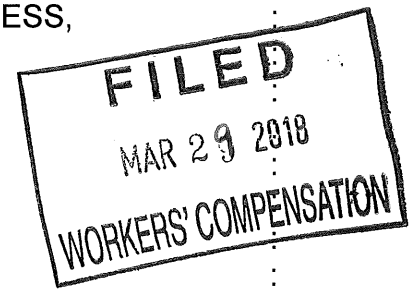
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RONNIE DEAN HARNESS, Claimant, vs. STATE OF IOWA, Self-Insured, Employer, Defendant.		File No. 5062583 ARBITRATION DECISION Head Notes: 1402.40, 1802, 1803

STATEMENT OF THE CASE

Claimant, Ronnie Dean Harness, filed a petition in arbitration seeking workers' compensation benefits from State of Iowa, self-insured employer, as defendant, as a result of a stipulated injury sustained on October 17, 2014. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, on August 31, 2017, in Des Moines, Iowa. The record in this case consists of joint exhibits 1 through 7, claimant's exhibits 1 and 2, defendant's exhibit A, and the testimony of the claimant. The parties submitted post-hearing briefs, the matter being fully submitted on September 15, 2017.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant's ongoing left knee condition and need for total knee replacement are causally related to the stipulated work injury of October 17, 2014;

2. Whether claimant is entitled to temporary disability benefits from June 24, 2015 through August 27, 2015;

3. Whether the work injury is a cause of permanent disability;

4. Extent of any permanent disability to claimant's left leg;

5. Whether claimant is entitled to reimbursement for an independent medical examination (IME) and incidental mileage expenses pursuant to Iowa Code section 85.39; and

6. Specific taxation of costs.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

FINDINGS OF FACT

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

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

Claimant was 61 years of age at the time of hearing. For nearly 23 years, claimant has served as a correctional officer for defendant. His duties involved extensive movement about the Mt. Pleasant facility, as well as searches of individual cells and restraining of inmates. (Claimant's testimony)

In the early 1990s, claimant slipped in oil and twisted his left knee. Claimant underwent treatment with Scott Neff, D.O. He underwent two arthroscopic procedures, designed to treat an injured meniscus. Following the second surgery in 1992, claimant testified his complaints resolved. He denied any ongoing problems or pain of the left knee. (Claimant's testimony)

On October 17, 2014, claimant presented to work, where he slipped in a puddle of soda. He slipped, twisted, and began to fall in a split-leg position, but was able to catch himself on a doorknob. As a result of the slip, claimant testified he felt pain in his left leg and groin area. Claimant reported the injury and defendant referred claimant for medical attention. (Claimant's testimony) That same day, claimant presented to the emergency department of Henry County Health Center (Henry County). Claimant was diagnosed with a knee strain and referred for evaluation by a workers' compensation physician. In the interim, claimant was removed from work and received prescriptions for Naproxen and Tramadol. (Joint Exhibit 2, pages 1-2)

On October 20, 2014, claimant presented to Kent Rynders, M.D., for evaluation. Dr. Rynders noted claimant's history of 2 left knee surgeries approximately 20 years prior, with "no problems" until a work injury on October 17, 2014. (JE3, p. 1) Claimant underwent left knee x-rays which, per the radiologist, revealed osteoarthritic changes, most prevalent in the medial compartment. (JE2, p. 3) Dr. Rynders ordered a left knee MRI and prescribed hydrocodone. Claimant expressed belief he could return to work without restrictions. Accordingly, Dr. Rynders released claimant without restrictions;

however, he cautioned that if claimant experienced significant pain, he needed to "back off and go back home" to rest, elevate, and ice the knee. (JE3, p. 2) Claimant returned to work following the evaluation. (Claimant's testimony)

Claimant underwent the ordered left knee MRI on October 30, 2014. The radiologist opined the results revealed: marked attenuation of the body and posterior horn of the medial meniscus, believed to be secondary to a prior partial meniscectomy; severe osteoarthritic changes of the medial femoral compartment and mild osteoarthritis of the lateral and patellofemoral compartments; and prepatellar and infrapatellar bursitis. (JE4, pp. 1-2)

