BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

BILLY SOWDER, Claimant, vs. MJL DELIVERY, INC., Employer, and INTEGRITY INSURANCE, Insurance Carrier, Defendants.	File No. 20004530.03 ARBITRATION DECISION Headnotes: 1402.20; 1803

Claimant Billy Sowder filed a petition in arbitration on June 16, 2021, alleging he sustained injuries to his left lower extremity, right lower extremity, and body as a whole while working for Defendant MJL Delivery ("MJL") on January 2, 2020. MJL and its insurer, Defendant Integrity Insurance ("Integrity"), filed an answer on July 7, 2021.

An arbitration hearing was held on January 4, 2023. Attorney Nathaniel Boulton represented Sowder. Sowder appeared and testified. Attorney Coreen Sweeney represented Defendants. Mike Little appeared and testified on behalf of MJL and Integrity. Joint Exhibits ("JE") 1 through 15, and Exhibits 1 through 7 and A through G were admitted into the record. The record was held open through February 24, 2023, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

The parties submitted a hearing report listing stipulations and issues to be decided. A hearing report order was entered at the conclusion of the hearing accepting the parties' stipulations and the issues to be decided. MJL and Integrity raised the affirmative defense of lack of timely notice under Iowa Code section 85.23 for the right leg and body as a whole injuries and waived all other affirmative defenses.

STIPULATIONS

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

2. Sowder sustained an injury, which arose out of and in the course of his employment with MJL on January 2, 2020.

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

4. At the time of the alleged injury Sowder's gross earnings were $692.31 per week, he was married and entitled to two exemptions, and the parties believe the weekly rate is $466.34.

5. MJL and Integrity are entitled to a credit under Iowa Code section 85.38(2) for payment of medical/hospitalization expenses in the amount of $3,177.21.

ISSUES

1. What is the nature of the injury?

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

3. If the alleged injury is a cause of permanent disability, what is the extent of disability?

4. If the injury is found to be a cause of permanent disability, what is the commencement date for permanent partial disability benefits, if any are awarded?

5. Is Sowder entitled to temporary benefits?

6. Is Sowder entitled to payment of medical expenses set forth in Exhibits 4 through 7?

7. Is Sowder entitled to alternate care under Iowa Code section 85.27?

8. Is Sowder entitled to payment of an independent medical examination ("IME") under Iowa Code section 85.39?

9. Have costs been paid?

10. Is Sowder entitled to recover costs?

FINDINGS OF FACT

Sowder lives with his wife in Altoona, Iowa. (Tr.:8; Ex. C:21) At the time of the hearing he was 62. (Tr.:8)

Sowder graduated from Southwest Polk High School in 1979. (Ex. B:4; Tr.:8) Sowder has not completed any schooling beyond high school. (Tr.:8) Sowder holds a forklift certification and a Commercial Drivers' License ("CDL"). (Tr.:9)

After graduating from high school Sowder enlisted in the Marines and worked in the infantry for four years from 1979 through 1983. (Tr.:9; Ex. B:8) Sowder also has experience working in warehouses, as a bus driver, as a groundskeeper, dump truck driver, dispatcher, and truck driver. (Ex. B:7-8; Tr.:20-21, 37)

In May 2019, MJL hired Sowder as a full-time driver. (Ex. C:22; Tr.:10) MJL provides delivery service for FedEx. (Ex. C:22) Sowder performed commercial deliveries and loaded and unloaded orders for customers. (Ex. C:22; Tr.:10-11)

The parties stipulated Sowder sustained a work injury to his left lower extremity on January 2, 2020. Sowder alleges the work injury aggravated his pre-existing left knee condition, and alleges he sustained sequelae injuries to his right knee and low back. MJL and Integrity disagree with Sowder's contentions and aver he is not entitled to permanency benefits in this case.

Sowder has a long history of pre-existing bilateral knee, left lower extremity, right hip, right shoulder, and back problems. Sowder first underwent right knee surgery in 1988. (JE 11:131).

On February 7, 2000, Sowder felt a sudden pain in his left knee, his knee collapsed, and he fainted. (JE 1:1) He was taken to the emergency room at Mercy Medical Center where he was diagnosed with syncope, contusion with hematoma left parietal area, and left knee joint status post ligamentous and cartilaginous repair, medial meniscus, and medical collateral ligament with effusion. (JE 1:2)

On October 17, 2013, Sowder underwent left knee magnetic resonance imaging. (JE 2:15) The reviewing radiologist listed an impression of complete rupture of the anterior cruciate ligament, which appeared to be a chronic old injury, a complex meniscal tear involving the posterior horn of the medial meniscus, joint effusion, and degenerative changes of the knee. (JE 2:16)

Sowder sought treatment for his left knee with William Jacobson, M.D., an orthopedic surgeon. (JE 3) During an appointment on October 25, 2013, Sowder complained of left knee pain after he slipped while carrying an old television upstairs. (JE 3:19) Sowder reported he had undergone knee surgery in 1998 or 1999, and complained of pain in the posterior and medial area of his knee. (JE 3:19) Dr. Jacobson reviewed Sowder's imaging and listed an impression of left knee pain, left ACL tear, left degenerative knee arthritis, and left medial meniscal tear. (JE 3:20) Dr. Jacobson discussed treatment options and Sowder elected to proceed with a left knee arthroscopy with ACL reconstruction and partial medial meniscectomy. (JE 3:21) Dr. Jacobson documented he discussed the fact Sowder had early arthritic changes in his knee and he may not receive complete pain relief with surgery and understood he may

require future treatment. (JE 3:21) On November 11, 2013, Sowder underwent a left knee arthroscopy with anterior cruciate ligament reconstruction with autograft hamstring, partial medial and lateral meniscectomies, and lateral femoral condyle chondroplasty. (JE 4:39)

