

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

KEVIN BOCK,

Claimant,

vs.

SCHUMACHER ELEVATOR CO.,

Employer,

and

ZURICH AMERICAN INS. CO.,

Insurance Carrier,
Defendants.

File No. 21701150.01

ARBITRATION DECISION

Head notes: 1402.40, 1402.60, 1803,
2501

Claimant, Kevin Bock, filed a petition in arbitration seeking workers' compensation benefits from Schumacher Elevator Company, employer, and Zurich American Insurance Company, insurer, both as defendants. The hearing occurred before the undersigned via Zoom on August 5, 2022.

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

The evidentiary record consists of: Joint Exhibits 1 through 5, Claimant's Exhibits 1 through 6, and Defendants' Exhibits A through I. All exhibits were received without objection.

Claimant testified on his own behalf. No other witnesses testified at hearing. The evidentiary record closed at the conclusion of the hearing. Both parties served their post-hearing briefs on September 12, 2022, at which time this case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained temporary disability as a result of the November 29, 2019, work injury;

2. Whether claimant sustained permanent disability as a result of the November 29, 2019, work injury;
3. Whether claimant is entitled to payment of medical expenses;
4. Whether claimant is entitled to reimbursement of an independent medical examination under Iowa Code section 85.39;
5. Whether claimant is entitled to any credits against an award of benefits; and
6. Costs.

FINDINGS OF FACT

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

Kevin Bock sustained injuries to his right knee and left hip, arising out of and in the course of his employment with Schumacher Elevator Company, on November 29, 2019. The defendants stipulate that claimant sustained injuries to his right knee and left hip; however, they dispute whether the injuries resulted in any permanent disability.

Bock works as an elevator service mechanic for Schumacher Elevator Company. (Hearing Transcript, page 27) In this role, Bock handles service calls and performs preventative maintenance on elevators, escalators, and dumbwaiters. (Defendants' Exhibit F, page 1)

On the date of injury, Bock was driving a company van to Minnesota for a service call when he received a notification that his vehicle was overheating. (Hr. Tr., pp. 30-31) Bock pulled over to the side of the road to let his van to cool down. In an attempt to speed the process along, Bock planned to open the hood of his van. Unfortunately, as he exited his vehicle, the wind caught his door and pulled him out of the vehicle. According to Bock, his left leg slid underneath the van door and his right leg became wedged between a running board or "cubbyhole" and the door. (Hr. Tr., pp. 31-32)

Days later, the defendant employer referred Bock to St. Luke's Occupational Medicine in Sioux City, Iowa. (See Joint Exhibit 4, page 1) Bock described his work injury to Brenda Mauch, ARNP. He denied any prior injuries to his knee and shoulder. (JE4, p. 1) Ms. Mauch assessed a right knee medial contusion, left patella contusion, right shoulder strain, and left groin strain. (JE4, p. 3) Bock was assigned work restrictions, fitted for bilateral knee sleeves, prescribed medication, and referred to physical therapy. (Id.)

On December 9, 2019, Bock presented to his family physician, Thomas Schryver, M.D., for what is described as a second opinion. (JE5, pp. 1-2) Bock described pain and the belief that a lump was present on the left side of his groin. (JE5, p. 1) Dr. Schryver assessed Bock with left testicle pain and a groin strain. He then ordered an ultrasound of Bock's scrotum to further evaluate his complaints. (JE5, p. 2)

On December 19, 2019, Bock returned to Ms. Mauch and reported a decrease in his overall pain following a course of prednisone. (See JE4, p. 12) He reported his worst pain was located in the left groin. He described the pain as sharp and intermittent, and noted that his pain changed with position changes and steps. Ms. Mauch also ordered an MRI of the right shoulder. (Id.) Given his history of a prior inguinal hernia repair, Ms. Mauch recommended a referral to William Rizk, M.D. (JE4, p. 4) Dr. Rizk performed Bock's bilateral inguinal hernia repairs and umbilical hernia repair in May 2016. (See JE1, p. 1)

Bock presented to Dr. Rizk on January 7, 2020, with concerns of left inguinal hernia pain following a slip and fall on ice. (JE1, p. 1) He described pain in his left groin when coughing, as well as sharp pain and pulling with certain movements. (Id.) Dr. Rizk did not observe a bulge in the area upon examination. (Id.) Dr. Rizk reassured Bock that there was no evidence of a recurrent left inguinal hernia and opined that his symptoms and examination were consistent with a left groin strain. (JE1, p. 3)

Ms. Mauch next referred Bock for an orthopedic evaluation of his right shoulder and knee on January 17, 2020. (JE4, p. 12) She told claimant he could follow-up with Dr. Rizk if his left groin pain continued. (JE4, pp. 12-13)

