

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DEAN KNIGHT,

Claimant,

vs.

TYSON FOODS, INC.,

Employer,
Self-Insured,

and

SECOND INJURY FUND OF IOWA,

Defendants.

FILED

MAY 08 2019

WORKERS' COMPENSATION

File No. 5059227

ARBITRATION

DECISION

Head Notes: 1802, 1803, 3202, 3701

STATEMENT OF THE CASE

Dean Knight, claimant, filed a petition in arbitration seeking workers' compensation benefits from Tyson Foods, Inc. (Tyson) and the Second Injury Fund of Iowa (Fund), as a result of an injury he sustained on January 13, 2017 and alleged first qualifying injury of November 12, 2008. The January 13, 2017 injury arose out of and in the course of his employment. This case was heard in Sioux City, Iowa and fully submitted on December 8, 2018. The evidence in this case consists of the testimony of claimant, Katherine Meyer, Martin Amezcua, Juan Zamudio, Joint Exhibits 1 – 9, Claimant's Exhibits 1 – 8, Tyson's Exhibits A – F and the Funds' Exhibits AA – HH. All parties submitted briefs.

At the time of the hearing claimant had filed a claim for workers' compensation benefits in Nebraska for an alleged injury at Tyson that occurred on February 9, 2018. Claimant subsequently dismissed the Nebraska claim. (Exhibit HH, pages 32 – 33)

ISSUES

1. Whether the injury is a cause of temporary disability and, if so, the extent.
2. Whether claimant has a scheduled member injury.
3. Whether the injury is a cause of permanent disability and, if so;
4. The extent of claimant's disability.

5. Whether the claimant has a first qualifying injury for Fund liability and, if so,
6. The extent of claimant's industrial disability.
7. Whether claimant is entitled to payment of medical expenses.
8. Whether claimant is entitled to payment for an independent medical examination (IME).
9. Whether claimant is entitled to alternative medical care.
10. Assessments of costs.

STIPULATIONS

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 deputy workers' compensation commissioner having heard the testimony and considered the evidence in the record finds that:

Dean Knight, claimant, was 55 years old at the time of hearing. Claimant went to 12th grade in high school. He did not graduate but did receive a GED. (Transcript p. 18) Claimant worked for 25 years in the grocery business for Nash Finch. Claimant started as a stocker and eventually became an assistant store director. (Tr. pp. 18, 19)

Claimant had an injury to his left knee while working at Nash Finch. Claimant had a knee infection and had to have surgery to clean up the infection. (Tr. p. 19) Claimant returned to work full duty after this injury. (Tr. p. 64) Claimant's next position in the grocery business was at a Select Mart (a/k/a Save-A-Lot). Claimant testified that he would wear a left knee pad at Select Mart when his left knee was hurting. (Tr. p.64) Claimant had an injury and was stabbed in the left arm at work by a shoplifter. (Tr. 21)

Claimant's next work was at Tyson. He started in July 2015. (Tr. p. 22) Claimant was hired to clean railcars and to fill them with tallow. Claimant initially worked ten hours a day six days a week. He later worked 12-hour days. Claimant would work outside all year long. (Tr. p. 25)

Claimant said that he worked a 12-hour shift on January 27, 2017. Claimant said he felt something tingling in his feet at work, but did not notice anything more about it until he went home and took off his socks. Claimant said his feet were purple and had blisters. (Tr. pp. 27, 28) Claimant said that his wife saw his feet and told claimant to

see a doctor. (Tr. p. 28) Claimant saw the nurse at Tyson. Claimant was seen by the occupational health physician and put on light duty. Claimant said that while he was on light duty the Tyson nurses would put cream on his feet. (Tr. p. 30) Claimant worked only eight hours, five days a week on light duty. Claimant was returned to work by Dr. Cassens without restriction and returned to working full shifts on March 6, 2017. (Tr. pp. 30, 68; JE 5, p. 1) Claimant said his feet continued to hurt after his return to regular work and that his symptoms got worse after being on them a long time or in cold or heat. (Tr. p. 31) Claimant testified that he missed a number of days from work after he was off light duty due to the pain in his feet. (Tr. p. 34) Claimant described his symptoms after his January 27, 2017 injury and up until his February 2018 injury as,

- A. Mostly bottom of the foot, all the bottom of the foot besides the arch, my toes, my feet, and my ankle, that started going up my leg.
- A. It's like a - - like a - - kind of like your tingling like when your foot starts going to sleep and then starts getting the pain. After you walk so far it starts getting more painful and more painful and then I could, you know, sometimes walk a block. Sometimes I feel better, I can walk two, three blocks, you know. My doctor said try to walk as much as you can. Sometimes I have to just sit down or call my wife to pick me up.