Sowder returned to Dr. Jacobson on December 27, 2013, six weeks after undergoing left ACL reconstruction and a partial medial lateral meniscectomy. (JE 3:26) Sowder relayed he was doing well until a week before when he slipped on the ice and twisted his knee. (JE 3:26) Sower complained of swelling. (JE 3:26) Dr. Jacobson found Sowder had very mild swelling in his left knee and continued his rehabilitation protocol. (JE 3:26-27)

During a follow-up appointment on February 7, 2014, Sowder complained of a little stiffness in his left knee. (JE 3:28) Dr. Jacobson found Sowder was progressing well, but found he was not ready to return to work. (JE 3:28)

On March 25, 2014, Sowder attended an appointment with Dr. Jacobson, reporting he had slipped at home on the ice and twisted his knee. (JE 3:30) Sowder was able to walk on his knee, but he had some pain on the medial side. (JE 3:30) Dr. Jacobson ordered Sowder to resume therapy and to avoid running and jumping. (JE 3:30)

On December 8, 2015, Sowder underwent bilateral knee x-rays. (JE 2:17; JE 5:42) The reviewing radiologist noted:

> Left knee: There is mild medial compartment joint space narrowing. There is spurring at the quadriceps tendon insertion on the patella. Residuals of anterior cruciate ligament repair are identified.
>
> Right knee: There is chondrocalcinosis of the medial and lateral compartment joint spaces.

(JE 2:18; JE 5:43)

Sowder returned to Dr. Jacobson on December 15, 2015. (JE 3:32) Dr. Jacobson noted he had been released from his care for some time and that he fell off his roof while putting up Christmas lights the week before, landing on his left leg and rolling onto this right shoulder. (JE 3:32) Sowder complained of difficulty lifting his right arm above shoulder height, he was walking with a limp, and he had pain in his left knee and swelling. (JE 3:32) Dr. Jacobson listed an impression of right shoulder pain and left leg joint pain and he recommended magnetic resonance imaging. (JE 3:33)

On December 17, 2015, Sowder underwent left knee magnetic resonance imaging. (JE 3:35) The reviewing radiologist listed an impression of:

1. Intact ACL reconstruction graft.

2. There is volume loss involving both the medial and lateral meniscus in keeping with prior meniscectomies. There is no well-defined displaced recurrent tear, however, there is a small amount of articular surface signal abnormality involving the anterior horn and body of the medial meniscus which may represent degenerative tearing/fraying.

3. Moderate-sized knee joint effusion. Grade II chondromalacia changes involving the patella and medial compartment.

(JE 3:35)

On December 29, 2015, Sowder attended an appointment with Dr. Jacobson to discuss his imaging results. (JE 3:37) Dr. Jacobson reviewed his imaging, listed an impression of left knee chondromalacia and effusion with intact ligaments and recommended conservative treatment to include physical therapy and a corticosteroid injection, which he administered. (JE 3:38)

During an appointment on October 4, 2016, with the Veterans Administration, Sowder complained of low back, right shoulder and left knee pain from the fall from his roof, reporting the pain was worse with bending over, sitting for a long time, and walking distances, and improved with lying down. (JE 6:44) Sowder was referred for physical therapy. (JE 6:44) The physical therapist noted he walked with a severe antalgic gait on the right and recommended he use a cane for symptom relief. (JE 6:47-48)

Sowder attended an orthopedic consult with Debra Smith, PA-C, with the Veterans Administration on November 30, 2016, complaining of right hip pain. (JE 6:52) Sowder had been using a cane since October. (JE 6:52) Smith assessed Sowder with right hip degenerative joint disease. (JE 6:53-54)

Sowder treated with Benjamin Beecher, M.D., and orthopedic surgeon with Iowa Ortho, from March 30, 2017, through December 5, 2017. (JE 7, JE 8) Dr. Beecher assessed Sowder with left thigh pain, a soft tissue mass, primary osteoarthritis of the right hip, pain in unspecified limb, and obesity. (JE 7:64-65) Dr. Beecher reviewed Sowder's hip magnetic resonance imaging, noting he found evidence of calcification along the hamstring tendon. (JE 7:68) Dr. Beecher documented Sowder had failed conservative treatment and recommended a right total hip arthroplasty. (JE 7:69) Dr. Beecher performed a right total hip arthroplasty on May 15, 2017. (JE 8:88)

On January 2, 2020, Sowder was rearranging the load on his work truck for MJL to bring the stack down so the truck would ride better. (Tr.:12-13) While grabbing a box he stepped on a box or crate that gave way and he fell. (Tr.:13; Ex. C:23-24) At hearing Sowder reported when he fell he was in a "split position" with one leg up and one leg back. (Tr.:54)

Sowder did not report the incident that day, but reported it the next day to his supervisor, Shawn Chapman. (Tr.:13) Sowder testified he was having a lot of pain in his knee and it was difficult for him to walk and to bend his knee. (Tr.:13) Sowder relayed he was having problems "[f]rom the knee down." (Tr.:13)

