

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LLOYD MATTHESS,

Claimant,

vs.

RYAN COMPANIES,

Employer,

and

ZURICH AMERICAN,

Insurance Carrier,
Defendants.

FILED
MAY 13 2019
WORKERS' COMPENSATION

File Nos. 5058885, 5058886

ARBITRATION

DECISION

: Headnotes: 1402.30, 1402.60, 1803, 1803.1

On May 3, 2017, the claimant Lloyd Matthes, filed two petitions in arbitration, File Numbers 5058885 and 5058886, against the defendants, Ryan Companies ("Ryan") and Zurich American ("Zurich"). In File Number 5058885 Matthes alleges he sustained an injury to his body as a whole while working for Ryan on May 11, 2015. In File Number 5058886, Matthes alleges he sustained an injury to his body as a whole while working for Ryan on May 12, 2015. Ryan and Zurich filed answers in both cases denying Matthes sustained a work injury.

An arbitration hearing was held on April 10, 2019, at the Division of Workers' Compensation in Des Moines, Iowa. Attorney Matthew Petrzelka represented Matthes. Matthes appeared and testified. Attorney Thomas Wolle represented Ryan and Zurich. Joint Exhibit 1 ("JE 1"), Exhibits 2 through 4, and Exhibit A were admitted into the record. The record was held open through May 1, 2019, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

Before the hearing the parties prepared an identical hearing report for each file, listing stipulations and issues to be decided. Ryan and Zurich waived all affirmative defenses.

STIPULATIONS

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

2. Matthess sustained an injury on May 11, 2015, which arose out of and in the course of his employment with Ryan.

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

4. The alleged injury is a cause of permanent disability.

5. Temporary benefits are no longer in dispute.

6. If the injury is found to be a cause of permanent disability, the commencement date for permanent partial disability benefits, if any are awarded, is August 11, 2017.

7. At the time of the alleged injury Matthess's gross earnings were \$1,290.00 per week, he was single and entitled to two exemptions, and the parties believe the weekly rate is \$748.99.

8. Ryan and Zurich agreed to pay the cost of the independent medical examination.

9. Prior to the hearing Matthess was paid 86 weeks and three days of compensation at the rate of \$763.61 per week.

10. If medical expenses are awarded, the parties stipulate Ryan and Zurich will reimburse Carpenters Health and Welfare (Five River Carpenters Fund).

ISSUES

1. Has Matthess sustained a scheduled member disability or an industrial disability?

2. What is the extent of disability?

3. Is Matthess entitled to payment of medical expenses set forth in Exhibit 4?

FINDINGS OF FACT

Matthess graduated from high school in 1975 and enrolled in the Marine Corps. (Transcript, pages 7-8) Matthess was an average student in high school. (Tr., p. 8) Matthess was an expert shooter in the military and he trained in jungle and mountain warfare, and guard duty. (Tr., pp. 9-10) Matthess left the Marine Corps after three years and he received an honorable discharge. (Tr., pp. 9-10) At the time of the hearing he was sixty-two. (Tr., p. 7)

After Matthess left the military he started working for the Iron Workers Local 89, where he set steel, red iron, "busted" re-rod, and tied re-rod. (Tr., p. 11) Matthess

worked for the Iron Workers for three years. (Tr., p. 12) There was a strike and Matthess was off work and he found another job with D&E Distributing. (Tr., pp. 12-13) Matthess worked as a draft and sales manager for D&E Distributing where he set up advertising in bars and cleaned keg lines. (Tr., p. 13) Matthess left D&E Distributing after two years and purchased a restaurant. (Tr., p. 13) Matthess operated the restaurant for five or six years. (Tr., p. 14) Matthess completed a modern home construction course at Kirkwood Community College to use his education benefits from the military. (Tr., p. 15) Matthess later purchased a bar that he operated for seven or eight years. (Tr., p. 16)

In 1987 Matthess went into carpentry work. (Tr., p. 16) He initially worked for a non-union company performing commercial work, and the union recruited him. (Tr., pp. 16-17) Matthess joined Carpenters Local 1260 in 1987. (Tr., p. 17) From 1987 until his work injury Matthess consistently worked in the carpentry trade. (Tr., p. 17) Matthess had periods of layoff when projects were completed. (Tr., p. 19) The longest period of layoff was two years. (Tr., p. 20)

When Matthess first joined Carpenters Local 1260 he performed interior work, but after a few years he started working for general contractors performing commercial work. (Tr., pp. 18-19) Matthess enjoyed working for general contractors because he worked on a variety of tasks. (Tr., p. 18) Matthess continued to perform commercial work for the rest of his time with Carpenters Local 1260. (Tr., p. 19) Matthess was unhappy with Carpenters Local 1260 due to the periods of layoff, and after approximately fifteen years he transferred to Carpenters Local 308 in Cedar Rapids in approximately 2010. (Tr., pp. 21-22)

On May 11, 2015, Matthess was working for Ryan in Cedar Rapids. (Tr., p. 24) Matthess was working on a flood wall with Duane Frank and reported:

[w]e got called over to move some I-beams off this – they were stacked on some re-rod mats, which is re-rods made up to go on a wall.