(Tr. pp. 36, 37)

Claimant obtained treatment from his primary care physician, Michael Jung, M.D. for his frostbite. (Tr. p. 35) Claimant also received care at the Iowa Clinic in Des Moines and a podiatrist in Omaha after his February 2018 fall. (Tr. pp. 35, 73) Claimant went to the Mayo Clinic (Mayo) after an injury on February 9, 2018. (Tr. p. 36) Claimant was performing his regular duties at Tyson from the time he was released to full duty by Dr. Cassens until his February 9, 2018 injury. (Tr. p. 96)

Claimant testified that he was climbing down a railcar on February 9, 2018 when he could not feel his feet and fell. (Tr. p. 81) Claimant said he was knocked unconscious for a while. (Tr. p. 38) Claimant went to the company nurse for this incident and was given some over-the-counter medication and was returned to work. (Tr. p. 40) Claimant said his feet hurt after the fall. (Tr. p. 72) On February 12, 2018 claimant provided Tyson a note from Dr. Jung that took him off work. (JE 2 p. 27) On March 27, 2018 Dr. Jung wrote that claimant was to be off work from February 9, 2018 due to frostbite and a concussion. (JE 2, p. 40) On April 18, 2018 Dr. Jung wrote a letter describing his restrictions. Dr. Jung wrote,

I was asked to clarify this patient's work restrictions in follow up a a [sic] recent office visit for his headaches which are related to a work related fall. I have stated that his work should be restricted to a sitting position which does not require him to do significant lifting, bending, carrying or other strenuous [sic] activity.

He also has residual peripheral nerve pain and sensitivity of his feet. Because of his neuropathy, his work conditions need to be in temperature of over 64 degrees. He has difficulty walking due to this neuropathy so he will need to be allowed to use assisted devices such as a walker, cane [sic] or wheel chair [sic] if he will need to walk distances of more than [sic] 100 feet from his vehicle to his work station. He could be provided with a handicap permit if a close parking spot is not available.

(JE 2, p. 49)

Claimant testified that in addition to his previous frostbite foot symptoms he was having issues with his left knee; if he kneels he has discomfort and no motion when he gets up. (Tr. pp. 45, 46) The claimant did not testify at the hearing that his left knee symptoms were related to his November 11, 2008 knee injury. In his deposition claimant said that he had problems with his knee, but was able to work. (Ex C, p. 12) Claimant had no restrictions for his left knee. (Ex. C, p. 14) Claimant testified in his deposition that he had the original incident of frostbite on January 27, 2017 and continuation of symptoms after additional exposures. (Ex. C, p. 15)

Claimant has not worked since the February 2018 injury and was terminated by Tyson. (Tr. p. 58) Claimant has not looked for work since his February 2018 injury. (Tr. p. 46) Claimant applied for and was granted Social Security Disability in September 2018. (Tr. pp. 46, 77) Claimant's onset date for his Social Security Disability was February 9, 2018. (Tr. p. 77) This was the day claimant fell off a railcar at work.

Claimant testified that after his injury of January 27, 2017 he has not done remodeling on his house, something that he did prior to his injury. (Tr. p. 49) Claimant testified he walks his dogs. He has one dog that weighs 180 pounds and one that weighs 120. (Tr. p. 51)

Claimant testified that he used to run every day, since he was 17 and at one time was a boxer. (Tr. p. 51) Katherine Meyer, claimant's wife, testified that claimant ran up until his January 27, 2017 injury, up to 20 miles. (Tr. p. 124) Claimant testified that his symptoms have not improved due to his care at Mayo although he believes the care has been necessary. (Tr. p. 52)

Tyson sent a letter to claimant dated April 3, 2018 stating that Dr. Jung had allowed claimant to return to restricted work and informing claimant to report to work on April 4, 2018. The letter also notified claimant he would receive workers' compensation benefits under Nebraska law. (Ex. DD, p. 9) On April 4, 2018 Tyson sent claimant a letter stating his leave of absence expired April 4, 2018 and claimant needed to provide a work certification by his healthcare provider. (Ex. B, p. 1; Tr. p. 56)