Bock presented for an initial evaluation with orthopedic specialist Aaron Althaus, M.D., of Tri-State Specialists, on January 29, 2020. (JE3, p. 1) Bock reported right shoulder pain, right knee pain, and left groin pain that had been present since the date of injury. Dr. Althaus found evidence of osteoarthritis in the affected joints and noted claimant's reports that he had never experienced pain or discomfort prior to the work injury. Dr. Althaus opined the work injury likely exacerbated some of claimant's osteoarthritis. He ordered an MRI of the right knee and performed a right shoulder injection. (JE3, p. 3) Dr. Althaus also administered an intra-articular left hip injection. (See JE3, p. 5)

The MRI of the right knee, dated February 6, 2020, revealed tears of the medial meniscus and mild-to-moderate arthritis. (JE3, pp. 7-8)

Bock returned to Tri-State Specialists on February 19, 2020, to review his MRI results with Dr. Althaus. (JE3, p. 9) At the time, Bock was reporting that his primary complaint was pain in his right knee. (See Claimant's Exhibit 1, page 6) He reported that his right shoulder pain improved following injection, and that his left hip pain was "60% better" following injection. (See Ex. 1, p. 6) Dr. Althaus provided Bock with a second right knee injection and discussed the possibility of right knee surgery. (See Ex. 1, p. 6)

Unfortunately, it appears the improvement in Bock's left hip pain was short-lived. On April 1, 2020, Bock returned to Dr. Althaus and described worsening left hip pain. (JE3, p. 10) He described his left hip pain as his worst condition. (Id.) On examination, Bock had painful range of motion. (JE3, p. 12) Dr. Althaus diagnosed left hip osteoarthritis with bone-on-bone articulation, right knee osteoarthritis, and right shoulder arthritis. (Id.) He again opined that the work injury exacerbated pre-existing arthritis in all three joints, with the left hip being most symptomatic. (Id.)

Dr. Althaus discussed treatment options with Bock, including, “doing nothing, activity modifications, anti-inflammatories, a cortisone injection, physical therapy, and surgery.” (Id.) Dr. Althaus expressed that Bock, “would be a candidate for a total hip arthroplasty, and he would do well.” (Id.) Despite opining that the work injury exacerbated pre-existing arthritis in all three joints, he noted the procedure would have to be done under Bock’s private health insurance. (Id.) Dr. Althaus did not elaborate on his reasoning.

Following the April 1, 2020, appointment, Dr. Althaus requested and received authorization for platelet rich plasma (PRP) injections for claimant’s right knee. (JE3, p. 13) Dr. Althaus administered the first set of injections on April 29, 2020, May 6, 2020, and May 13, 2020. (JE3, pp. 18, 20, 22) Following this series of three injections, Bock rated his right knee pain 1/10. (JE3, p. 26) As a result of claimant’s improvement, Dr. Althaus estimated that Bock could return to full duty work in late July, 2020. (JE3, p. 28)

On July 22, 2020, Bock reported that the PRP injections significantly helped his condition; however, he was reportedly still experiencing pain on a daily basis. (JE3, p. 30) As such, he requested a second round of injections. (Id.) The injections were approved and administered between September and October, 2020. (See JE3, pp. 34, 37, 42) Bock reported 10 percent improvement with the second round of PRP injections. (JE3, p. 45)

Bock was happy with the improvements he had seen through conservative treatment, and he reported the same to Dr. Althaus on November 11, 2020. (Id.) That being said, he continued to describe significant pain that he managed with work restrictions and anti-inflammatory medication. Dr. Althaus felt additional observation was warranted and continued Bock’s work restrictions for an additional three months. (JE3, p. 46)

Despite observing ongoing swelling and discomfort in Bock’s knee, Dr. Althaus returned Bock to full duty work on February 10, 2021. (JE3, p. 51)

After working full duty for approximately one month, Bock returned for a follow-up appointment with Dr. Althaus. (JE3, p. 54) Bock reported that he was still doing well, but had a small area of concern over his anterior knee, “almost like a lump that moves around.” (Id.) Dr. Althaus felt the lump was a mobile piece of bursa and recommended observation of the same. (JE3, pp. 55-56) Dr. Althaus closed out the medical record by placing claimant at maximum medical improvement. (JE3, p. 56) He noted that Bock could be a candidate for further diagnosis and/or treatment if he experienced a worsening of symptoms. (Id.)