So we went over there. He got on one end, I got on the other end. And we have to walk through these mats, square holes. Well, I got clear over to the side, and my last step, I caught my foot on that last re-rod, which, in turn, flipped me back onto my back, holding this I-beam, which the I-beam then came down onto my leg.

(Tr., p. 25) Matthess relayed the I-beam weighed 250 to 300 pounds and landed on his left groin area. (Tr., p. 25) Matthess's coworkers helped him off the ground and helped him walk over to the edge of the building. (Tr., p. 25) Matthess testified,

I thought I was bleeding, it hurt so bad. So I pulled my trousers down – got my tool bag off, pulled my trousers down, and it was just black and blue down clear to my knee, from right where my private area is clear down to my knee.

So I, you know, sat there and let it hurt for a little bit, and kept on with the day. And it was getting close to the day's end.

Next morning I showed up to work, and I made it about – I made it to the first break before it was just getting too much for me. And so I took off that day – part of the day.

And then the next day I came in, I got till noon – I worked till noon. And it was hurting so bad, I went home.

Then after that, I went back and I just kept going, no matter how much it hurt. And it hurt bad.

(Tr., p. 26) Matthess did not report he sustained a work injury.

Matthess did not seek medical treatment for a week. (Tr., p. 26) Matthess reported he delayed seeking medical treatment because in his experience “when somebody gets hurt on the job, they pretty much get black-balled off the job. I mean, they say it don't happen, but it happens. If you're hurt, they want you out of there.” (Tr., pp. 26-27)

Matthess thought the bruise would go away, but it did not. (Tr., p. 27) Matthess went to the emergency room. (Tr., p. 28) At the emergency room Matthess received an ultrasound test and the hospital staff told him nothing was wrong and he probably had some nerve damage that would take about a year to heal. (Tr., pp. 28-29) Matthess used his insurance through the Carpenter's Local 308 to pay for his medical bills. (Tr., pp. 31-32)

Matthess returned to work. (Tr., p. 29) He testified his left leg hurt so much he would wake up at night screaming. (Tr., p. 29)

After many months of pain, Matthess sought medical treatment. (Tr., p. 29) He again used his insurance through the Carpenter's Local 308 to pay for his treatment. (Tr., p. 32) On April 21, 2016, Matthess attended an appointment with Judith Buchanan, M.D., a neurologist, complaining of thigh pain with throbbing while wearing a tool belt or walking for any distance. (JE 1, p. 1) Matthess reported he was experiencing back pain. (JE 1, p. 3) Dr. Buchanan noted Matthess had a normal station and gait. (JE 1, p. 4) Dr. Buchanan listed an impression of a possible resolving hematoma of the left groin, and mildly enlarged left groin lymph node, and noted if there was no evidence of arterial disease, she would be “happy to arrange mri lumbar spine.” (JE 1, p. 4)

On April 29, 2016, Matthess attended an appointment with David Lawrence, M.D., a vascular surgeon, reporting he sustained two injuries to his left leg. (JE 1, p. 6) The first injury occurred years ago when a tree branch fell on his leg causing a large hematoma he described as a “baseball” sticking up out of the top of his left thigh, and in May 2015, a beam fell on his left groin and he again developed “a large ecchymotic

area covering his entire thigh.” (JE 1, p. 6) Dr. Lawrence examined Matthess, assessed him with an intermittent claudication atherosclerotic versus traumatic vascular disease of the left leg, and recommended a computerized tomography abdomen angiography. (JE 1, p. 8) Matthess underwent the computerized tomography scan, and the reviewing radiologist listed an impression that:

[t]here is a complete occlusion of the left common femoral artery from about the level of the inguinal ligament to the origins of the left superficial and deep femoral arteries. Multiple well formed tortuous collaterals at the left groin and across the pelvis reconstitute the femoral vessels below the occlusion, suggesting a relatively chronic occlusion. Except for some scattered calcific atheromatous plaques in the aortoiliac vessels, no other arterial abnormalities are identified.