Claimant returned to Dr. Rynders in follow up on November 3, 2014. At that time, Dr. Rynders issued claimant a prescription for MS Contin and a referral for orthopedic evaluation. (JE3, p. 7)

While awaiting orthopedic evaluation, claimant returned to the Henry County emergency department on November 7, 2014. Claimant indicated he had missed work due to knee pain and requested a medical note excusing him from work if his pain level became too severe. The provider declined claimant's request for an excuse which would allow claimant to miss work "when he wanted to." The provider described claimant as angry and defensive upon denial of the request. (JE2, p. 5) A medical excuse was issued noting claimant's significant arthritis and questioning if any possible accommodations could be made. (JE2, pp. 5-6)

Claimant returned to Dr. Rynders on November 10, 2014 and indicated his knee pain could reach excruciating levels. (JE3, p. 8) Accordingly, Dr. Rynders issued work restrictions designed to allow claimant relief should his symptoms become severe. Specifically, Dr. Rynders opined that if claimant's pain was aggravated, claimant should not stand or engage in prolonged walking. He commented that only claimant was capable of determining on a daily basis if his pain was too severe. Dr. Rynders subsequently noted that during symptom flares, claimant would need to sit and rest his knee. (JE3, pp. 8, 10-11) Defendant was unable to accommodate these restrictions. (JE3, p. 11)

At Dr. Rynders' referral, on November 24, 2014, claimant presented to Matthew Bollier, M.D., of the Orthopedic Department of the University of Iowa Hospitals & Clinics. Dr. Bollier noted claimant's history of injury on October 17, 2014 and two prior left knee arthroscopies with meniscal debridement in the early 1990s. Dr. Bollier noted success following the second arthroscopy, with claimant experiencing "zero problems" thereafter. (JE6, p. 1) Dr. Bollier reviewed claimant's MRI and performed a physical examination. (JE6, pp. 2-3) Thereafter, he assessed left knee pain and opined claimant likely suffered from progressive degenerative changes secondary to the prior arthroscopies, but was "completely asymptomatic" prior to the fall at work. (JE6, p. 3) Dr. Bollier ordered x-rays, which were accomplished that day, and recommended an injection of the left knee. (JE6, pp. 3-5) Pending follow up, Dr. Bollier imposed work restrictions of desk-type work, with a maximum 20-pound lift. (JE5, p. 1)

Claimant returned to Dr. Bollier in follow up on December 1, 2014. Dr. Bollier reviewed claimant's x-rays and opined they revealed near complete loss of cartilage in the medial compartment of the left knee. Following examination, Dr. Bollier assessed significant osteoarthritis of the left knee, without pain for many years prior to the work injury, but significantly aggravated thereafter. Dr. Bollier outlined claimant's treatment options and performed a diagnostic/therapeutic injection of the left knee; he noted claimant may ultimately require arthroplasty in the future. Dr. Bollier released claimant to return to work without restrictions on December 6, 2014. (JE5, p. 2; JE6, p. 7)

On December 29, 2014, claimant presented to Dr. Bollier for left knee evaluation. Dr. Bollier noted the injection helped considerably and claimant was much improved. Claimant relayed an ability to work, but complained of occasional twinges of knee pain with twisting. Dr. Bollier opined claimant had achieved maximum medical improvement (MMI) and required no permanent restrictions. He cautioned claimant may require additional injections or arthroplasty in the future. (JE6, pp. 8-9)

Claimant testified the knee injection reduced some inflammation; however, he continued to experience some pain and difficulties with his knee. He denied his symptoms resolved to pre-injury levels. Claimant testified he desired to continue working, so he self-accommodated, including by kneeling upon his right knee or utilizing a cushion under his knees. Over time, claimant's knee pain worsened to a degree it became distracting and caused him to not always be aware of the inmates around him. (Claimant's testimony)