Unfortunately, Bock returned to Dr. Althaus on August 20, 2021, reporting worsening right knee pain, “as he has been doing more at work.” (JE3, p. 59) The medical record notes that claimant had experienced right knee pain ever since the date of injury. (Id.) Bock’s pain was “quite severe” and affecting his job and quality of life. (Id.) Dr. Althaus assessed Bock with worsening symptoms of right knee osteoarthritis with bone-on-bone arthritic changes, and opined Bock was a candidate for a total knee replacement “in the setting of his workers’ compensation injury.” (Id.) Dr. Althaus

placed Bock on sedentary duty restrictions as of September 1, 2020, pending approval of the right total knee replacement. (JE3, p. 62)

Defendants assert that Dr. Althaus was confused in August of 2021 when he documented that claimant had experienced right knee pain since the date of injury. Following my review of the medical records in evidence, I do not reach the same conclusion as defendants. The medical records in evidence indicate claimant's pain was periodically controlled with the use of conservative treatment and work restrictions. There is little to no evidence his pain ever completely resolved between the date of injury and August 20, 2021.

On September 17, 2021, Dr. Althaus provided the following assessment: "Symptomatic right knee osteoarthritis as a result of a work injury which has led to degenerative arthritis as a result of the type of work the patient does, as well as exacerbation of his symptoms during his return to duty." (JE3, p. 66)

In response to Dr. Althaus' recommendation of a total knee replacement, defendants scheduled Bock to present to an independent medical examination with Ryan Meis, M.D., of CNOS. (Exhibit A) Dr. Meis examined Bock on October 1, 2021. (Ex. A, p. 1) Dr. Meis described the injury as a right knee problem only and assessed Bock with right knee pain due to primary osteoarthritis. (Ex. A, p. 3)

Dr. Meis opined: "He has had appropriate care for his knee injury by all treating providers. I do feel that the treatment he has received up until now has been related to his work injury from 11/29/2019." (Id.) Nevertheless, Dr. Meis ultimately opined that Bock's current diagnosis and need for a total knee replacement was not causally related to the November 29, 2019, work injury. (Ex. A, p. 4) Dr. Meis provided: "While I certainly have no reason to doubt that his pain symptoms after his injury never completely resolved prior to becoming severely arthritic, this is potentially the natural progression of arthritis that occurs in somebody his age category that is significantly overweight." (Ex. A, p. 3)

Dr. Meis further opined that the progression of Bock's arthritic change was not related to his work injury because there was no evidence on the MRI of a significant intra-articular event having occurred. (Id.) Such an opinion is at odds with the opinions of the initial reviewing physician, Dr. Althaus, and Dr. Bansal. All three physicians observed a medial meniscus tear on the February 6, 2020, MRI report. (JE3, pp. 7-8; Ex. 1, pp. 6, 14)

Notably, Dr. Meis did not have all of claimant's medical records when he rendered his causation opinion. More specifically, Dr. Meis provided that he was unable to review any of Dr. Althaus' medical records between January 29, 2020, and August 20, 2021. (Ex. A, p. 1) There is no indication in the record that Dr. Meis was ever afforded an opportunity to review the same. I find that Dr. Meis did not have a complete and accurate record when he rendered his opinion on causation.

Following receipt of Dr. Meis' report, authorization of the total knee replacement, as recommended by Dr. Althaus, was denied on October 15, 2021. (Ex. 2, p. 1) Between September 1, 2021, and October 15, 2021, defendants paid claimant 6.283 weeks of temporary total disability benefits.

Following the denial, Bock decided against moving forward with surgery. Understandably, Bock testified that he declined the recommended surgery because he had to keep working in order to provide for his family. (See Hr. Tr., p. 43)

Counsel for claimant produced a letter to Dr. Meis on December 22, 2021. (Ex. 6) The letter asked Dr. Meis to "Agree" or "Disagree" with several statements regarding Bock's condition. (Ex. 6, pp. 1-2) Dr. Meis responded to the letter on January 28, 2022; however, he did not address the majority of the statements provided by claimant's counsel; rather, he simply stated that his IME opinions were based on the relevant information available to him at the time, and his opinions had not changed. (Ex. 6, p. 1) Dr. Meis did, however, agree with the assertion that he was not asked to issue an opinion regarding a left hip injury. (Ex. 6, p. 2)

Despite defendants' denial of additional treatment, Bock presented to Dr. Althaus on January 12, 2022. (JE2, p. 8) At this juncture, it is worth noting that Tri-State Specialists merged with CNOS in January 2022. As such, Dr. Althaus' medical records are contained in both Joint Exhibit 2 and Joint Exhibit 3. In the January 12, 2022, record, Dr. Althaus documented that Bock's right knee pain had been improving with diminished activity. Given said improvement, and the lack of limited duty work available to him, Bock was interested in returning to full duty work. Dr. Althaus felt Bock's request was reasonable and agreed to release him to full duty work with instructions to follow-up after one month. (JE2, p. 8)

At hearing, Bock confirmed that he requested a release to full duty work. (Hr. Tr., p. 46) Bock testified that he needed to return to work to ensure that he did not lose his health insurance. (Id.) Bock testified that prior to requesting a full-duty release, an individual by the name of "Ted Duffy" assured him that he would have a full-time helper to assist him if he returned to work with the defendant employer. (Id.)