(JE 1, p. 10)

Matthess returned to Dr. Lawrence on May 12, 2016. (JE 1, p. 11) Dr. Lawrence recommended a left external iliac to superficial femoral artery bypass. (JE 1, p. 13) Dr. Lawrence performed the procedure on May 16, 2016. (JE 1, p. 14)

Matthess attended a follow-up appointment with Dr. Lawrence on June 17, 2016. (JE 1, p. 16) Dr. Lawrence noted the incision and ankle-brachial index was normal. (JE 1, p. 16) Matthess expressed concern about a right inguinal hernia. (JE 1, p. 16) Dr. Lawrence referred Matthess to general surgery for a hernia evaluation. (JE 1, p. 18)

On January 18, 2017, Matthess returned to Dr. Lawrence. (JE 1, p. 19) Dr. Lawrence noted the bypass was occluded and had likely been down for six to eight weeks. (JE 1, p. 19) Dr. Lawrence noted Matthess had continued to work and smoke, and he recommended an attempt at thrombolysis. (JE 1, p. 19)

Matthess attended an appointment with Dr. Lawrence on February 7, 2017, noting Matthess had undergone successful lysis the week before, but, unfortunately, the graft had already reoccluded, and Matthess was complaining of rest pain intermittently, but he was able to walk. (JE 1, p. 23) Dr. Lawrence recommended a computerized tomography abdomen angiography, and prescribed Percocet. (JE 1, p. 26) Dr. Lawrence documented he performed “[r]edo external iliac to above knee popliteal bypass with prosthetic” on February 8, 2017, and listed a post-operative diagnosis of left graft thrombosis and critical limb ischemia. (JE 1, p. 29)

On February 13, 2017, Matthess returned to Dr. Lawrence’s office and was examined by Carrie Campbell, ACNP. (JE 1, p. 34) Campbell documented she Dopplered the graft and noted Matthess had a strong biphasic signal, his feet were warm, and he had good capillary refill. (JE 1, p. 32) Campbell recommended Matthess quit smoking, slowly increase his ambulation, and elevate his leg when he is not walking. (JE 1, p. 32) Campbell assessed Matthess with atherosclerosis of the extremities. (JE 1, p. 34)

Matthess followed up with Campbell on March 8, 2017. (JE 1, p. 35) Campbell documented Matthess was doing well and showing much improvement in his activity and pain levels, but also reported he was experiencing shooting pain in his left leg and occasional toe numbness. (JE 1, p. 36) Campbell reviewed his vascular labs and documented the labs showed a "patent graft with good waveforms," found Matthess could return to work in two weeks, and referred Matthess to hematology for coagulation studies. (JE 1, p. 36)

On April 3, 2017, Dr. Lawrence performed a left leg angiogram, placement of thrombolysis catheter and initiation of thrombolytic therapy on Matthess. (JE 1, p. 39) Dr. Lawrence diagnosed Matthess with an acute left ileofemoral graft occlusion. (JE 1, p. 39) The next day, Dr. Lawrence performed a left leg angiogram and cessation of thrombolysis and left lower leg four compartment fasciotomy. (JE 1, p. 42)

After the fasciotomy, Matthess reported his work injury to Carpenters Local 308 because his leg nearly was amputated. (Tr., p. 32) Matthess retired from the union to receive his pension because he did not have any money coming in. (Tr., p. 38)

Matthess followed up with Campbell on April 13, 2017. (JE 1, p. 43) Campbell examined Matthess and found his wound was stable. (JE 1, p. 44)

On April 17, 2017, Dr. Lawrence examined Matthess. (JE 1, p. 47) Dr. Lawrence noted Matthess had quit smoking. (JE 1, p. 48) Dr. Lawrence also noted Matthess had a significant amount of swelling in his calf and he instructed Matthess to elevate his lower extremity above his heart. (JE 1, p. 48)

Matthess attended a follow-up appointment with Campbell on April 20, 2017, reporting his pain was under control and his left foot swelling had decreased. (JE 1, p. 53) Campbell changed his wound dressing and recommended warfarin. (JE 1, p. 56)

On May 9, 2017, Matthess returned to Dr. Lawrence. (JE 1, p. 58) Dr. Lawrence noted his swelling had improved, his ankle-brachial index was normal, ordered physical therapy, and recommended coordination with another physician to discuss skin grafting. (JE 1, pp. 58-61)