Due to increased symptomatology, claimant returned to Dr. Bollier on April 13, 2015. Dr. Bollier noted approximately three months of relief following the injection, but an increase in symptoms over the past month, "back to the way it was before the injection." Specifically, claimant complained of: medial knee pain with occasional sharp, stabbing pains; instability; and hyperextension of the knee. (JE6, p. 11) Dr. Bollier offered a repeat injection and issued a referral to Dr. Nicolas Noiseux, a joint replacement specialist. Given the specialist referral, claimant declined a repeat injection. (JE6, p. 12)

On April 24, 2015, claimant returned to the emergency department at Henry County and reported left knee symptoms. Peter Reynen, M.D., noted claimant suffered a fall on October 17, 2014 and had experienced "ongoing problems with his knee since that time." (JE2, p. 7) Claimant reported he received some relief with the prior injection and had been managing rather well until only recently. Dr. Reynen aspirated claimant's knee and removed approximately 20 milliliters of fluid. (JE2, pp. 7-8)

Via letter dated April 27, 2014, Dr. Bollier responded to inquiries from defendant's third party administrator. Dr. Bollier noted he treated claimant following the work injury and on December 29, 2014, claimant's pain had "largely resolved." Accordingly, claimant was placed at MMI without restrictions. Dr. Bollier indicated claimant then returned for evaluation on April 13, 2015, with complaints of increased left knee pain. (DEA, p. 1)

Dr. Bollier opined the recommended referral to Dr. Noiseux and possible knee arthroplasty were not caused or accelerated by the October 17, 2014 work injury. Instead, Dr. Bollier highlighted claimant's longstanding osteoarthritic condition and two prior left knee arthroscopies. Dr. Bollier opined claimant's x-rays showed "end-stage" degenerative changes and further opined claimant likely would have required treatment for advanced osteoarthritis regardless of the work injury. He opined claimant likely suffered a temporary symptomatic exacerbation of this underlying condition as a result of the work injury, with claimant returning to normal function with conservative treatment. Coupled with the natural course of osteoarthritis symptoms to wax and wane, Dr. Bollier opined he was unable to attribute claimant's need for surgery to the work injury. (DEA, p. 2)

On April 28, 2015, claimant returned to Dr. Rynders and reported increased swelling and difficulty walking. Dr. Rynders noted claimant experienced knee problems dating to a work injury in October 2014. He noted claimant's joint effusion resolved with Dr. Reynen's treatment and claimant felt "back to normal." Claimant requested to return to work; Dr. Rynders released claimant without restrictions. (JE3, p. 12)

Based upon Dr. Bollier's opinions, defendant denied liability for further medical treatment. (Claimant's testimony) Due to defendant's denial of further care, claimant presented to Bradley Scott, D.O. on May 22, 2015. Dr. Scott noted claimant's history of two arthroscopies and onset of pain after a fall in October 2014. Claimant reported approximately one month of relief following the injection, but described that relief as minimal in the context of work tasks. Dr. Scott performed an examination and assessed osteoarthritis of the left knee. Following discussion of treatment options, claimant elected to proceed with left total knee arthroplasty. (JE7, pp. 1-2)

Dr. Scott performed the recommended total knee arthroplasty on June 24, 2015. (JE7, pp. 5-6) Following surgery, claimant continued to follow up with Dr. Scott, who ordered progressive weight-bearing and physical therapy. (JE7, pp. 5-7, 14, 18) Dr. Scott ultimately released claimant to return to work effective August 21, 2015. (JE7, p. 18) Claimant returned to Dr. Scott in follow up on September 10, 2015. Dr. Scott described claimant as doing well, with continuing improvement. Claimant indicated he tolerated his work, with some soreness of the knee. Dr. Scott released claimant to a home exercise program. (JE7, p. 20)

On March 10, 2016, claimant returned to Dr. Scott for evaluation. At that time, claimant reported some continued soreness, an inability to squat or kneel on the left knee, discomfort with prolonged standing in one spot, and difficulty transitioning from sitting to standing. Dr. Scott opined claimant was doing well overall. Based upon the arthroplasty with a good result, Dr. Scott opined claimant sustained permanent impairment of 22 percent left lower extremity. (JE7, pp. 24-25) Dr. Scott's rating methodology is not specifically identified.