Sowder testified over the weekend his wife noticed bruising down the back of his leg, below his knee, and around the front. (Tr.:14) The following Monday he went to work and informed Mike Little, the owner of the company, he was hurting and asked if he could see a doctor after work and Little told him to go to DoctorsNow. (Tr.:14; Ex. C:25)

Little testified on Monday, January 6, 2020, Sowder sent him a picture of his leg showing a "[v]ery bruised hamstring going all the way up into his groin." (Tr.:79) Little could not recall if the picture had bruising below the knee, but it certainly showed bruising above his knee. (Tr.:79)

On January 6, 2020, Sowder attended an appointment with Kaitie Worley, PA-C with DoctorsNow, complaining of constant bruising of his left thigh since January 2, 2020. (JE 9:91) Sowder reported his foot slipped out from underneath him while reaching for a box. (JE 9:97)

On exam, Worley noted Sowder had an antalgic gait with a limp favoring the left lower extremity, mid to distal left thigh swelling and tenderness, abnormality of the popliteal fossa. (JE 9:91-92) Worley noted he had normal active and passive range of motion in his knees. (JE 9:92) She documented Sowder had no tenderness in the medial or lateral joint lines, no tenderness or subluxation of the patella, a negative drawer test, negative abduction and adduction and stress tests of the knee, and negative testing for meniscus tears in the left knee. (JE 9:92) Worley diagnosed Sowder with a left hip sprain and imposed work restrictions of avoiding squatting, jumping, running, climbing ladders, prolonged standing, and no lifting or pushing or pulling over 20 pounds. (JE 9:93, 95)

Sowder testified at hearing it was not possible he told Worley he only had symptoms associated with a hamstring pull and alleged he reported his knee popped at the time of the work injury. (Tr.:55) Worley's records do not document Sowder reported he experienced a pop in his knee.

Sowder returned to DoctorsNow on January 13, 2020, and he was examined by Anna Holzer, M.D. (JE 9:99-101) Dr. Holzer noted Sowder had a left hamstring strain with a large contusion, imposed work restrictions of no lifting or pushing or pulling over 30 pounds, recommended icing with ibuprofen or naproxen, and ordered physical therapy. (JE 9:100-101)

Sowder returned to work around January 15, 2020, and MJL provided him with a helper. (Ex. C:28)

On January 20, 2020, Sowder returned to Dr. Holzer regarding his left thigh bruising. (JE 9:102) During the appointment Sowder complained of joint pain. (JE 9:102) Dr. Holzer documented the joint pain was an abnormal symptom. (JE 9:102) Sowder reported he was doing better, but he was still tender and bruised. (JE 9:102) Dr. Holzer document Sowder's left knee joint line, medial joint line, and patella were tender, his left patella was abnormal, and he had tenderness in his mid to distal thigh, posterior and medial. (JE 9:103) Dr. Holzer diagnosed Sowder with a left thigh contusion and left hip sprain, imposed restrictions of no lifting, pushing, or pulling over 30 pounds, noted his left hamstring injury was slowly improving, and she continued his physical therapy. (JE 9:103-105)

Sowder attended a follow-up appointment with Dr. Holzer on January 27, 2020, complaining of joint pain related to his left thigh bruising, which she again documented was an abnormal symptom related to the bruising. (JE 9:106) Dr. Holzer documented the same tenderness in the left knee, diagnosed Sowder with a left thigh contusion and a left hip sprain, continued his restrictions, and continued his physical therapy. (JE 9:107-09)

Sowder returned to Dr. Holzer on February 3, 2020, reporting his pain was about the same and it was painful to walk on. (JE 9:110) Dr. Holzer documented Sowder's joint pain was an abnormal symptom related to his left thigh complaint. (JE 9:110). She noted Sowder had tenderness in the joint line and medial joint line of his left knee and left thigh tenderness over the mid to distal thigh, posterior and medial. (JE 9:111) Dr. Holzer noted his left hamstring strain had not improved, she continued his restrictions, noted the employer had not approved additional physical therapy, and she referred Sowder to an orthopedic surgeon. (JE 9:112-13)

On March 3, 2020, Sowder attended an appointment with Dr. Beecher complaining of left knee pain with an onset of January 2, 2020. (JE 7:74) Sowder reported he injured his knee when the box he was standing on while reaching for some boxes fell apart. (JE 7:74) Sowder reported having pain in his knee, difficulty getting in and out of his truck, and noted walking and using stairs cause pain. (JE 7:74) Dr. Beecher documented Sowder had arthritis in his knee and opined the incident likely aggravated his underlying condition. (JE 7:76) Dr. Beecher recommended left knee magnetic resonance imaging and imposed restrictions no lifting over 30 pounds and to avoid repetitive lifting, climbing, twisting, pulling, kneeling, pushing, and squatting with respect to his left knee. (JE 7:76-77)

Sowder returned to Dr. Beecher on March 19, 2020, complaining of constant and fluctuating left knee pain that is aching and sharp and aggravated by climbing stairs, movement, and walking. (JE 7:78) Dr. Beecher noted magnetic resonance imaging revealed he has significant arthritis, a medial meniscus tear, and a re-reputure of the anterior cruciate ligament graft. (JE 7:78) Dr. Beecher administered an injection, recommended conservative treatment, noted Sowder would likely end up with a knee replacement, continued his restrictions, ordered physical therapy, and fit him with a brace to wear all the time. (JE 7:80-82)