During an appointment on May 30, 2017, Dr. Lawrence noted Matthess had made slow progress with physical therapy, and while his wound had markedly improved, Matthess was continuing to struggle with neuropathic pain. (JE 1, p. 63) Dr. Lawrence prescribed gabapentin. (JE 1, p. 63)

Kahlil Andrews, M.D., a plastic surgeon, examined Matthess on May 30, 2017. (JE 1, p. 67) Dr. Andrews noted Matthess had an open wound on his leg, recommended an immediate graft of the wound, and recommended Matthess stop smoking. (JE 1, p. 68)

Matthess received the skin graft and returned to Dr. Andrews on June 12, 2017, complaining of swelling in his knee. (JE 1, p. 69) Dr. Andrews examined Matthess,

found the skin graft was intact, redressed his wound, and ordered an equalizer boot. (JE 1, pp. 69-70)

On June 27, 2017, Matthess attended a follow-up appointment with Dr. Andrews. (JE 1, p. 73) Matthess reported he was experiencing paresthesias in his leg and foot with swelling, and expressed concern about his ability to perform his job. (JE 1, p. 73) Dr. Andrews referred Matthess to his primary physician for rehabilitation. (JE 1, p. 73)

Matthess attended an appointment with Campbell on August 17, 2017. (JE 1, p. 76) Campbell noted Matthess was doing very well, physical therapy had cleared him for work, and his ankle-brachial index was normal. (JE 1, p. 76)

Dr. Andrews examined Matthess on August 28, 2017. (JE 1, p. 80) Dr. Andrews noted his donor skin graft was healing well. (JE 1, p. 80)

Matthess testified he returned to carpentry work and he was able to perform his duties. (Tr., p. 36) He reported he did not go back to Carpenters Local 308 because he would receive "crap jobs." (Tr., p. 37)

Leisure Living Home Improvements hired Matthess. (Tr., p. 37) Leisure Living Home Improvements sells windows, doors, and offers home remodeling. (Tr., p. 37) Matthess reported he performed trim work and special work. (Tr., p. 37) Matthess worked for Leisure Living Home Improvements for around eight months, and reported he was able to perform his job duties. (Tr., p. 39) Matthess testified that when he worked for Leisure Living Home Improvements he was responsible for lifting as much as fifty pounds or more frequently. (Tr., p. 50) All of the work was residential. (Tr., p. 50) Matthess worked full-time, at least forty hours per week. (Tr., pp. 50-51) Leisure Living Home Improvements wanted Matthess to take a pay cut and he did not want to take a pay cut so he quit in July 2018. (Tr., pp. 39-40, 50)

On February 27, 2018, James Milani, D.O., a family practice and occupational medicine physician, conducted an independent medical examination of Matthess for Ryan and Zurich. (Ex. A) Dr. Milani examined Matthess and reviewed his medical records. (Ex. A, p. 2) Dr. Milani noted Matthess walked with a slight "limp," favoring the right leg. (Ex. A, p. 4) Dr. Milani opined Matthess sustained a work injury in May 2015 that caused a left common femoral artery occlusion that required an arterial bypass, the bypass occluded again requiring thrombolysis and the bypass needed to be redone, and due to another occlusion, Matthess had to undergo a fasciotomy of the left lower extremity. (Ex. A, p. 6) Dr. Milani found Matthess reached maximum medical improvement on August 11, 2017, and that he will need chronic medication and monitoring of his medication for his condition. (Ex. A, p. 6)

Using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), Dr. Milani opined:

[r]ange of motion for the knee, Table 17-10 shows flexion of 150 degrees is 0% impairment and extension of 0 degrees is 0% impairment. For the ankle, Table 17-11 shows plantarflexion of greater than 20 degrees is 0% impairment, dorsiflexion/extension of 3 degrees is equal to 2% whole person/5% lower extremity. Chapter 17-21 shows that we use Table 16-10 for the grading of the sensory impairment. He would fit into grade 2 which is between 61% and 80% of the max nerve. When looking at his exam, the common peroneal nerve, sural nerve, and superficial peroneal nerve are involved. When one takes 80% times those max values for those nerves, you essentially round up and get the same percentage as in the Table 17-37 for these nerves. Therefore, when adding these 3 nerves (Common peroneal, Superficial peroneal, Sural) for sensory impairment in Table 17-37, they add to 5% whole person/12% lower extremity.

For skin loss under Chapter 17.2k, there is 0% impairment.

For Chapter 8.3: scars and skin graft, he has no restriction of motion and no open sores of the scars or skin grafts and he has had very good healing: Therefore 0% impairment.