Katherine Meyer, claimant's wife testified at the hearing. Ms. Meyer said that her husband is not able to help with "much of anything." (Tr. p. 84)

Ms. Meyer said that she saw claimant's feet after he came home from work on January 27, 2017 and saw that they were purple, had blistered and had black spots. (Tr. p. 85) Claimant was scheduled to work the next day. Ms. Meyer said she took pictures of claimant's feet and sent it to claimant's supervisor and told him claimant could not work. The supervisor told claimant to see the nurse on Monday. (Tr. p. 87)

Ms. Meyer said she took claimant to the emergency department in December 2017. (Tr. p. 94) Ms. Meyer said claimant had frostbite after his fall in February 2018. (Tr. p. 94) Ms. Meyer said claimant had frostbite on January 27, 2017, December 2017 and February 2018. (Tr. p. 120) Claimant went to Dr. Jung for treatment after the February 2018 injury. Ms. Meyer said Dr. Jung referred claimant to Mayo. (Tr. p. 96) Ms. Meyer testified that claimant stopped driving after his January 27, 2017 injury due to medication he is taking and numbness of his feet. (Tr. pp. 108, 109) Ms. Meyer said that claimant's treatment at Mayo has helped in trying to determine a diagnosis of claimant's symptoms. (Tr. p. 110) Ms. Meyer said she was concerned about the amount of pain claimant is in, that claimant is taking the maximum amount of Gabapentin and still has pain, his leg swells and his legs go numb. (Tr. p. 115)

Martin Amezcua, claimant's supervisor at Tyson, testified that when claimant came back to work after his January 27, 2017 injury he did good work. (Tr. p. 130)

On January 27, 2017 claimant was referred to physician Rodney Cassens, M.D. and was assessed with frostbite of the right first and second, and left fourth and fifth digit and frostnip in the remaining toes. Claimant was provided an antibiotic cream for his feet, restricted to work sitting and not allowed to work in a cold or refrigerated environment. (Joint Exhibit 1, pp. 1, 2) In February Dr. Cassens modified claimant's restrictions to allow standing and sitting as needed. (JE 1, p. 10) On March 6, 2017 Dr. Cassens found claimant to be a maximum medical improvement (MMI) and returned claimant to work without restrictions. (JE 1, pp. 12, 13)

Claimant was seen on March 28, 2017 at the Family Medical Center/Siouxland Medical Education Foundation (FMC) for his frostbite symptoms. Claimant was advised that he was to keep his feet warm and dry and he was at increased risk of frostbite. (JE 2, p. 6) On October 10, 2017 claimant went to FMC for anxiety and for his feet. Claimant expressed concern about the progress he was making. A possible diagnosis of peripheral vascular disease was made. (JE 2, pp. 10, 11)

On December 2, 2017 claimant went to the emergency department at St Luke's Hospital for bilateral foot pain, right greater than left. Claimant had worked a 12 ½-hour shift the night before and had discoloration of his feet. (JE 2, p. 17; JE 4, p. 2) The history taken in the emergency department stated,

Mr. Knight is a 54 year old male who follows with Dr. Jung at the Family Medicine Center. He presents to the ED this evening with complaint of bilateral foot pain R>L increased since last evening. He has a history of having sustained frostbite on both feet about 11 months ago. Ever since

then he has had fairly constant tingling, numbness and cold-feeling sensations in both feet. About 1 month ago his shifts at Tyson were changed to being 6 days straight of 12.5 hour shifts, working on his feet. Last night when he came home his feet were bothering him more than usual. His wife examined them and found they were bright reddish-purple in the distal half of the plantar surface. He stayed home from work today and the pain and coloration have improved; however, he is concerned that they will worsen again if he returns to work tomorrow. Last month Dr. Jung did take him off work for a 3 day stretch when symptoms had worsened then, as well.