On April 16, 2020, Sowder returned to Dr. Beecher regarding his left knee pain. (JE 7:83) Sowder reported the pain is aching, aggravated by working, and relieved by physical therapy. (JE 7:83) Sowder relayed the injection did not help him, he was having issues with his brace, and while working with restrictions he felt like his knee was giving out on him. (JE 7:83) Dr. Beecher noted he believed he would need a total knee replacement, fit him for a new brace, and continued his physical therapy. (JE 7:84)

During a follow up appointment on May 14, 2020, Sowder complained of constant aching and sharp knee pain aggravated by bending, climbing stairs and getting in and out of his truck with instability. (JE 7:85) Dr. Beecher recommended a total knee replacement. (JE 7:86)

Scott Neff, D.O., an orthopedic surgeon, performed an IME for MJL and Integrity on June 17, 2020. (JE 14) Dr. Neff examined Sowder and reviewed his medical records. (JE 14) Dr. Neff diagnosed Sowder with left knee osteoarthritis with previous hamstring tear that likely occurred at the time of his injury on January 2, 2020. (JE 14:243) Dr. Neff noted Sowder has significant left knee osteoarthritis that is directly related to the 2000 meniscectomy. (JE 14:243) Dr. Neff opined Sowder's osteoarthritis is not related to the January 2, 2020 injury and that he did have a hamstring injury, and opined the injury did not cause, aggravate, or accelerate his knee arthritis or his need for surgery. (JE 14:244)

Dr. Neff opined it is reasonable to consider a total left knee arthroplasty and noted the procedure is directly related to 2000 arthroscopic meniscectomy and debridement and the ACL insufficiency surgically treated in 2014. (JE 14:244) Dr. Neff found "[t]he work injury was a hamstring tear or hamstring pull resulting from stepping backwards, stumbling, and a hyperextension injury to the left lower extremity. This did not cause, contribute to, or aggravate his preexisting chronic arthritic disease." (JE 14:244) Dr. Neff found Sowder could continue to work with a helper while wearing a brace and after surgery and rehabilitation he could return to work without restrictions. (JE 14:244)

On July 1, 2020, Integrity sent Sowder a letter stating it was denying his claim given Dr. Neff had opined the proposed left knee arthroplasty surgery is not work-related. (Ex. D:31)

Sowder's last day of work for MJL was July 7, 2020. (Tr.:19) Sowder informed MJL he was leaving to take care of his knee. (Tr.:19) Sowder received unemployment benefits after he left MJL and he has not worked since July 7, 2020. (Tr.:20, 32)

Robert Rondinelli, M.D., Ph.D. conducted an IME for Sowder and issued his report on July 23, 2020. (Ex. 1) Dr. Rondinelli reviewed Sowder's medical records and examined him. (Ex. 1) Dr. Rondinelli diagnosed Sowder with pre-existing history of left knee osteoarthritis, status post left knee arthroscopic meniscectomy in 2000, history of recurrent left knee trauma due to sports injury including a complete ACL tear, complex

meniscal tear, joint effusion, and degenerative joint disease of the left knee with an ACL repair, right hip arthroplasty for traumatic arthritis following a fall, and re-tear of the ACL graft, a medial meniscal tear and chondromalacia patella of his left knee following a work injury on January 2, 2020. (Ex. 1:7)

With respect to causation, Dr. Rondinelli opined Sowder's pre-existing arthritis to his left knee was materially accelerated by trauma to his left knee in 2000 and the 2013 left knee ACL tear and complex meniscal tear and joint effusion. (JE 1:7) Dr. Rondinelli further found, with respect to the January 2, 2020 work injury:

> In his follow-up visit of 5/14/2020 Dr. Beecher reassessed Mr. Sowder's continued left knee pain "as well as instability" and which was not improving with the use of the left knee brace or steroid injection. He attributed this to "Significant LEFT knee osteoarthritis, anterior cruciate ligament rupture, meniscal tears."
>
> I would conclude from his documentation that Dr. Beecher acknowledged pre-existing and underlying osteoarthritis and a previous left ACL tear which was surgically repaired, and that Mr. Sowder likely suffered a recurrent ACL tear resulting in significant additional dynamic instability of his left knee as a result of his injury.
>
> The mechanism of injury clearly was of sufficient magnitude to directly cause extensive hematoma and strain to his left medial hamstrings, popliteal space, and medial calf muscles. A recurrent tear of the Left ACL could also certainly have occurred as a direct result of this event. Since Mr. Sowder was still fully able bodied, gainfully employed, and working without restrictions at the time the accident occurred, and within medical probability, the accident itself either directly caused the ACL re-tear or was a material aggravation to same which directly resulted in a permanent loss of dynamic stability to his left knee. This has directly resulted in enduring inability to walk without a significant and disabling limp, requiring use of a left knee orthosis, and requiring significant material handling limitations and work restrictions in this case. None of this was present or required solely due to the pre-existing osteoarthritis and "ACL insufficiency" which was allegedly present prior to the injury of 1/02/2020. Consequently, I believe within medical probability that the injury Mr. Sowder suffered on January 2, 2020, is directly and causally related to the re-tear of his ACL graft, and/or was materially aggravating to any pre-existing and underlying joint arthropathy and instability as a result of his prior histories of left knee trauma. From a functional perspective, he has become dependent upon a hinged knee orthosis, and has significant pain, and an antalgic gait pattern as a direct result of this injury.