Under Chapter 17-2n which is vascular, Table 17-38 would classify him in class 2 which is 10% to 39% of the lower extremity. Because of the extent of his complications and his symptoms that he is discussing, I would place him at 39% lower extremity impairment which is also equal to a 16% whole person impairment. The guides then instruct to combine the above impairment ratings which would be: range of motion shows 2% whole person/5% lower extremity, peripheral nerve involvement is 5% whole person/12% lower extremity, and vascular claudications symptoms is 16% whole person/39% lower extremity. When combining for the whole person, that equals 22% whole person; and when combined for the lower extremity, that is 48% lower extremity impairment.

(Ex. A, pp. 6-7) Dr. Milani did not recommend any work restrictions. (Ex. A, p. 7)

Mark Taylor, M.D., an occupational medicine physician, conducted an independent medical examination for Matthes on March 31, 2018, and issued his report on June 27, 2018. (Ex. 2) Dr. Taylor examined Matthes and reviewed his medical records. (Ex. 2) Dr. Milani opined Matthes sustained a work injury in May 2015 that caused a left common femoral artery occlusion that required an arterial bypass, the bypass occluded again requiring thrombolysis and the bypass needed to be redone, and due to another occlusion, Matthes had to undergo a fasciotomy of the left lower extremity, and then a skin graft. (Ex. 2, p. 7) Dr. Taylor also diagnosed Matthes with left leg pain and cramping, left lower extremity paresthesias, and chronic low back pain. (Ex. 2, p. 7) With respect to causation for the low back pain, Dr. Taylor opined:

Mr. Matthes described no prior history of back pain or problems. As mentioned multiple times, he worked as a journeyman carpenter for many years and had no problems and required no restrictions. After the injury to his left femoral artery that required surgery, he was left with chronic, and often severe, left lower extremity pain. This has led to a total of three years of limping because he put up with the pain for nearly a year before a diagnosis was made. He has continued to limp and his gait pattern revealed evidence of limping protecting the left leg. I was also able to view his gait pattern when he exited the clinic and walked to his car and he remained very consistent. He was also consistent as far as walking in a hunched over position. As a result of his altered gait pattern that is likely permanent, it is more likely than not that his gait pattern and hunched over position represents a significant factor as far as his now chronic low back pain. He has had no testing or treatment as far as the back pain, such as an x-ray or an MRI. The onset of the back pain was only after he started limping and the limping only occurred after the previously described work injury in May 2015. As such, it is my opinion that the back pain occurred as a sequela of his work injury.

(Ex. 2, p. 8) Dr. Taylor found Matthes will need periodic follow-up care with Dr. Lawrence and medications, including periodic labs, and noted he might benefit from seeing a pain specialist. (Ex. 2, p. 8) Dr. Taylor opined Matthes reached maximum medical improvement on August 28, 2017, when Dr. Andrews released him. (Ex. 2, p. 8)

Using the AMA Guides, Dr. Taylor opined:

[a]s far as the vascular injury resulting in multiple surgeries, Table 4-5, on page 76, is utilized (the same Table can be identified on page 554). I agree with Dr. Milani that Mr. Matthes would appropriately be placed within Class 2 with a 39% lower extremity impairment rating. I similarly identified decreased left ankle dorsiflexion and as per Table 17-11, on page 537, he would be assigned 7% lower extremity impairment (it appears that Dr. Milani may have inadvertently looked at a different Table when he assigned 5% lower extremity impairment related to decreased ankle extension as it appears that it should be 7% lower extremity impairment/3% whole person).

I also agree with Dr. Milani that Mr. Matthes has experienced persistent paresthesias associated with the left lower extremity. Dr. Milani recommended impairment related to several nerves from Table 17-37, on page 552, with a maximum assigned sensory rating of 12% lower extremity impairment. As indicated by Dr. Milani, this must be multiplied by a modifier from Table 16-10, on page 482. I agree with the 80% modifier and when 80% is multiplied by 12%, the result, after rounding, is 10% lower extremity impairment.

As far as the lower extremity impairments, these must be converted to whole person impairments before combining the results, as per the instructions on page 528. His 39% lower extremity converts to 16% and the 10% converts to 4%. His 7% related to the decreased ankle motion converts to 3%.

As far as the lumbar spine at the present time, it is my opinion that Mr. Matthes would fall between DRE Lumbar Category I & II and for which I would assign a 3% whole person impairment rating related to the chronic low back pain. Last, Mr. Matthes reportedly now requires long-term anticoagulation, which places him at increased risk for bleeding. When turning to page 207, under Section 9.6(c), it remarks that a 10% rating can be assigned related to long-term anticoagulation.