(JE 4, p. 2) The clinical impression was, "Neuropathic pain of foot, right. Frostbite of both feet, sequela." (JE 2, p. 19; JE 4, p. 4) Claimant was advised that being on his feet for a long time could cause micro-trauma. (JE 2, p. 19; JE 4, p. 4)

Claimant was seen by Dr. Jung at FMC on December 5, 2017 for a follow up after claimant's trip to the emergency department. (JE 2, p. 20) On January 23, 2018 Dr. Jung prescribed gabapentin due to claimant's frostbite injury. (JE 2, p. 25)

On February 9, 2018 claimant fell off a railcar and was injured. This injury included a head injury. Claimant was working at the Tyson facility in Nebraska. Claimant filed a claim in Nebraska for workers' compensation benefits that was subsequently dismissed by claimant. (Ex. AA and HH)

On February 12, 2018 claimant was seen at the Iowa Clinic. The assessment was,

1. Raynaud's disease
2. Frostbite of both feet, sequela
3. Peripheral neuropathy
4. Pain in both feet
5. Corns

(JE 6, p. 2) The note of that visit stated that nerve damage can be a permanent sequela to frostbite. Testing for neuropathy was recommended. (JE 6, p. 3)

On July 5, 2018 Elizabeth Hartman, M.D. examined claimant for his complaint of headaches. Dr. Hartman noted in claimant's history frostbite in 2017 with peripheral neuropathy. (JE 8, p. 1)

On February 12, 2018 Dr. Jung wrote that claimant could not return to work until he was cleared by a physician. (JE 2, p. 27) On March 27, 2018 Dr. Jung noted that claimant had frostbite about a year ago, and claimant told Dr. Jung he had frostbite

about eight weeks ago. Claimant requested to see a podiatrist in Des Moines. (JE 3, p. 39) On March 27, 2018 Dr. Jung wrote that claimant needed to be off work due to his concussion and frostbite. (JE 3, p. 40) In response to an inquiry from Tyson Dr. Jung wrote that claimant could return to work with restrictions based only upon his concussion injury. (JE 2, p. 42) On April 18, 2018 Dr. Jung wrote,

I was asked to clarify this patient's work restrictions in follow up a a [sic] recent office visit for his headaches which are related to a work related fall. I have stated that his work should be restricted to a sitting position which does not require him to do significant lifting, bending, carrying or other strenuous [sic] activity.

He also has residual peripheral nerve pain and sensitivity of his feet. Because of his neuropathy, his work conditions need to be in temperature of over 64 degrees. He has difficulty walking due to his neuropathy so he will need to be allowed to use assisted devices such as a walker, cane [sic] or wheel chair [sic] if he will need to walk distances of more than [sic] 100 feet from his vehicle to his work station. He could be provided with a handicap permit if a close parking spot is not available.

(JE 2, p. 49)

On April 26, 2018 Dr. Cassens responded to a letter from Tyson concerning claimant's condition. Dr. Cassens said claimant's condition since he had last evaluated claimant on March 6, 2017 has worsened. His dermatitis that had cleared on March 6, 2017 reoccurred in both feet, claimant's skin was discolored red and brown, and his toes were cold and tender. (JE 1, p. 15) Dr. Cassens said claimant was at MMI for the January 27, 2017 injury and that, "The patient likely has had a recurrence of frostbite/vascular insufficiency dermatitis due to personal condition of Raynaud's phenomenon." (JE 1, p. 15) Dr. Cassens stated that he agreed with the recommended restriction of claimant's personal physician that claimant should be restricted to sitting work due to recurrent exacerbation of Raynaud's phenomenon. (JE 1, p. 16)

Claimant was evaluated at Mayo for a number of conditions. On June 6, 2018 he evaluated for frostbite with sequela, Raynaud's disease and headaches. (JE 9, p. 3) The assessment/plan was:

- #1 Frostbite Subsequent
- #2 Paresthesias Feet
- #3 Edema Lower Extremity
- #4 Raynaud's Phenomenon Without Gangrene
- #5 Pain Foot Right

#6 Pain Foot Left

I do believe most of his bilateral lower extremity issues a [sic] sequelae from and [sic] the significant frostbite that he had with other vascular damage. He does have bilateral dorsalis pedis pulses that was palpable but had a hard time finding the posterior tibialis pulses. We would start a workup as follows:

- Bilateral lower extremity arterial study/ABI
- Bilateral lower extremity venous ultrasound to rule out DVT
- Comprehensive labs inclusive of lipid panel, B12 as well as inflammatory markers
- X-ray of bilateral feet
- Consultation at the Foot Ankle Clinic
- He is an outside diagnosis of Raynaud's. I do not believe that this is Raynaud's however we would go ahead and rule out with an upper extremity vascular vasospasm study. I believe what the considering [sic] his renal is mostly venous congestion likely from venular-capillary damage.