Shortly thereafter, Bock returned to his full-time job as an elevator service mechanic. He remained in this role at the time of hearing. (Hr. Tr., p. 62) Bock testified his job duties have not changed; however, he now works with a full-time "helper" to handle all of the physical aspects of the job. (Hr. Tr., p. 30; Hr. Tr., pp. 42-43) Bock testified that he handles all of the paperwork and troubleshooting. (Hr. Tr., p. 30) Bock asserts he would not be able to continue working as an elevator service mechanic without a full-time helper. (Hr. Tr., p. 29)

Defendants acknowledged that Bock works with a helper; however, they contend he worked with a helper prior to the date of injury. (Hr. Tr., p. 64) Bock argues that defendants' assertion is misleading. He asserts that the helper he had prior to the date of injury only provided assistance when there was a safety concern, such as when a two-person lift was required. As previously stated, his current helper handles all of the physical aspects of claimant's job. (Id.)

At his one-month follow-up appointment, Bock reported increasing left hip and right knee pain. (JE2, p. 10) Theresa Swenson, PA-C, noted that Bock was walking with a limp on the right side. She also noted a moderate effusion of the knee and tenderness to palpation with any type of manipulation. With respect to the left hip, Ms. Swenson observed pain in the anterior groin with any type of passive range of motion. (Id.) Given the increase in symptoms, Bock requested repeat injections and inquired about additional, alternative treatments available to him. (Id.) Ms. Swenson assessed Bock with osteoarthritis of the right knee and left hip and restricted him to light duty work. She prescribed a hinged knee brace for the weakness and deformity through the right knee requiring stabilization. She also administered a cortisone injection to the right knee and scheduled Bock for an injection to the left hip. (Id.)

Claimant's counsel produced a letter, dated February 21, 2022, to Dr. Althaus, seeking clarification of his initial opinions regarding causation. (Ex. 6, p. 3) Of particular interest, Dr. Althaus was asked if the November 29, 2019, incident was a significant contributing factor to Bock's knee and/or left hip becoming symptomatic. (Id.) In a letter dated March 21, 2022, Dr. Althaus declined to provide an opinion on causation. He provided, "Due to the patient/physician relationship and the IME opinion within CNOS, I will defer to an outside opinion on causation if warranted." (Ex. 6, p. 5) In other words, Dr. Althaus declined to provide a causation opinion due to a perceived conflict of interest now that he works at CNOS with Dr. Meis. Regardless of causation, Dr. Althaus opined that Bock will require total joint replacements for his knee and hip as symptoms warrant in the future. (Id.)

In response to the opinions of Dr. Meis, and the lack of opinion from Dr. Althaus, Bock secured an independent medical evaluation with Sunil Bansal, M.D. The examination occurred on April 8, 2022. (Ex. 1, p. 1) Consistent with the initial diagnostic imaging, Dr. Bansal diagnosed Bock with right knee medial meniscus tears, aggravation of medial compartment and trochlear notch chondromalacia, and aggravation of right knee osteoarthritis. (Ex. 1, p. 14) Dr. Bansal opined that from both mechanistic and temporal standpoints, Bock's current right knee condition is related to the November 29, 2019, work injury. (Ex. 1, pp. 14-15) He explained that the presence of pre-existing structural arthritis does not negate or dismiss the fact that the condition was asymptomatic prior to the November 29, 2019, work injury, and was "lit up" by said injury. (Ex. 1, p. 15) In terms of additional treatment, Dr. Bansal recommended intermittent steroid and/or viscosupplementation injections and eventually a total knee replacement. (Id.)

With respect to Bock's left hip, Dr. Bansal diagnosed an aggravation of left hip degenerative joint disease, with bone-on-bone disease. (Id.) Dr. Bansal opined that Bock aggravated his left hip arthritis by traumatically impacting it on November 29, 2019. (Ex. 1, p. 16) In addition, Dr. Bansal opined that Bock now has an altered gait secondary to his right knee pathology. (Ex. 1, p. 18) In terms of additional treatment, Dr. Bansal recommended intermittent steroid and/or viscosupplementation injections and eventually a total hip replacement. (Ex. 1, p. 18)

The parties stipulate that Bock sustained an injury, arising out of and in the course of his employment, on November 29, 2019; however, defendants deny that the work injury materially aggravated Bock's right knee and left hip osteoarthritis. As such, the primary issue in this case is whether claimant carried his burden of proving the stipulated work injury was a cause of temporary and/or permanent disability.

Three physicians have provided opinions regarding whether the November 29, 2019, work injury materially aggravated, accelerated, or lit up claimant's pre-existing right knee condition.