All of these values are then combined, according to the Combined Values Chart on page 604. When 16% is combined with 10%, the result is 24%. That is then combined with the 4% related to the nerve-related issues and results in 27%. That is combined with 3% related to the decreased ankle motion and results in 29%. That is then combined with the 3% related to the low back and results in 31% whole person impairment. This rating is higher than the rating assigned by Dr. Milani. However, the bulk of the difference is related to the small amount assigned related to the chronic back condition as well as the 10% related to the chronic anticoagulation.

(Ex. 2, pp. 8-9) Dr. Taylor found Matthes could self-restrict and obtain help when he needs help. (Ex. 2, p. 9)

On February 20, 2019, Dr. Milani sent a letter to the attorney for Ryan and Zurich, after reviewing Dr. Taylor's independent medical examination, and asked Dr. Milani to provide his opinion "on whether Mr. Matthes has an impairment rating or permanent restrictions for his low back, as opposed to his significant injury to his left lower extremity." (Ex. A, p. 8) Dr. Milani responded:

[t]he mechanism of injury was to the left upper thigh/groin region. There is no documentation of low back injury or pain. Mr. Matthes, a 61-year-old gentleman, is now subjectively having low back pain. There appears to be an assumption that since he has an abnormal gait and has never had back pain before, it would be related to his leg injury. As indicated by Dr. Taylor, he has not had a workup for his back pain. The main reason for the "non-workup" would be the delay in reporting/having the symptoms. There was no original report of back injury and there has not been any subsequent reported back injury. Low back pain most commonly would be coming from degenerative disc disease/degenerative joint disease and/or spinal stenosis or mechanical back pain.

On his exam performed by me, 2/27/2018, there is no indication of a back injury/pathology. From an impairment standpoint, table 15-3 for diagnosis related estimates of the lumbar spine, he would fit into category 1 which is a 0% impairment of the whole person. It is in category 1 due to the subjective findings but lack of structural abnormality/finding or a mechanism of injury that would cause a structural change/abnormality as to the injury of May 11, 2015.

If the assumption is an abnormal gait is causing his back pain: As found in table 17-2, gait derangement is not used when using other methods of impairment. It is implied that the impairment rating for the leg injury already includes the deficits of the leg function that also could cause gait derangement/changes.

(Ex. A, p. 8)

Matthess testified that before the May 2015 work injury he had not had any problems with his low back or received any treatment for his low back or back pain. (Tr., pp. 40-41) Matthess relayed, "[t]he back, when I go to work, the main muscle back here in my lower back starts tightening up, and the harder I work, the worse it feels. If I've put a long, full day in, it's really bad at night." (Tr., p. 41)

Matthess reported that since the May 2015 work injury he limps a lot which has changed the angle of his back into his hips, and reported the longer he walks, the more it hurts. (Tr., p. 41) Matthess testified before his work injury he never limped. (Tr., p. 42)

Matthess testified he is a hardworking man and he plans to work until he is seventy or older. (Tr., pp. 43-44) He reported he is very skilled at what he does and he has three younger boys that he wants to start a construction company with and teach them his skills. (Tr., p. 44) Matthess testified the company will do snow removal, lawn care, bathroom repair and remodeling, deck work, and other miscellaneous small projects. (Tr., pp. 44-45)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves several issues, including nature and extent of disability, entitlement to medical benefits, and interest under Iowa Code sections 85.27, 85.34 and 535.3. In March 2017, the legislature enacted changes (hereinafter "Act") relating to workers' compensation in Iowa. 2017 Iowa Acts chapter 23 (amending Iowa Code sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.45, 85.70, 85.71, 86.26, 86.39, 86.42, and 535.3). Under 2017 Iowa Acts chapter 23 section 24, the changes to Iowa Code section 85.34 apply to injuries occurring on or after the effective date of the Act. This case involves a work injury occurring before July 1, 2017, therefore, the

provisions of the new statute involving extent of disability Iowa Code section 85.34 do not apply to this case. The calculation of interest is governed by Sanchez v. Tyson, File No. 5052008 (Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue), which holds interest for all weekly benefits payable and not paid when due which accrued before July 1, 2017, is payable at the rate of ten percent; all interest on past due weekly compensation benefits accruing on or after July 1, 2017, is 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.