(JE 9, p. 4) Kevin Moder, M.D. evaluated claimant's foot pain and numbness. Dr. Moder's assessment was,

#1 Frost bite injury, feet.

#2 Probable chronic pernio.

#3 Mild leg edema, likely medication related.

#4 Probable peripheral neuropathy.

I believe that the patient's clinical presentation is consistent with chronic hernia. He describes a cold induced blistering, discoloration and pain involving the digits of his feet. This occurs in the setting of frostbite injury to his feet 2 years ago. Moreover, the patient has history of repetitive cold exposure given his up bringing [sic]. It would be reasonable to consider giving the patient a trial of Cardura 0.5-1 mg at bedtime to prevent the recurrence of these lesions. This could be started at Labor Day and continue through Memorial Day.

.....

Lastly, the patient has symptoms consistent with a peripheral neuropathy. He has had good response to gabapentin. The mechanism for his peripheral neuropathy is not clear but seems to have occurred following his frostbite injury. It seems also to be limited to his feet. An EMG and referral to Neurology would be reasonable.

(JE 9, p. 8) Rayya Saadiq, D.O. was consulted and noted claimant had chronic pernio.
(JE 9, p. 9)

Claimant has requested reimbursement and payment of medical expenses as set forth in Exhibit 6. (Ex. 6, pp. 1 – 70) Total charges incurred were \$20,729.94. Insurance and Medicaid paid a portion of the charges. Claimant paid \$595.66 and there is an outstanding balance of \$10,825.06. (Ex 6, p. 2) A number of the bills occurred after claimant's February 10, 2018 fall at Tyson.

Tyson provided three DVDs of surveillance. (Exs. F1, F2, F3) The surveillance was conducted from March through July 2018. The surveillance shows claimant walk claimant's dogs at a casino, in his yard and at a Walmart store. There is nothing significant in these exhibits.

Claimant answered interrogatories propounded by the Fund on July 20, 2018. Claimant answered interrogatory number 24 that his November 12, 2018 left knee injury resulted in a zero functional disability. (Ex. FF, p. 28)

Claimant stated in interrogatories that prior to the January 27, 2017 frostbite injury he would work out, run and enjoyed body building. (Ex. A, p. 10)

Dr. Sunil Bansal, M.D. performed an independent medical examination on August 31, 2018. (Ex. 1, pp. 1 – 16) Dr. Bansal noted, "His symptoms alternate between numbness, hypersensitivity, a cold sensation, and extreme pain. Part of his problem is that when he was returned to work and placed back out in the cold, with delayed treatment, it worsened his problems." (Ex. 1, p. 12) Dr. Bansal's diagnosis was,

RIGHT FOOT:

Frostbite of the right foot with chronic pernio and resultant neuropathic foot.

LEFT FOOT:

Frostbite of the left foot with chronic pernio and resultant neuropathic foot.

LEFT KNEE (SIF):

Left parapatellar cellulitis.(2008)

Status post irrigation and debridement of the left knee prepatellar bursa with excision of septic prepatellar bursa. (November 22, 2008)

(Ex. 1, p. 14) Dr. Bansal found claimant at MMI on January 23, 2018. Dr. Bansal provided a 20 percent lower extremity rating for claimant's left and right feet. (Ex. 1, p.15)

CONCLUSIONS OF LAW

PERMANENT DISABILITY

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); Dunlavy 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).

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under Iowa Code section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

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).

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 Iowa 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.

Defendant Tyson acknowledges claimant had an injury on January 27, 2017. Tyson has asserted claimant did not have any temporary or permanent disability.

Claimant had two additional frostbite exposures to his feet, in December 2017 and February, 2018. There is some evidence of superficial frostbite due to the December 2017 exposure. (JE 4, p. 2) The evidence of frostbite for the February 2018 injury was not as clear, as the Mayo Clinic did not differentiate between the January 27, 2017 and February 10, 2018 exposures.

