they dispute whether the:

- Treatment with Dr. Powers was reasonable and necessary.
- Listed expenses in Claimant's Exhibit 15 are causally connected to the work injury.
- Defendants authorized the care.

As determined above, Kaalberg's hip condition is causally related to the stipulated work injury. Because the defendants denied liability and did not revisit the denial, they lost their right to waive an authorization defense. Brewer-Strong v. HNI Corp., 913 N.W.2d 235, 243–45 (Iowa 2018). The record establishes the care was reasonable and necessary because the defendants' denial of liability meant they refused to provide any care and the alternate care Kaalberg obtained resulted in:

- A diagnosis of grade 4 osteoarthritis in Kaalberg's right hip and grade 3 osteoarthritis in his left hip; and
- Referral to an orthopedic specialist and a physical therapist.

Therefore, the defendants must pay for the fees detailed in Claimant's Exhibit 15.

Moving forward, the defendants have lost the right to direct care for Kaalberg's hip condition because of the defendants' denial of liability. It would be unreasonable to allow the defendants to regain control of Kaalberg's course of treatment at this time. Kaalberg may consequently obtain reasonable care from an orthopedic specialist and a physical therapist of his choice. The defendants shall hold Kaalberg harmless for the cost of reasonable care provided by the orthopedic specialist and physical therapist he chooses, as well as any follow-up care with Dr. Powers relating to his hip condition.

3. Permanent Disability.

The parties stipulated Kaalberg sustained a work injury to his right lower extremity that resulted in permanent partial disability. Drs. Karam and Kreiter have both found Kaalberg's right-leg injury at MMI and provided permanent partial disability ratings for his right lower extremity. But the parties dispute the extent of Kaalberg's permanent disability to his right leg resulting from the stipulated work injury.

The preponderance of the evidence establishes a causal connection between Kaalberg's unscheduled hip condition and his employment with US Foods. Thus, this

decision awards him medical benefits for his hip condition in Section 2. No doctor has assessed the permanent disability caused by Kaalberg's hip condition because treatment for the condition is ongoing and he is not yet at MMI. Because Kaalberg's hip condition makes the assessment of his disability one of the body as a whole and his care for that condition is ongoing, the issue of permanent disability is not ripe for determination at this time.

4. IME Reimbursement.

On, April 23, 2015, Dr. Karam gave Kaalberg an impairment rating. Dr. Karam revisited that rating and affirmed it as accurate in a letter dated August 6, 2017. Kaalberg believed Dr. Karam's rating was too low, so he obtained an IME with Dr. Kreiter on April 10, 2019, which cost one thousand dollars (\$1,000.00).

While the payment for Dr. Kreiter's IME is identified as a disputed issue in the hearing report, the defendants did not include any argument regarding why they should not have to pay the full cost of the IME under Iowa Code section 85.39. This is likely because Kaalberg is entitled to payment for the reasonable cost of Dr. Kreiter's IME under the law. See Plew, Jr. v. AJS of Des Moines, Inc., File No. 5056490, p. 6–7 (App. Feb. 11, 2019). For these reasons, the defendants shall reimburse Kaalberg for the full cost of the IME performed by Dr. Kreiter.

5. Taxation of Costs.

Under the administrative rules governing contested case proceedings before the Iowa workers' compensation commissioner, hearing costs include filing fees when appropriate. 876 IAC 4.8(2)(f), 4.33. The parties stipulated that Kaalberg paid the filing fee of one hundred dollars (\$100.00). Because Kaalberg prevailed in this case, the filing fee is taxed to the defendants under Rules 876 IAC 4.8(2)(f) and 4.33. The defendants shall pay Kaalberg the full cost of the filing fee.

CONCLUSION

It is therefore ordered:

- 1) Kaalberg has proven by a preponderance of the evidence a causal connection between his hip condition and his employment with US Foods.
- 2) The issue of Kaalberg's permanent disability is not ripe for determination at present.
- 3) Under Rules 876 IAC 4.8(2)(f) and 4.33, the defendants shall pay to the claimant one hundred dollars and 00/100 (\$100.00) for the taxed cost of the filing fee.
- 4) Under Iowa Code section 85.39, the defendants shall pay to the claimant one thousand and 00/100 dollars (\$1,000.00) for the cost of Dr. Kreiter's IME.

- 5) Under Iowa Code section 85.27, the defendants shall pay all fees and costs detailed in Claimant's Exhibit 15.
- 6) Under Iowa Code section 85.27, the defendants shall hold Kaalberg harmless for all fees and costs relating to the reasonable care he obtains for his hip condition from his chosen orthopedic specialist, his chosen physical therapist, and Dr. Powers.

Signed and filed this 27th day of March, 2020.


BENJAMIN G. HUMPHREY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Paul McAndrew (via email)
Thomas Wertz (via WCES)
Jill Hamer Conway (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.