(JE 1:8-9)

Dr. Rondinelli agreed with Dr. Beecher's recommendation of a left total knee arthroplasty. (Ex. 1:9) Without additional treatment, Dr. Rondinelli found claimant had reached maximum medical improvement and using the AMA Guides, assigned claimant a whole person impairment of 15 percent. (Ex. 1:10-11) Dr. Rondinelli recommended restrictions of not using his left leg to operate a truck, walking short distances with a hinge knee brace at all times, and seated activity with the opportunity to change positions and stretch. (Ex. 1:11)

Counsel for MJL and Integrity sent Dr. Neff a letter asking him to provide an impairment rating. (JE 14:246). Dr. Neff responded to the letter on November 5, 2020, assigned Sowder a zero percent impairment rating using the AMA Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"). (JE 14:246)

On December 16, 2020, Sowder attended an appointment with Dr. Neff for treatment. (JE 11:134; Tr.:16) Dr. Neff documented Sowder had a complicated history including a fall from a roof 12 years before with a right hip replacement and ACL reconstruction on his left knee. (JE 11:135) Dr. Neff documented his imaging showed end-stage arthritis and his weight had increased from 230 pounds to 267 pounds while he has been off work. (JE 11:135) Dr. Neff assessed Sowder with left knee secondary osteoarthritis, recommended a left total knee arthroplasty, noted he also had arthritic disease and chondrocalcinosis in the right knee as well, and wrote a note stating Sowder could return to work as a driver with a helper for loading, unloading, and delivering up steps. (JE 11:135)

Dr. Neff performed a left total knee arthroplasty on Sowder on February 2, 2021. (JE 11:138) Following surgery, Dr. Neff ordered physical therapy three times per week. (JE 11:141)

On March 18, 2021, Sowder went to the emergency room at Broadlawns Medical Center complaining of bilateral knee pain following a fall where he landed on his right side the night before. (JE 11:145) Sowder relayed on his way to physical therapy he felt like his right knee was going to give out and he fell again, landing on his right side, with no direct knee impact with either fall. (JE 11:145) Hospital staff documented Sowder was ambulating with a cane, found x-rays did not show acute injuries to his knees, and discharged him to home with instructions to ice and take ibuprofen and follow up with orthopedics. (JE 11:145, 148)

Sowder returned to Dr. Neff on March 22, 2021, complaining of acute right knee pain. (JE 11:151) Dr. Neff diagnosed Sowder with status post total left knee replacement and acute right knee pain and documented Sowder had fairly significant chondrocalcinosis on the right and will likely required a total arthroplasty. (JE 11:152)

Sowder received right knee magnetic resonance imaging on April 7, 2021. (JE 11:153) The reviewing radiologist listed an impression of:

- Complex tear in the posterior horn and body of the medial meniscus with a dominant horizontal component and possible displaced fragment in the inferior medial gutter.
- Moderate diffuse distal quadriceps tendinitis.
- Evidence of extensor retinaculum sprain/degloving injury with edema both superficial and deep to the extensor retinaculum.
- Mild proximal patellar tendinitis.
- Tricompartment degenerative changes, most prominent and moderate in the medial tibiofemoral compartment.
- Small joint effusion.

(JE 11:154)

On April 12, 2021, Sowder returned to Dr. Neff reporting he was miserable and requesting to proceed with a right total knee arthroplasty. (JE 11:156) Dr. Neff assessed Sowder with other secondary osteoarthritis of the right knee and noted his magnetic resonance imaging was consistent with tricompartmental degenerative changes, most prominent and moderate in the medial joint space. (JE 11:156)

Counsel for MJL and Integrity provided Dr. Neff with a copy of Dr. Rondinelli's report in April 2021. (JE 14:247). Dr. Neff responded noting degenerative changes cannot be repaired and can be expected to progress over time. (JE 14:247) He also noted Sowder had progressive arthritic disease in his knee in February 2020 without evidence of any fractures. (JE 14:247) Dr. Neff opined Sowder's arthritis was not materially aggravated by his trauma to the left knee in 2000 or the degenerative meniscal tear in 2013. (JE 14:248)

Counsel for MJL and Integrity asked for Dr. Neff's opinion concerning Sowder's right knee condition. (JE 14:249) Dr. Neff responded on September 13, 2021, stating: "Sowder has progressive arthritis in his right knee, chondrocalcinosis, which is an arthritic condition and wear changes in the medial hemijoint and medial meniscus with degenerative tear with extrusion of the meniscus." (JE 14:251) Dr. Neff documented he had no record of Sowder injuring his right knee in January 2020. (JE 14:251) Dr. Neff noted as his symptoms worsen he will need a right total knee arthroplasty, but the surgery would not be causally related to the January 2, 2020, work injury. (JE 14:251-252)

On September 20, 2021, Sowder attended an appointment with Dr. Neff. (JE 11:159) Sowder reported his right knee was giving him more and more pain. (JE 11:160) Dr. Neff ordered a computerized tomography scan and noted he had been cleared for surgery by cardiology. (JE 11:160)

Sowder attended an appointment with Theron Jameson, D.O., an orthopedic surgeon with Broadlawns Medical Center on November 9, 2021, regarding his right knee and reporting he had pain with range of motion in his left knee. (JE 11:163) Dr.