Following a conference with claimant's counsel, Dr. Scott completed a check-the-box form on July 14, 2016. Thereby, Dr. Scott opined the work injury of October 17,

2014 permanently accelerated and aggravated claimant's arthritic knee condition, resulting in Dr. Scott providing treatment. (CE1, p. 1)

At the arranging of claimant's counsel, on November 8, 2016, claimant presented to board certified occupational and environmental medicine physician, Mark Taylor, M.D. for an independent medical examination (IME). Dr. Taylor authored a report containing his findings and opinions dated December 5, 2016. Dr. Taylor performed a records review and completed a medical records summary. He also interviewed claimant. (CE2, pp. 3-5, 9)

Dr. Taylor drafted a history of claimant's left knee conditions. He noted claimant sustained an injury in 1991 which ultimately required two arthroscopies. Following the second arthroscopy in 1992, claimant reported his left knee felt "great... perfect," and he was able to return to normal activities without any additional problems. On October 17, 2014, claimant slipped in soda and his legs partially did the "splits," until claimant was able to catch himself. During the slip, claimant's left leg and knee twisted awkwardly. (CE2, p. 3)

Dr. Taylor noted claimant received medical treatment with Dr. Bollier, including an injection. Thereafter, claimant returned to Dr. Bollier on April 13, 2015, at which time Dr. Bollier indicated the injection provided relief for approximately three months. Claimant informed Dr. Taylor the injection helped for closer to one month and then his symptoms progressively worsened. Dr. Taylor noted Dr. Rynders drained the knee on April 24, 2015 and the increased symptoms and swelling resolved, but his knee did not return to pre-injury status. At that time, claimant indicated he wanted to return to work, as his restrictions were not accommodated and he was instead required to utilize sick leave. (CE2, p. 4) Dr. Taylor noted claimant then treated with Dr. Scott and following total knee replacement, Dr. Scott opined claimant sustained a 22 percent lower extremity or 9 percent whole person impairment rating. Dr. Taylor indicated Dr. Scott appeared to utilize the AMA Guides to the Evaluation of Permanent Impairment, 6th Edition, in computing claimant's impairment. (CE2, p. 5)

Dr. Taylor also performed a physical examination. (CE2, pp. 6-7) Following records review, interview and examination, Dr. Taylor opined claimant's osteoarthritis was "lit-up" by the October 17, 2014 work injury. Dr. Taylor described claimant's knee as asymptomatic for 21 years, without restrictions or limitations and without medical evaluation or treatment. Following the work injury, Dr. Taylor noted claimant was immediately symptomatic and received treatment. Dr. Taylor opined the knee injection was temporarily beneficial, but claimant's symptoms did not return to baseline. Dr. Taylor ultimately opined the work injury lit up previously asymptomatic left knee osteoarthritis and required the total knee arthroplasty performed by Dr. Scott. (CE2, p. 7)

Dr. Taylor opined claimant achieved MMI for the work-related knee condition on September 10, 2015. Given what he described as a good result following total knee replacement, Dr. Taylor opined claimant sustained a permanent impairment of 37

percent left lower extremity by the AMA Guides, 5th Edition. He recommended no permanent restrictions, provided claimant remained employed in a similar capacity within a similar work environment. Dr. Taylor did recommend claimant be able to alternate between sitting, standing and walking, an ability he had been permitted; he also recommended avoidance of prolonged kneeling on hard surfaces with the left knee. (CE2, p. 8)

Defendant provided Dr. Bollier with a copy of Dr. Taylor's IME report for review. On June 29, 2017, Dr. Bollier issued a letter to defendant's third party administrator, setting forth his opinions. Thereby, Dr. Bollier indicated he continued to opine that the work injury of October 17, 2014 likely caused a temporary symptomatic exacerbation and it was unlikely the event resulted in any permanent injury. Dr. Bollier expressed disagreement with the idea that claimant's work injury lit up an asymptomatic condition and caused a need for knee replacement. He explained claimant demonstrated longstanding, preexisting degenerative osteoarthritis and opined this condition was temporarily symptomatically exacerbated, with near complete resolution of such symptoms on December 29, 2014. (DEA, p. 3) Dr. Bollier opined claimant sustained no impairment as a result of the temporary work injury. (DEA, p. 4)