II. Nature of the Injury

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

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

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979). The parties have stipulated Mattheß has sustained a permanent injury, but dispute the nature of the injury. Mattheß contends he has sustained a permanent impairment to his left lower extremity and sequela low back pain caused by the work injury. Ryan and Zurich contend Mattheß has not sustained sequela low back pain caused by the work injury.

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony,

even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

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

a disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

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

Two physicians have provided opinions on causation and permanency, Dr. Milani, a family practice and occupational medicine physician retained by Ryan and Zurich to conduct an independent medical examination of Matthess and Dr. Taylor, an occupational medicine physician retained by Matthess to conduct an independent medical examination. Dr. Taylor opined Matthess has sustained permanent low back pain caused by an altered gait following the work injury. Dr. Milani has opined Matthess has not sustained a permanent injury to his low back caused by his work injury. I find the opinion of Dr. Milani most persuasive on the issue of causation, considering all of the evidence, including Matthess's medical records, testimony, and responses to discovery.

Matthess did not immediately report his work injury and sought medical care on his own. Matthess testified he started limping after his work injury in May 2015. (Tr., p. 53)

On April 21, 2016, just under a year after the work injury, Matthess attended an appointment with Dr. Buchanan, a neurologist, complaining of thigh pain with throbbing while wearing a tool belt or walking for any distance. (JE 1, p. 1) Dr. Buchanan documented Matthess complained of back pain, and noted he had a normal station and gait. (JE 1, p. 4) She also noted that she would be "happy to arrange mri lumbar spine w/o if no evidence of arterial disease." (JE 1, p. 4) There is no other mention of back pain in Matthess's treatment records. He did not return to Dr. Buchanan at any time to

request lumbar spine magnetic resonance imaging prior to the hearing, even after he obtained Dr. Taylor's report in June 2018. He did not obtain medical treatment through any physician, or through the Veterans Administration prior to the hearing.

After several surgeries with Dr. Lawrence, Matthess reported his work injury to Ryan. Ryan ultimately accepted the claim. Matthess selected his own treating orthopedic surgeon, Dr. Lawrence. Dr. Lawrence's records do not provide Matthess complained of low back pain or discomfort. Matthess admitted on cross-examination no physician has issued restrictions for an alleged back injury. (Tr., p. 49)

After Dr. Andrews released Matthess following the skin graft, Matthess returned to carpentry work, and he accepted a position with Leisure Living Home Improvements. (Tr., p. 37) Matthess testified he returned carpentry work and he was able to perform his duties, starting in 2017, working full-time, at least forty hours per week, and earning \$25.00 per hour. (Tr., pp. 36, 50-51) Matthess continued to work for Leisure Living Home Improvements through July 2018, when he quit due to a wage dispute. (Tr., pp. 39-40, 50) Matthess testified that when he worked for Leisure Living Home Improvements he was responsible for lifting as much as fifty pounds or more frequently. (Tr., p. 50) Matthess's lifting ability does not comport with the restrictions listed by Dr. Taylor.

Dr. Milani examined Matthess in February 2018. At that time Matthess was working for Leisure Living Home Improvements. During his examination Dr. Milani noted Matthess reported he favored his left leg when walking, and he noted Matthess had a "slight 'limp'" when ambulating. (Ex. A, p. 4) Dr. Milani's records do not support Matthess complained to Dr. Milani of low back pain or of a low back condition. (Ex. A)

During the time Matthess worked for Leisure Living Home Improvements Matthess did not seek medical treatment for a low back condition or low back pain, or request treatment from Ryan and Zurich, even after his independent medical examination with Dr. Taylor.

Matthess testified "my back symptoms really didn't start going until I started back to work, okay? That's when, you know, I'm doing things, I'm bending, picking up things. And all I can tell you, sir, is that before all this happened, I could work a hard day and my back not hurt. Now I can work a hard day and it just is painful as heck. It starts when I'm walking to whatever I'm doing, and it progressively gets worse as I work harder." (Tr., p. 57) This is contrary to his earlier testimony that he began experiencing back pain in 2015, which he reported to Dr. Buchanan in 2016.

When answering interrogatories propounded by Ryan and Zurich, Matthess failed to disclose he sustained a back injury or back pain caused by the work injury, which he admitted on cross-examination, as follows:

Q. And so when we asked you in Interrogatory No. 6 to describe in detail each injury, illness, disability or condition you claim to

have received or suffered as a result of the injury alleged in the petition, what did you say there, next to c(ii)?

Can you take a look at that and read that?