Jameson noted he had a moderate left knee effusion and aspirated fluid from his left knee for testing. (JE 11:164)

Sowder received a right knee computerized tomography scan on December 9, 2021. (JE 11:167) The reviewing radiologist listed an impression of chronic and degenerative changes of the right knee. (JE 11:167)

On December 20, 2021, Dr. Jameson performed a right total knee arthroplasty on Sowder. (JE 11:168) Dr. Jameson listed a postoperative diagnosis of degenerative joint disease of the right knee. (JE 11:168)

On January 4, 2022, Sowder returned to Dr. Jameson requesting additional narcotics. (JE 11:174) Dr. Jameson declined to prescribe additional narcotics. (JE 11:174) Dr. Jameson instructed Sowder on stretches and exercises he should do more than once a day and noted if he did not get his knee moving better he would need to undergo a manipulation. (JE 11:175)

During an appointment on January 18, 2022, Sowder reported he was not gaining motion in his right knee. (JE 11:177) Dr. Jameson noted x-rays showed excellent position alignment of the right total knee arthroplasty, he discontinued his physical therapy and recommended a home exercise program, and he recommended a manipulation under anesthesia of the right knee following by additional physical therapy. (JE 11:177-78)

On February 2, 2022, Dr. Jameson performed a manipulation under anesthesia of Sowder's right knee. (JE 11:180) During a follow-up appointment on March 3, 2022, Sowder reported he had gained a lot of motion after the manipulation and he was attending physical therapy. (JE 11:182) Dr. Jameson noted his left total knee arthroplasty would need a revision. (JE 11:183)

Sowder returned to Dr. Jameson on March 24, 2022, complaining of posterior lateral pain in his right knee and that his left knee did not feel stable. (JE 11:186-87) Dr. Jameson documented he was scheduled for a left total knee revision in May, noted he believed the posterior pain was related to the manipulation and capsular stretching, and continued his physical therapy. (JE 11:188)

On April 26, 2022, Dr. Jameson responded to a check-the-box letter from counsel for MJL and Integrity, asking for his opinions after reviewing IMEs prepared by Dr. Neff and Dr. Rondinelli and letter from Dr. Neff, as follows:

LEFT LEG/KNEE

1. Mr. Sowder's diagnosis is osteoarthritis of the left knee with a hamstring tear. Because of the significant pre-existing treatment and underlying osteoarthritis in the left knee, Dr. Neff could not relate that condition to the alleged work injury of 01/02/2020. Dr. Neff did,

however, opine that Mr. Sowder had a hamstring tear based on history, examination and a photo Mr. Sowder showed him. Dr. Neff opined that the hamstring injury was temporary, appropriately treated, healed and required no further treatment, leaving Mr. Sowder with a 0% left lower extremity rating pursuant to the *AMA Guides* – 5th Edition. Dr. Neff did not believe the injury of 01/02/2020 caused, aggravated or accelerated the knee arthritis or need for surgery.

Do you agree with Dr. Neff's conclusions summarized above and outlined in the attached reports?

____X_____YES _____NO

RIGHT LEG/KNEE

2. As to the right knee, Dr. Neff's opinion is that Mr. Sowder has progressive arthritis in the right knee, chondrocalcinosis and wear changes in the medial hemijoint and medial meniscus with degenerative tear and extrusion of the meniscus. Dr. Neff was unable to attribute Claimant's progressive arthritis in the right knee to Mr. Sowder's work or injury of 01/02/2020. While Dr. Neff recognized in his 09/13/2021 report that a right total knee arthroplasty would be necessary at some point, he did not causally relate it to the work injury of 01/02/2020.

   Do you agree with Dr. Neff's conclusions summarized above and outlined in the attached reports?

   ____X_____YES _____NO

3. Given your review of the records, opinions from Dr. Neff and treatment of the patient, did Mr. Sowder sustained any work-related injury other than the temporary hamstring condition associated with the 01/02/2022 event?

   _____YES _____X____NO

4. Dr. Neff also addressed the opinions outlined in Dr. Rondinelli' IME report. Do you agree or disagree with Dr. Neff's opinions and conclusions in his 04/12/2021 report?

   ____X_____AGREE _____DISAGREE

(JE 11:253-55)

On May 5, 2022, Sowder attended an appointment with Dr. Jameson complaining of left knee pain. (JE 11:189) Dr. Jameson documented he believed Sowder just needed the tibial component revised because it is loose. (JE 11:190) Sowder underwent a left total knee tibial spacer revision performed by Dr. Jameson on May 13, 2022. (JE 11:192)

When he returned to Dr. Jameson on May 24, 2022, Sowder reported he had been involved in a motor vehicle accident where he used his left leg to brace himself. (JE 11:195) Dr. Jameson documented he believed he aggravated his left knee and because he is on anticoagulation medication he probably had more bleeding in his knee making it more painful. (JE 11:196) Dr. Jameson continued his physical therapy. (JE 11:196)

On June 28, 2022, Sowder attended an appointment with Dr. Jameson reporting his knee aches at times, but his left knee felt much better than it did prior to surgery. (JE 11:203) Dr. Jameson continued his physical therapy. (JE 11:204)