Dr. Bollier opined a natural course of degenerative osteoarthritis included symptoms which arose "out of nowhere." He identified such an instance as occurring when claimant sought care in 2015, months following resolution of symptoms and achievement of MMI. Given resolution of symptoms following the work injury and a passage of several months prior to seeking additional care, Dr. Bollier opined he was unable to attribute claimant's need for surgery to the work injury. (DEA, p. 4) Dr. Bollier noted claimant also presented with several non-occupational risk factors, including age, obesity, and prior surgeries. (DEA, pp. 3-4) Given these risk factors and a history of resolution of symptoms associated with a benign work injury, Dr. Bollier opined he was unable to attribute claimant's need for total knee replacement "to that one incident." (DEA, p. 4)

Claimant remains employed at defendant in his pre-injury position, without restrictions. Claimant is now assigned to work in a more restricted area; however, this change in assignment is not related to any permanent restrictions. Although he reports suffering with ongoing pain, claimant testified he is able to perform the functions of his job. (Claimant's testimony)

CONCLUSIONS OF LAW

The first issue for determination is whether claimant's ongoing left knee condition and need for total knee replacement are causally related to the stipulated work injury of October 17, 2014.

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

The claimant has the burden of proving by a preponderance of the evidence that the 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).

The threshold inquiry for determination is whether the stipulated work injury of October 17, 2014 was temporary or permanent in nature. Claimant argues the work injury resulted in a permanent acceleration, aggravation, or lighting up of an arthritic condition. Claimant relies upon the opinions of Drs. Scott and Taylor. Defendant argues to the contrary, that the work injury resulted only in a temporary symptomatic exacerbation. Defendant relies upon the opinion of Dr. Bollier in support of its position.

Following the stipulated work injury on October 17, 2014, defendant authorized medical evaluation. Dr. Rynders noted claimant underwent two prior left knee arthroscopies, but lacked problems prior to the work injury. At Dr. Rynders' referral, claimant presented to Dr. Bollier on October 24, 2014. Like Dr. Rynders, Dr. Bollier noted claimant experienced no problems following the second left knee arthroscopy. On that date, Dr. Bollier described claimant as completely asymptomatic prior to the work injury, despite likely progressive degenerative changes following the prior arthroscopies. Claimant returned to Dr. Bollier again on December 1, 2014, at which point Dr. Bollier assessed significant osteoarthritis, without pain for many years but

significantly aggravated. He performed a left knee injection. On December 29, 2014, claimant returned to Dr. Bollier, who noted improvement following the injection, but some continued complaints. He placed claimant at MMI, without restrictions, and noted claimant might require future care.

Claimant credibly testified between the second arthroscopy in 1992 and the work injury on October 17, 2014, that he did not experience any symptoms of his left knee. Claimant further testified his symptoms did not return to pre-injury levels following Dr. Bollier's care and further, that he was never pain-free after the work injury. Following Dr. Bollier's release, claimant testified he attempted to continue working, but his symptoms worsened to a degree that interfered with safe performance of his work activities.

As a result of this worsening, claimant returned to Dr. Bollier for evaluation on April 13, 2015, approximately 3 ½ months following his initial release. At that visit, Dr. Bollier noted claimant received approximately 3 months of relief following the injection, but his symptoms had since returned to pre-injection levels. He referred claimant for consideration of a total knee arthroplasty. However, Dr. Bollier subsequently authored a letter opining claimant's need for ongoing care was not caused or accelerated by the work injury. Dr. Bollier opined claimant presented with underlying end-stage degeneration and would likely have required treatment for advanced osteoarthritis regardless of occurrence of the work injury. He opined the work injury caused a temporary symptomatic exacerbation of this underlying condition and claimant returned to normal function with conservative treatment. Dr. Bollier opined he was unable to attribute claimant's need for arthroplasty to the work injury.