Dr. Althaus has served as Bock's treating physician since January 29, 2020. He has examined claimant's condition on numerous occasions and provided opinions and recommendations regarding the same. He was certainly in an advantageous position to consider and determine whether the November 29, 2019, work injury materially aggravated or lit up Bock's pre-existing condition and accelerated his need for surgical intervention. While Dr. Althaus declined the opportunity to confirm his opinions on causation, he causally related Bock's ongoing knee pain and need for surgery to the November 29, 2019, work injury, prior to Tri-State Specialists' merger with CNOS. (See JE3, pp. 3, 12)

Dr. Bansal's report is consistent with Dr. Althaus' initial causation opinion. After conducting a comprehensive review of the medical records in evidence, Dr. Bansal opined that the mechanism of injury caused medial meniscus tears and set in motion a series of biochemical events that led to an aggravation of his medial compartment degenerative disease and chondromalacia, to the point where he now requires a total knee arthroplasty. Dr. Bansal's opinion is consistent with the February 6, 2020, MRI report, which noted meniscus tears. (See JE3, pp. 7-8) I find the causation opinion of Dr. Bansal to be persuasive, credible, and consistent with the opinions of the treating physician.

In comparison, Dr. Meis is the only physician to find no causal relationship exists between the need for a total knee replacement and the November 29, 2019, work injury. There are several glaring issues with Dr. Meis' report.

First, Dr. Meis did not have all of claimant's medical records when he rendered his causation opinion. More specifically, Dr. Meis did not have access to over 18 months of medical records from Bock's authorized treating physician, Dr. Althaus. (Ex. A, p. 1) There is no indication in the record Dr. Meis was ever afforded an opportunity to review all of claimant's medical records and confirm his initial opinions. I find that Dr. Meis did not have a complete and accurate record when he rendered his opinion on causation. Such a finding significantly diminishes the credibility afforded to Dr. Meis' opinions.

Second, Dr. Meis' report fails to address whether the November 29, 2019, work injury materially aggravated, accelerated, or lit up claimant's underlying and pre-existing right knee osteoarthritis. Instead, the report essentially addresses whether the November 29, 2019, work injury caused the underlying, pre-existing condition of osteoarthritis. In doing so, Dr. Meis fails to utilize the correct causation standard when

addressing the injury to claimant's right knee. Dr. Meis' failure to use the correct causation standard similarly diminishes the credibility of Dr. Meis' opinions.

Additionally, Dr. Meis' causation opinion is based, in part, on a review of the February 6, 2020, right knee MRI that is at odds with the impressions of the radiologist, Dr. Althaus, and Dr. Bansal. Dr. Meis acknowledged that knee injuries are capable of causing rapid demise of the joint and explained that the rapid demise typically follows a meniscal root injury, a significant chondral defect, or potential ligamentous instability. According to Dr. Meis, the MRI revealed some pre-existing arthritic change, but no meniscal tear or significant cartilage defects that would lead to an acute progression of osteoarthritis. (Ex. A, p. 3) He ultimately opined, "I feel that the progression of his arthritic change is not related to his work injury because although he had an injury to his knee and had symptoms in his knee, there was no evidence on MRI of a significant intra-articular event that occurred." (*Id.*) In comparison, Eric Luebbert, D.O., Dr. Althaus, and Dr. Bansal all observed a medial meniscus tear on the February 6, 2020, right knee MRI. (JE3, pp. 7-8; Ex. 1, pp. 6, 14)

Lastly, Dr. Meis' report contains a number of opinions that are largely speculative and, in some areas contradictory. As an example, Dr. Meis opined, "While I certainly have no reason to doubt that his pain symptoms after his injury never completely resolved prior to becoming severely arthritic, this is potentially the natural progression of arthritis that occurs in somebody in his age category that is significantly overweight." (Ex. A, p. 3) He further opined, "The progression of his arthritic change is coincidental in my opinion to his knee injury." I do not find Dr. Meis' explanation particularly logical or convincing.

Having determined that Dr. Meis did not possess a complete and accurate medical record, he failed to utilize the correct causation standard, and his analysis of the February 6, 2020, MRI report is at odds with the impressions of three other physicians, I assign no weight to Dr. Meis' causation opinion.

Having accepted the causation opinions of Dr. Bansal, I find Bock carried his burden of proving the November 29, 2019, work injury materially aggravated, accelerated, or lit-up his pre-existing right knee condition and accelerated his need for surgical intervention.