During an appointment on September 27, 2022 Sowder complained of pain in both of his knees and reported when he sits for a long period and stands he feels a popping sensation about the tibial tubercle region, and noted he cannot sit for a long period of time and then stand in a low position seat. (JE 11:206) Dr. Jameson documented both knees were in stable position alignment and there was no evidence of loosening or infection on exam. (JE 11:208) Dr. Jameson assessed Sowder with chronic lumbar radiculopathy and he ordered lumbar spine magnetic resonance imaging. (JE 11:207-08)

On October 17, 2022, Sowder underwent lumbar spine magnetic resonance imaging. (JE 11:209) The reviewing radiologist listed an impression of:

1. Severe degenerative disc disease at L5-S1 with posterior diffuse disc osteophyte complex formation. At this level there is asymmetric stenosis of the left lateral recess with likely impingement on the left S1 nerve root.

2. At both L4-5 and L5-S1 there is disc osteophyte complex formation which extends laterally. At both levels the bilateral L4 and L5 nerve roots have significant contact beyond the neuroforamina with disc osteophyte lesions and should be correlated with L4 and L5 radicular symptoms.

3. No spinal stenosis.

(JE 11:210)

Dr. Jameson reviewed the imaging and discussed it with Sowder. (JE 11:211) Dr. Jameson noted Sowder has L4-L5 nerve impingement outside the foramen from

disc bony osteophytes both on the right and left, which would account for his ongoing symptoms in both his knees and legs. (JE 11:211) Dr. Jameson assessed Sowder with status post left total knee replacement, status post right total knee replacement and chronic lumbar radiculopathy, and recommended a neurosurgery consultation at Mercy. (JE 11:212)

On November 28, 2022, Dr. Rondinelli submitted an updated report after reviewing additional medical records without examining Sowder. (Ex. 1:17-18) Dr. Rondinelli opined Sowder was able bodied and gainfully employed despite his prior injuries and was gradually progressing to his baseline rate of functional decline, but

> [a]fter suffering a discrete injury to his left knee on January 2, 2020, he experienced a rapid and pervasive deterioration of function over a 4-month period to the point that he could no longer work or safely and efficiently engage in major ADLs and qualify-of-life activities, and a left TKA became medically necessary. *Therefore, and within medical probability, this altered rate of functional decline represents a permanent aggravation of his preexisting and underlying arthritic condition in proximal and direct casual association to his work injury in this case.*

(Ex. 1:20) Using the AMA Guides, Dr. Rondinelli assigned Sowder 20 percent whole person impairment as a result of a "fair" result from a total knee replacement. (Ex. 1:20)

On December 1, 2022, Dr. Jameson signed a letter prepared by Sowder's attorney agreeing the lumbar spine conditions identified on the October 17, 2022 magnetic resonance imaging were asymptomatic and were made symptomatic after Sowder's bilateral knee conditions caused issues with weight-bearing and an altered gait. (Ex. 2:22)

During the hearing Sowder testified he applied for Social Security Disability Insurance benefits in April 2022, and his application was approved in August 2022. (Tr.:23, 49)

Sowder reported that his legs and back bother him. (Tr.:25) Sowder relayed "it hurts when I sit too long" and "when I stand to long . . . I only sleep ever since two-hour intervals at night." (Tr.:25) Sowder reported he cannot play soccer, softball, bowl, golf, or play with his grandchildren since the January 2020 work injury. (Tr.:25)

CONCLUSIONS OF LAW

I. Nature of the Injury

The parties agreed Sowder sustained a work-related injury to his left lower extremity on January 2, 2020, but disagree as to the nature of the injury and whether his conditions are permanent.

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

> . . . . it is within the period of employment at a place where the employee reasonably may be in performing his duties, and while he is fulfilling those duties or engaged in doing something incidental thereto. An injury in the course of employment embraces all injuries received while employed in furthering the employer's business and injuries received on the employer's premises, provided that the employee's presence must ordinarily be required at the place of the injury, or, if not so required, employee's departure from the usual place of employment must not amount to an abandonment of employment or be an act wholly foreign to his usual work. An employee does not cease to be in the course of his employment merely because he is not actually engaged in doing some specifically prescribed task, if, in the course of his employment, he does some act which he deems necessary for the benefit or interest of his employer.

Farmers Elevator Co., Kingsley v. Manning, 286 N.W.2d 174, 177 (Iowa 1979).

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

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

> . . . . a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of

> disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

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

An employer is responsible for a sequela injury "that naturally and proximately flow[s] from" an injury arising out of and in the course of employment. Oldham v. Schofield & Welch, 266 N.W.2d 480, 482 (Iowa 1936) ("[i]f 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"); see also Mallory v. Mercy Med. Ctr., 2012 WL 529199, File No. 5029834 (Iowa Workers' Comp. Comm'n Feb. 15, 2012). A sequela may occur as the result of a fall during treatment, an altered gait, or a later injury caused by the original injury.

MJL and Integrity aver Sowder sustained an injury to his left hamstring, which resolved. Sowder asserts the work injury aggravated his pre-existing osteoarthritis and chronic ACL problems, resulting in the need for a total knee replacement, and aggravating his right knee and low back.