Following his appointment with Dr. Bollier, claimant underwent aspiration of his left knee in the emergency room. The physician noted claimant had experienced ongoing symptoms since the work injury and had managed well until recently. Shortly thereafter, claimant also saw Dr. Rynders, who noted claimant had experienced knee problems dating to the work injury.

After defendant denied liability for claimant's condition, claimant sought care with Dr. Scott. Dr. Scott noted claimant's history of two arthroscopies and the work injury, with some relief following a knee injection. Dr. Scott assessed osteoarthritis and performed a left knee arthroplasty/replacement on June 24, 2015. Thereafter, Dr. Scott completed a check-the-box form created by claimant's counsel. Thereby, he opined the work injury permanently accelerated and aggravated claimant's arthritic knee condition, resulting in the treatment provided.

Following completion of treatment, claimant presented to Dr. Taylor for an IME. Dr. Taylor also noted a history of two knee arthroscopies, with no problems following the second surgery in 1992. Claimant informed Dr. Taylor that following left knee injection with Dr. Bollier, his symptoms improved for approximately one month and then progressively worsened. Claimant denied his symptoms returned to pre-injury levels, even following the subsequent aspiration. Dr. Taylor ultimately opined the work injury of

October 17, 2014 lit up previously asymptomatic osteoarthritis of the left knee, requiring total knee replacement with Dr. Scott. Dr. Taylor described claimant as asymptomatic for 21 years, without a need for restrictions, limitations, or medical care, until the work injury. Following the work injury, claimant was immediately symptomatic and received care, including an injection which provided only temporary relief.

Dr. Bollier reviewed Dr. Taylor's report and maintained his original opinion that the work injury resulted in a temporary exacerbation only. He specifically disagreed with the idea that the work injury lit up a previously asymptomatic condition. Dr. Bollier noted claimant presented with non-occupational risk factors, experienced resolution of symptoms, and months passed prior to seeking additional care. He also opined the natural course of osteoarthritis included symptoms which seemingly arose out of nowhere; he opined such an unrelated increase occurred, leading claimant to seek further care in April 2015. As a result, Dr. Bollier opined he was unable to attribute claimant's need for total knee arthroplasty to the work injury. Rather, he opined claimant presented with degenerative osteoarthritis that was temporarily symptomatically exacerbated by the work injury and nearly completely resolved with conservative treatment.

Following consideration of each of the medical opinions in evidence, I find the opinions of Drs. Scott and Taylor are entitled to the greatest weight. The evidence unquestionably supports a conclusion that claimant presented with osteoarthritis of his left knee which predated and was unrelated to the work injury. However, both Drs. Scott and Taylor opined the work injury of October 17, 2014 resulted in a permanent acceleration, aggravation, and/or lighting up of claimant's underlying arthritic condition, necessitating total knee replacement. Dr. Scott served as claimant's treating surgeon, with the ability to observe claimant on multiple occasions, including intraoperatively. He therefore possesses expertise in total knee replacements and greater knowledge of claimant's physical condition than other evaluating physicians. Dr. Taylor evaluated claimant on only one occasion, but based his opinions upon the most complete and accurate history. Dr. Taylor's history is consistent with the entirety of the medical record, which consistently describes claimant as asymptomatic from 1992 until the work injury in 2014. His history is also consistent with claimant's credible testimony regarding his symptoms during and after Dr. Bollier's care, as well as with contemporaneous medical records which note claimant suffered with ongoing symptoms dating to the work injury. Both Drs. Scott and Taylor offered opinions which comport with the correct legal standard with respect to causation.