Turning to the left hip condition, Dr. Bansal is the only physician to definitively address causation. Defendants correctly note that Dr. Althaus assessed the left hip issue as osteoarthritis and opined the condition would need to be treated outside of Bock's workers' compensation claim. However, Dr. Althaus did not provide any analysis to support his opinion and ultimately elected to defer to an outside opinion on causation. Dr. Meis was not asked to issue an opinion regarding an injury to Bock's left hip. (Ex. 6, p. 2)

Dr. Bansal concluded that Bock aggravated his left hip arthritis from traumatically impacting it on November 29, 2019. (Ex. 1, p. 16) Dr. Bansal opined the inflammatory response to traumatic impact was most likely what aggravated his left hip degenerative joint disease. He further opined that the work injury did not cause a temporary exacerbation of claimant's pre-existing condition, as a temporary exacerbation

presupposes a return to a pre-injury baseline. Dr. Bansal noted that Bock has not returned to his pre-injury baseline, which he characterized as doing well with no left hip pain. (Id.) Additionally, Dr. Bansal explained that Bock now has an altered gait secondary to his right knee pathology, and the same can add contralateral stress to the hip joint. (Ex. 1, p. 18)

Bock's left hip condition was asymptomatic before the November 29, 2019, work injury. Following the work injury, Bock's authorized treating physician diagnosed left hip osteoarthritis with bone-on-bone articulation and opined that the work injury likely exacerbated Bock's pre-existing arthritis. As part of Bock's treatment plan, Dr. Althaus administered an intra-articular left hip injection on February 6, 2020. Bock reported 60 percent improvement from the injection. Unfortunately, Bock returned to Dr. Althaus and described worsening left hip pain on April 1, 2020. Following his examination, Dr. Althaus discussed additional treatment options with Bock. One of the options discussed was a total hip arthroplasty; however, Dr. Althaus noted that the procedure would have to be done under Bock's private health insurance. Dr. Althaus did not provide any analysis as to why the osteoarthritis in the left hip, but not the right knee, would need to be addressed outside of Bock's workers' compensation claim.

Based on the evidentiary record as a whole, I accept the unrebutted causation opinion of Dr. Bansal and find Bock's current left hip condition remains causally related to the November 29, 2019, work injury.

The undersigned is cognizant of defendants' argument that Bock did not report any complaints involving his left hip between April 1, 2020, and February 28, 2022. Defendants' argument does not negate the fact Dr. Althaus' assessment of osteoarthritis with bone-on-bone articulation and his recommendation for a total hip arthroplasty occurred in the months following the November 29, 2019, work injury, and there is no evidence claimant experienced issues with his left hip prior to the date of injury.

Additionally, it appears claimant's lack of reporting was due, at least in part, to a belief that care for the left hip was no longer authorized following his April 1, 2020, appointment with Dr. Althaus. As detailed in the above medical records summary, Bock consistently reported left hip pain to his treating physicians between November 29, 2019, and April 1, 2020. On April 1, 2020, Bock presented to Dr. Althaus and reported increasing left hip pain. He then categorized his left hip pain as his greatest concern. Dr. Althaus offered to perform a left hip replacement; however, he told Bock that the procedure would likely involve closing his case and pursuing the recommended surgery under his own insurance. As explained by defendants, claimant "seemed to accept" that his left hip condition would need to be treated outside of his work comp claim.

At hearing, Bock appeared surprised to learn that there was a nearly two-year gap in the medical records between left hip complaints. (See Hr. Tr., p. 58) He testified his left hip pain never went away, and if the medical records do not reflect left hip complaints, it is likely because the right knee became his primary concern. (See Hr. Tr., p. 53) Bock provided a similar explanation during his independent medical examination. According to Dr. Bansal's report, Bock has experienced left hip pain since the date of

injury; however, it was not as bad as his knee, and he described the pain as intermittent. He also relayed that his left hip pain increased with activity. (Ex. 1, p. 11)

Claimant's activity was relatively limited between April 1, 2020, and February 18, 2022. Following the April 1, 2020, appointment, claimant was returned to light duty work with a 10-pound lifting restriction, and functional limitations including no kneeling, crawling, climbing ladders, bending, and twisting. (See JE3, p. 13) Bock operated under these restrictions until approximately February 10, 2021. (See JE3, pp. 50-51) Unfortunately, claimant's right knee pain increased with the return to full duty work. By August 20, 2021, Bock's pain was "quite severe" and "affecting his job[.]" (JE3, p. 59) As a result, Dr. Althaus imposed sedentary restrictions. (JE3, p. 62) Claimant operated under sedentary restrictions until January 12, 2022, when claimant requested a return to full duty work for financial reasons. Shortly after returning to full duty work, claimant reported an increase in his right knee and left hip pain.