Sowder testified he reported his knee problems to DoctorsNow in January 2020 and he does not know why his medical records reference his left thigh instead of his left knee symptoms. (Tr.:51) Sowder testified he told DoctorsNow about his knee and that it popped. (Tr.:51) Sowder testimony raises an issue of credibility. Sowder's testimony is not reasonable or consistent with the other evidence I believe.

During the hearing I assessed Sowder's credibility by considering whether his testimony was reasonable and consistent with other evidence I believe, whether he had made inconsistent statements, his "appearance, conduct, memory and knowledge of the facts," and his interest in the case. State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). Sowder has an obvious interest in the outcome of this case. I had the opportunity to observe Sowder testify under oath. During his testimony he engaged in direct eye contact, his rate of speech was appropriate, and he did not engage in any furtive movements. I do not find Sowder's testimony that he reported he injured his left knee and it popped credible considering his medical records and recorded statement shortly after the work injury. I do not believe he injured his left knee or aggravated his left knee at the time of the work injury.

Sowder's treatment records do not document he reported a pop in his left knee. (JE 9) During his appointment on January 6, 2020, Worley documented Sowder's chief complaint was "constant bruising of the left thigh, noting the bruise was painful and large. (JE 9:91) During her exam Worley noted Sowder had left thigh swelling "over mid to distal thigh," reduced right hip extension, and left thigh tenderness "over mid to distal thigh, posterior and medial." (JE 9:92) Worley observed Sowder's right and left knee

active and passive range of motion and strength were normal and he had no tenderness of medical or lateral joints of the knee or tenderness or subluxation of the patella. (JE 9:92)

Sowder returned to DoctorsNow and was examined by Dr. Holzer on January 13, 2020 for constant, painful bruising of his left thigh after his leg slipped at work. (JE 9:99-101) Dr. Holzer noted Sowder was limping with an antalgic gait and that he had tenderness over his mid to distal thigh, posterior and medial. (JE 9:100) There is no mention of a pop in the knee or other knee injury.

When Sowder presented to physical therapy on January 16, 2020, the physical therapist noted he was attending physical therapy for left hamstring pain. (JE 10:115) The therapist noted Sowder was unloading boxes when his leg slipped lateral and that he worked for the next two days, "but started to note bruising in posterior leg". (JE 10:115) There is no mention of a pop in the knee or knee injury.

During his appointment with Dr. Holzer on January 20, 2020, Sowder complained of joint pain, which she noted was an "abnormal symptom related to the complaint." (JE 9:102) During his exam, Sowder complained of left knee joint line tenderness, medial joint line tenderness, and tenderness over his left patella. (JE 9:103) Dr. Holzer diagnosed Sowder with a left thigh contusion and left hip sprain, noting his "[h]amstring injury is slowly improving." (JE 9:103-04)

In his recorded statement on February 20, 2020, and at hearing Sowder reported when he was moving boxes down in the truck his left leg gave way, he fell, and stated he did the splits. (Ex. C:24; Tr.:53-54) The recorded statement does not document Sowder reported his knee popped at the time of his injury. Sowder testified he told the adjuster his knee popped and his "original report was my knee popped." (Tr.:54) Sowder also testified he informed DoctorsNow his knee popped at the time of his work injury and that it is not possible he only reported symptoms associated with a hamstring pull. (Tr.:55)

Sowder had a long history of knee problems, including surgery. If he re-injured or aggravated his left knee at the time of the work injury, the re-injury or aggravation would be documented in his medical records. He also failed to report a left knee injury at the time of his recorded statement just over a month after his work injury. I find Sowder's testimony that he heard a pop and injured his left knee at the time of the work injury is not reasonable or consistent with the other evidence I believe. I do not find Sowder to be a credible witness. I do not find his statements to Dr. Beecher or Dr. Rondinelli regarding his injury credible. Dr. Neff opined the work injury did not materially aggravate Sowder's preexisting left knee condition, or cause his alleged sequelae conditions. I find Dr. Neff's opinion to be the most persuasive.

I find Sowder has not met his burden of proof that he sustained a left knee condition caused by the work injury or that the work injury aggravated, "lit-up", or accelerated his pre-existing left knee condition. I do not find he met his burden of proof

that he sustained sequelae injuries to his right knee or low back caused by the stipulated January 2, 2020 injury.

No expert witness assigned permanent impairment for Sowder's left hamstring injury. Therefore, I find Sowder is not entitled to permanent partial disability benefits. I find the remaining issues are moot with the exception of taxation of the costs and the IME.

II. IME

Sowder seeks to recover the cost of Dr. Rondinelli's IME. Iowa Code section 85.39(2) provides:

> 2. If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination. . . . An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection, shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Sowder has not met his burden of proof he sustained a compensable injury. For this reason he is not entitled to recover the cost of the IME under the statute.

III. Costs

Sowder seeks to recover costs set forth in Exhibit 3. Iowa Code section 86.40 (2020), provides, "[a]ll costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner." Rule 876 IAC 4.33(6), provides:

> Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of

doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

Sowder was not successful in proving he sustained a compensable injury. Using my discretion, I find the parties should bear their own costs.

ORDER

IT IS THEREFORE ORDERED THAT:

Claimant shall take nothing in this case.

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

Signed and filed this 10th day of July, 2023.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Nathaniel Boulton (via WCES)

Coreen Sweeney (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 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.