I ultimately reject Dr. Bollier's opinions, as I find he did not possess a complete and accurate history with respect to claimant's symptoms following the work injury. Dr. Bollier's presumption that claimant's symptoms resolved nearly completely following left knee injection is inconsistent with claimant's credible testimony, as well as the histories noted by multiple subsequent physicians. Based in large part upon a resolution of symptoms following the injection, Dr. Bollier opined the work injury was temporary in nature. However, claimant's credible testimony is that the injection provided some benefit, but did not resolve claimant's symptoms. Based upon this history, Dr. Taylor

concluded the injection provided only temporary relief, with symptoms increasing thereafter. Dr. Taylor's conclusion is consistent with Dr. Bollier's own contemporaneous medical notes detailing a period of relief following the injection, but a subsequent increase of symptoms "back to the way it was before the injection." (JE6, p. 11) Furthermore, I note the passage of time between the injection in December 2014 and claimant's pursuit of additional care in April 2015 is not a substantial period. His potential need for further care was contemplated by Dr. Bollier at the time of his initial treatment; Dr. Bollier did not specify that any such care would be related to an underlying arthritic condition. On these facts, I find Dr. Taylor possessed a more accurate understanding of the progression of claimant's symptoms and therefore, his opinion is entitled to greater weight than that of Dr. Bollier.

As I award greater weight to the opinions of Drs. Scott and Taylor, I find claimant has carried his burden of proving by a preponderance of the evidence that his ongoing symptoms and need for total knee arthroplasty are causally related to the work injury of October 17, 2014.

The next issue for determination is whether claimant is entitled to temporary disability benefits from June 24, 2015 through August 27, 2015.

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

At the time of evidentiary hearing, the parties stipulated that should defendant be found liable for the total knee replacement, defendant would be responsible for temporary disability benefits during the claimed period. Accordingly, defendant is found responsible for healing period benefits from June 24, 2015 through August 27, 2015. The parties stipulated at the time of the work injury, claimant's gross weekly earnings were $1,116.00, and claimant was single and entitled to one exemption. The proper rate of compensation is therefore, $645.97.

The next issue for determination is whether the work injury is a cause of permanent disability. At the time of evidentiary hearing, the parties stipulated that should defendant be found liable for the total knee replacement, claimant sustained permanent disability. Accordingly, it is determined claimant has established the work injury of October 17, 2014 is a cause of permanent disability.

The next issue for consideration is the extent of any permanent disability to claimant's left leg.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Where an injury is limited to scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a-t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably the following language in the 66-year-old case of Soukup v. Shores Co., 222 Iowa 272, 277; 268 N.W. 598, 601 (1936):

> The legislature has definitely fixed the amount of compensation that shall be paid for specific injuries . . . and that, regardless of the education or qualifications or nature of the particular individual, or of his inability . . . to engage in employment . . . the compensation payable . . . is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong's Sportswear 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

When the result of an injury is loss to a scheduled member, the compensation payable is limited to that set forth in the appropriate subdivision of Code section 85.34(2). Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961). "Loss of use" of a member is equivalent to "loss" of the member. Moses v. National Union C. M. Co., 194 Iowa 819, 184 N.W. 746 (1921). Pursuant to Iowa Code section 85.34(2)(u) the workers' compensation commissioner may equitably prorate compensation payable in those cases wherein the loss is something less than that provided for in the schedule. Blizek v. Eagle Signal Co., 164 N.W.2d 84 (Iowa 1969).

Evidence considered in assessing the loss of use of a particular scheduled member may entail more than a medical rating pursuant to standardized guides for evaluating permanent impairment. A claimant's testimony and demonstration of difficulties incurred in using the injured member and medical evidence regarding general loss of use may be considered in determining the actual loss of use compensable. Soukup, 222 Iowa 272, 268 N.W. 598. Consideration is not given to what effect the scheduled loss has on claimant's earning capacity. The scheduled loss system created by the legislature is presumed to include compensation for reduced capacity to labor and to earn. Schell v. Central Engineering Co., 232 Iowa 421, 4 N.W.2d 339 (1942).

The right of a worker to receive compensation for injuries sustained which arose out of and in the course of employment is statutory. The statute conferring this right can also fix the amount of compensation to be paid for different specific injuries, and the employee is not entitled to compensation except as provided by statute. Soukup, 222 Iowa 272, 268 N.W. 598.