A. What's your question?

Q. Sure.

I would like you, please, to read what I've marked there with my pen, which is your response to that question.

A. "Nobody has given me a solid time frame on when I will be recovered and able to walk without pain in my leg."

(Tr., p. 48) Matthess never amended his answer. I do not find Matthess's testimony that he was experiencing back pain from 2015 and also during his employment with Leisure Living Home Improvement convincing or consistent with the other evidence I believe. Considering all of the record evidence, I find Matthess has not established he sustained a permanent low back pain caused by the work injury.

III. Extent of Disability

Permanent partial disabilities are divided into scheduled and unscheduled losses. Iowa Code § 85.34(2). If the claimant's injury is listed in the specific losses found in Iowa Code section 85.34(2)(a)-(t), the injury is a scheduled injury and is compensated by the number of weeks provided for the injury in the statute. Second Injury Fund v. Bergeson, 526 N.W.2d 543, 547 (Iowa 1995). "The compensation allowed for a scheduled injury 'is definitely fixed according to the loss of use of the particular member.'" Id. (quoting Graves v. Eagle Iron Works, 331 N.W.2d 116, 118 (Iowa 1983)). If the claimant's injury is not listed in the specific losses in the statute, compensation is paid in relation to 500 weeks as the disability bears to the body as a whole. Id.; Iowa Code § 85.34(2)(u). "Functional disability is used to determine a specific scheduled disability; industrial disability is used to determine an unscheduled injury." Bergeson, 526 N.W.2d at 547.

As discussed above, Matthess has not proven he sustained permanent low back pain caused by the work injury. The parties stipulated Matthess has sustained a permanent impairment to his left lower extremity. Left lower extremity impairments are included as scheduled losses. Iowa Code § 85.34(2)(o). The schedule provides a maximum award of 220 weeks of compensation. Iowa Code § 85.34(2)(o). As noted above, I found Dr. Milani's causation opinion most persuasive. Dr. Milani assigned Matthess a forty-eight percent lower extremity permanent impairment rating. (Ex. A, p. 7) Considering all of the evidence, including lay testimony, I am not persuaded to deviate from the schedule. Matthess is entitled to 105.6 weeks of permanent partial disability benefits at the stipulated rate of \$748.99, commencing on the stipulated commencement date of August 11, 2017.

IV. Medical Bills

Matthess seeks to recover medical bills paid by his insurance for treatment he received for the work injury that was not authorized set forth in Exhibit 4, totaling \$28,165.16. Ryan and Zurich contend they should not be responsible for the medical bills because the treatment was unauthorized and did not provide a more favorable outcome than would have been achieved by the care authorized by the employer.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. *Id.* "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." *Id.* § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. *Id.* If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of the necessity therefor, allow and order other care." *Id.* The statute requires the employer to furnish reasonable medical care. *Id.* § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability"). The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010).

This is not a situation where Ryan and Zurich offered care to Matthess, which he rejected, and then he pursued care on his own. This is a case where Matthess did not report the work injury and sought care on his own, ultimately reporting the work injury after he had received several surgeries. Upon reviewing all of the evidence, including the medical records and testimony concerning the treatment Matthess received, I find the treatment Matthess received was reasonable and beneficial to Matthess, and prevented him from having to have his left leg amputated, given the poor blood flow to his leg. Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 206; Brewer-Strong v. HNI Corp. 913 N.W.2d 235 (Iowa 2018). No evidence was provided concerning an alternate treatment proposed by Ryan or Zurich Matthess rejected; no care was authorized or provided. Ryan and Zurich shall reimburse Carpenters Health and Welfare (Five River Carpenters Fund) for the medical bills associated with the work injury set forth in Exhibit 4, and remain responsible for causally related future medical care.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendants shall pay the claimant one hundred five point six (105.6) weeks of permanent partial disability benefits at the stipulated weekly rate of seven hundred forty-

eight and 99/100 dollars (\$748.99), commencing on the stipulated commencement date of August 11, 2017.

Defendants 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. Sanchez v. Tyson, File No. 5052008 (Apr. 23, 2018 Ruling on Defendant's Motion to Enlarge, Reconsider, or Amend Appeal Decision Re: Interest Rate Issue).

Defendants shall receive a credit for all benefits paid to date.

Defendants shall reimburse the claimant for the cost of the independent medical examination.

Defendants shall reimburse Carpenters Health and Welfare (Five River Carpenters Fund) for all causally related medical bills as set forth in this decision, and for all causally related future medical care.

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

Signed and filed this 13th day of May, 2019.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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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.