Claimant's prolonged recovery and limited activity between April 1, 2020, and February 18, 2022, tends to support claimant's testimony and the statements he made to Dr. Bansal. Ultimately, I find defendants' argument does not outweigh the credible, un rebutted opinions of Dr. Bansal with respect to the alleged left hip condition.¹

On the Hearing Report, Bock asserts entitlement to temporary disability benefits; however, he failed to provide what additional time periods he would be entitled to benefits. Additionally, Bock provided no argument regarding temporary disability benefits in his post-hearing brief. As such, I find Bock failed to prove entitlement to additional temporary disability and/or healing period benefits.

Bock next asserts entitlement to permanent partial disability benefits.

Defendants assert Bock is not entitled to permanent partial disability benefits at this time as he has not reached maximum medical improvement. More specifically, defendants argue it would be inappropriate to award permanent disability before claimant pursues the surgical recommendations of Dr. Althaus and Dr. Bansal.

Dr. Althaus placed claimant at maximum medical improvement on March 10, 2021. (JE3, p. 56) Dr. Meis did not provide a specific date; however, he nevertheless opined that claimant was at maximum medical improvement in his October 1, 2021, report. (Ex. A, p. 4) Dr. Bansal assigned permanent impairment, but did not expressly provide that claimant is at maximum medical improvement.

Although claimant continues to treat with Dr. Althaus, the treatment appears to be maintenance related. There is no indication that the treatment being provided will significantly improve the right knee and left hip conditions. Importantly, Bock is not

¹ The parties stipulated that if the injury is found to be a cause of permanent impairment, the disability is an industrial disability. (Hearing Report, page 2; Hr. Tr., p. 6) A finding that claimant failed to carry his burden of proving the November 29, 2019, injury materially aggravated, accelerated, or lit up the pre-existing left hip condition, would require the undersigned to reject a stipulation of the parties. The rejection of a stipulation has been found to be a denial of due process.

specifically requesting that the undersigned order defendants to authorize and schedule the surgical recommendations of Dr. Althaus and Dr. Bansal. There is no indication that claimant intends to undergo surgical intervention in the near future. Although he may seek future medical treatment, I find Bock is at maximum medical improvement unless and until he undergoes surgical intervention.

Utilizing the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Bansal assigned 10 percent lower extremity impairment, or 4 percent whole person impairment, for a loss of knee flexion. (Ex. 1, p. 15) Dr. Bansal assigned 6 percent whole person impairment for loss of range of motion in the left hip. (Ex. 1, p. 18) Importantly, these impairment ratings were assigned with the understanding they would only apply if Bock declined surgical intervention. (See id.)

Dr. Althaus opined, "In regard to his impairment with a diagnosis of right knee osteoarthritis and left hip osteoarthritis treated conservatively, per the Fifth Edition no impairment." (Ex. 6, p. 5)

Dr. Meis did not assign an impairment rating as he did not believe the arthritic changes in Bock's right knee were causally related to the November 29, 2019, work injury. (Ex. A, p. 4)

Having accepted Dr. Bansal's opinion that the November 29, 2019, work injury, materially aggravated, accelerated, and lit up the pre-existing conditions in claimant's right knee and left hip, I similarly accept Dr. Bansal's impairment ratings as convincing and credible. I find claimant sustained 4 percent permanent functional impairment of the whole person as a result of the right knee injury. I further find claimant sustained 6 percent permanent functional impairment of the whole person as a result of the left hip injury. Utilizing the combined values chart on page 604, these impairment ratings combine to make a total impairment rating of 10 percent.

Bock returned to work for the defendant employer. Today, he earns the same or greater wages than he did at the time of his injury. As such, he is only entitled to recover the functional loss of his right knee and left hip injuries.

In his post-hearing brief, claimant references the need for additional medical treatment. More specifically, claimant asserts he needs to be returned to Dr. Althaus for knee and hip replacements. Alternatively, claimant requests a referral to GIKK Orthopaedics or Nebraska Spine. (Bock Post-hearing Brief, pages 7-8) Claimant did not request alternate care under Iowa Code section 85.27 on the hearing report. While defendants will be ordered to provide ongoing care for the right knee and left hip conditions, I make no findings with respect to the specific alternate care requested.

CONCLUSIONS OF LAW

Claimant is seeking a determination as to whether his current right knee and left hip conditions are causally related to the November 29, 2019, work injury.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only

cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

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

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

In this case, I found the opinions of Dr. Bansal to be the most credible and convincing in the evidentiary record. Accordingly, I found that Bock proved his current right knee and left hip conditions remain causally related to the November 29, 2019, work injury. I further found that claimant carried his burden of proving he sustained permanent disability as a result of the November 29, 2019, work injury.

On the Hearing Report, the parties stipulated that if the injury was found to be a cause of permanent disability, the disability is an industrial disability, with benefits commencing on November 7, 2021.