Two physicians offered opinions with respect to claimant's extent of permanent disability following the total knee arthroplasty/replacement. Dr. Scott, claimant's treating surgeon, opined claimant sustained permanent impairment of 22 percent left lower extremity based upon undergoing an arthroplasty with good result. However, Dr. Scott did not identify his rating methodology. Dr. Taylor, claimant's IME physician, opined Dr. Scott appeared to utilize the AMA Guides, 6th Edition. By the AMA Guides, 5th Edition, Dr. Taylor opined claimant sustained a permanent impairment of 37 percent left lower extremity, due to the total knee replacement with good result. Dr. Scott did not impose permanent restrictions. Dr. Taylor did not recommend any permanent restrictions, provided claimant remains employed in a similar capacity and similar environment.

By rule 876 IAC 2.4, this agency has adopted the AMA Guides, 5th Edition, in considering the extent of an individual's functional impairment. The record is unclear as to what methodology was utilized by Dr. Scott, while Dr. Taylor cites to the adopted AMA Guides, 5th Edition. As Dr. Taylor utilized the accepted rating methodology and neither physician recommended any permanent restrictions, I adopt the opinion of Dr. Taylor with respect to the extent of claimant's permanent impairment as a result of the October 17, 2014 work injury.

It is therefore determined that claimant has sustained a 37 percent left lower extremity impairment as a result of the October 17, 2014 work injury. Such an award entitles claimant to 81.4 weeks of permanent partial disability benefits (37 percent x 220 weeks = 81.4 weeks), commencing on the stipulated date of August 28, 2015 and payable at the rate of $645.97 per week.

The next issue for determination is whether claimant is entitled to reimbursement for an independent medical examination and incidental mileage expenses pursuant to Iowa Code section 85.39.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Claimant seeks reimbursement for Dr. Taylor's IME in the amount of $2,650.00. (CE2, p. 1) At the time of Dr. Taylor's IME, no employer-selected physician had offered an opinion with respect to the level of permanent impairment sustained by claimant as a result of the work injury. Dr. Bollier previously opined claimant likely sustained a temporary symptomatic exacerbation of an underlying arthritic condition and claimant achieved MMI without a need for permanent restrictions. The Iowa Supreme Court identified a "permanent disability rating" as a prerequisite to claimant receiving a reimbursable IME under the framework of section 85.39. Des Moines Area Reg'l Transit Auth. v. Young, 867 N.W.2d 839, 843 (Iowa 2015). As Dr. Bollier did not assign a numerical permanent impairment rating, claimant's right to a reimbursable 85.39 IME was not triggered. Claimant is therefore, not entitled to reimbursement for Dr. Taylor's IME and related mileage expenses under section 85.39.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the costs of: $100.00 filing fee and a portion of Dr. Taylor's IME expense. The cost of filing fee ($100.00) is an allowable cost and is taxed to defendant.

Claimant is not permitted to receive reimbursement for the full cost of Dr. Taylor's IME as a practitioner's report under rule 4.33. Rather, the Iowa Supreme Court has ruled only the portion of the IME expense incurred in preparation of the written report can be taxed. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015). Dr. Taylor's bill itemization allocates $1,432.50 of his total fee to report preparation. I find nothing inherently unreasonable regarding this charge. Accordingly, defendant is taxed with $1,432.50 of Dr. Taylor's IME expense as an allowable cost of report preparation.

Defendant is taxed with costs in the amount of $1,532.50 ($100.00 + $1,432.50 = $1,532.50).

ORDER

THEREFORE, IT IS ORDERED:

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendant shall pay unto claimant healing period benefits at the weekly rate of six hundred forty-five and 97/100 dollars ($645.97) for the period of June 24, 2015 through August 27, 2015.

Defendant shall pay unto claimant eighty-one point four (81.4) weeks of permanent partial disability benefits commencing August 28, 2015 at the weekly rate of six hundred forty-five and 97/100 dollars ($645.97).

Defendant shall pay accrued weekly benefits in a lump sum.

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

Defendant shall receive credit for benefits paid.

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

Costs are taxed to defendant in the amount of one thousand five hundred thirty-two and 50/100 dollars ($1,532.50) pursuant to 876 IAC 4.33.

Signed and filed this 29th day of March, 2018.

ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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EJF/sam

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.