Dr. Cassens found that claimant did not have any permanent impairment due to his frostbite of January 27, 2017. I do not find his report convincing. Claimant's testimony and his wife were credible that he continued to have significant symptoms due to his frostbite, that claimant's feet would discolor and hurt and that claimant had to take time off work due to these symptoms after his release to return to work. Dr. Jung was providing treatment for his frostbite on January 27, 2017 into January 2018, shortly before the February 10, 2018 injury. The emergency department record of December 2, 2017 reflects claimant's ongoing symptoms he had due to the January 27, 2017 frostbite. The emergency department record only reflects superficial frostbite in December 2017. The Mayo Clinic acknowledges the January 27, 2017 frostbite as the significant injury causing damage. Additionally, Dr. Bansal has found the frostbite injury has caused permanent disability.

I find that claimant has proven by a preponderance of the evidence the claimant has a permanent injury to his bilateral feet due to his January 27, 2017 work injury. The claimant's injury is governed by Iowa Code section 85.34(2)(s).

There is only one convincing rating in the file. That rating by Dr. Bansal was for 20 percent of the lower extremity. I find that claimant has a 20 percent functional impairment to his bilateral feet. This entitles claimant to 100 weeks of permanent partial disability benefits from Tyson.

I find that claimant was at MMI on January 28, 2018. That is when Dr. Jung prescribed gabapentin for the claimant and was the last treatment before the February 2018 injury.

HEALING PERIOD

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).

Claimant has requested healing period benefits from Tyson after his fall in February 2018. Claimant argues that his original frostbite injury made him more susceptible to frostbite and that the time he was off was from February 10, 2018 through August 29, 2018. Claimant has not provided medical evidence to support this argument. No physician has specifically stated that the claimant's time off work from February 10, 2018 through August 29, 2019 was related to his January 27, 2017 injury. Dr. Jung is not clear that he provided his restriction due to the January 27, 2017 frostbite injury or the exposure to cold on February 10, 2018. No healing period benefits are awarded.

Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 355 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

Claimant has failed to prove a compensable first injury for Fund Liability. Claimant stated in his interrogatory he had zero functional impairment in his left knee. Claimant was extremely active physically, running long distances, boxing and bodybuilding until the time of his January 27, 2017 injury. The claimant has not proven by a preponderance of the evidence that he had any permanent injury due to his November 12, 2008 left knee injury.

MEDICAL EXPENSES

Claimant has requested payment for a number of medical expenses. For the expenses after claimant's February 10, 2018 fall there is no way I can determine whether the treatment and cost is related to the January 27, 2017 injury or the February 10, 2018 injury. As this agency does not have jurisdiction to consider the February 10, 2018 injury I am unable to award any medical expenses for treatment after February 10, 2019.

I was also unable to determine what treatment claimant received for what conditions for the bills submitted at UnityPoint St. Luke's or the Siouxland Medical Educational Center. For treatment prior to the February 10, 2018 injury, the medical bills submitted in Exhibit 6 are just too cryptic for the undersigned to award these medical costs. The cost may be related to the January 27, 2017 injury, but there is not sufficient evidence in the record for me to legally conclude by a preponderance of the evidence that the expenses are related to the January 27, 2017 injury.

No specific medical costs are awarded.

MEDICAL CARE

Claimant also seeks ongoing care for his bilateral feet injuries.

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 16, 1975).

Claimant is entitled to ongoing care and treatment for his bilateral feet injuries due to the January 27, 2017 injuries. Treatment for conditions that arose out of the February 10, 2018 injury are not part of this decision.

Costs

I award claimant the costs of Dr. Bansal's IME cost of \$3,486.00. Dr. Cassens was a physician retained by defendant Tyson. Dr. Cassens examined and treated claimant. He released claimant to return to work. Dr. Cassens provided return to work equivalent of a zero impairment rating. As claimant was successful in his claim I award claimant the \$100.00 filing fee.

ORDER

Defendant Tyson shall pay claimant one hundred (100) weeks of permanent partial benefits commencing on January 28, 2018 at the weekly rate of five hundred eighty and 35/100 dollars (\$580.35).


Defendant Tyson shall pay costs of three thousand four hundred eighty-six dollars (\$3,486.00) for IME costs and one hundred dollars (\$100.00) in other costs.

Claimant shall take nothing from the Second Injury Fund of Iowa.

Defendant Tyson shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be 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. See. Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

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

Signed and filed this 8th day of May, 2019.


JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

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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.