Iowa Code section 85.34(2)(v) provides, in part:

If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

It is undisputed that following the November 29, 2019, work injury, claimant returned to work for the defendant employer and received the same or greater earnings than what he was receiving at the time of the injury. As of the date of hearing, Bock continued to work as a service technician for the defendant employer.

Iowa Code section 85.34(2)(v) continues:

Notwithstanding section 85.26, subsection 2, if an employee who is eligible for compensation under this paragraph returns to work with the same employer and is compensated based only upon the employee's functional impairment resulting from the injury as provided in this paragraph and is terminated from employment by that employer, the award or agreement for settlement for benefits under this chapter shall be reviewed upon commencement of reopening proceedings by the employee for a determination of any reduction in the employee's earning capacity caused by the employee's permanent partial disability.

Having weighed the competing medical evidence, and after accepting the impairment ratings of Dr. Bansal, I found Bock proved a functional loss equivalent to 10 percent whole person impairment as a result of the November 29, 2019, work injury.

Claimant is entitled to a proportional award equivalent to 10 percent of 500 weeks. Iowa Code section 85.34(2)(v). Therefore, I conclude claimant is entitled to an award of 50 weeks of permanent partial disability benefits. These benefits shall commence on the stipulated date of November 7, 2021. (Hearing Report)

Bock next seeks reimbursement of the medical expenses contained in Exhibit 5. Defendants dispute whether the listed expenses are causally connected to the work injury and assert the requested expenses were not authorized.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Claimant has provided documentation of his medical expenses in Exhibit 5. Exhibit 5 contains a two-page account inquiry from CNOS, and a one-page receipt for a \$300.00 payment from Bock to CNOS. (Ex. 5, pp. 1-3) The account inquiry from CNOS references a single office visit on February 18, 2022. (Ex. 5, p. 1) It is unclear what was charged as a result of the February 18, 2022, office visit. Claimant does not clarify the amount sought. Based on the limited information and lack of explanation provided, I find claimant failed to prove the various expenses in the CNOS account inquiry are causally related to the work injury. Defendants are not responsible for any of the charges provided in the CNOS account inquiry.

The one-page receipt for a \$300.00 payment from Bock to CNOS does not provide what the \$300.00 payment covered. At hearing, Bock testified that one of the out-of-pocket medical expenses stems from a knee brace. (Hr. Tr., p. 48) A review of the medical records in evidence reveals Dr. Althaus' office prescribed a hinged knee brace on February 18, 2022. (JE2, p. 10) The \$300.00 payment is dated March 22, 2022. (Ex. 5, p. 3) I accept claimant's testimony and find the \$300.00 payment was for the prescribed knee brace. I further find claimant carried his burden of proving the \$300.00 payment in Exhibit 5 was for treatment causally related to the November 29, 2019, work injury. Defendants are responsible for the \$300.00 payment provided in Exhibit 5.

Claimant also seeks reimbursement for the independent medical evaluation performed by Dr. Bansal on April 8, 2022. (Ex. 1, p. 1) Defendants stipulated at hearing that Dr. Bansal's IME would be reimbursed, and defense counsel has since confirmed the reimbursement occurred. The issue is now moot.

Lastly, claimant is seeking a specific taxation of his costs under rule 876 IAC 4.33. The parties stipulated that claimant's costs have been paid.

The agency is granted broad discretion in determining what costs can be assessed. Iowa Code section 86.40 states "All costs incurred in the hearing before the commission shall be taxed in the discretion of the commissioner." Id.

The only cost provided in Exhibit 5 is a receipt for medical records obtained from Tri-State Specialists for \$37.00. Claimant does not cite to a specific subsection of administrative rule 4.33 that is applicable to the expense of obtaining medical records from a provider. I decline to tax the costs associated with obtaining medical records.

ORDER

THEREFORE IT IS ORDERED:

Defendants shall pay unto claimant fifty (50) weeks of permanent partial disability benefits commencing on November 7, 2021, at the weekly rate of one thousand two hundred fifty-one and 45/100 dollars (\$1,251.45).

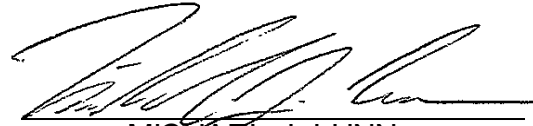
Defendants shall pay accrued weekly benefits in a lump sum together with interest payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent, as required by Iowa Code section 85.30.

Defendants shall provide claimant ongoing medical care of his right knee and left hip.

Defendants are responsible for past medical expenses as set forth above.

Pursuant to rule 876 IAC 3.1(2), defendants shall file subsequent reports of injury as required by this agency.

Signed and filed this 12th day of December, 2022.

A handwritten signature in black ink, appearing to read "Michael J. Lunn", written over a horizontal line.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

AI Sturgeon (via WCES)

Sarah Kieber (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.