BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH MOYER, Claimant, vs. INTERSTATE POWER & LIGHT CO., Employer, Self-Insured, Defendant.	:	File No. 5047944.01 REVIEW-REOPENING DECISION Headnotes: 1108.20, 1802, 1803.1, 1804, 2204, 2206, 2403, 2501, 2701, 2905

Claimant Joseph Moyer filed a petition in arbitration seeking workers' compensation benefits from Defendant Interstate Power & Light Company ("Interstate") and Defendant Second Injury Fund of Iowa ("the Fund"), as a result of a stipulated injury he sustained on March 20, 2012, File Number 5047944. Following an arbitration hearing, Deputy Workers' Compensation Commissioner Erica Fitch issued an arbitration decision on March 16, 2017: (1) finding Moyer failed to prove the work injury was a cause of permanent disability to his right knee, right hip, or low back; (2) concluding Moyer established he sustained a permanent impairment of 15 percent to his right lower extremity as opposed to his right foot entitling him to 33 weeks of permanent partial disability benefits at the rate of $866.74, commencing on November 8, 2012; (3) ordering Interstate to pay Moyer's medical expenses and medical mileage; (4) awarding Moyer alternate care with Kobusch Chiropractic for his low back and right hip pain caused by the changes in his gait; (5) finding while Moyer established a second qualifying loss to his right lower extremity, he failed to prove he sustained a first qualifying loss to his left knee, and thus, he was not entitled to benefits from the Fund; and (6) ordering Interstate to pay a portion of Moyer's costs.

Moyer appealed and Interstate cross-appealed the Arbitration Decision. Workers' Compensation Commissioner Joseph Cortese, II, affirmed the Arbitration Decision in its entirety. Moyer filed a Petition for Judicial Review. On June 28, 2019, the Iowa District Court for Polk County dismissed the Petition for Judicial Review and affirmed Commissioner Cortese's decision. The matter was not appealed from the district court and the decision became final.

On January 27, 2020, Moyer filed a Petition for Review-Reopening against Interstate, File Number 5047944.01, alleging he sustained a change of condition based on injuries to his right foot, right leg, right hip, right knee, low back, and mental health as a result of the March 2012 work injury, entitling him to an award of additional workers' compensation benefits, and seeking medical benefits. On January 31, 2021, Interstate filed an Answer, admitting Moyer sustained an injury to his right leg, but denying he has

sustained permanent injuries to his right hip, right knee, low back, and mental health caused by the March 2012 work injury.

A hearing on the Petition for Review-Reopening was held by CourtCall video conference on January 11, 2021. Attorney Mark Sullivan represented Moyer. Attorney James Peters represented Interstate. Moyer appeared and testified. Joint Exhibits ("JE") 1 through 11 and Exhibits 1 through 4, 6 through 10, and A through F were admitted into the record.

The parties were informed that any exhibits filed in the original arbitration proceeding are not part of the electronic record in File Number 5047944.01 and that if they wanted to include documents admitted as exhibits from the arbitration proceeding to be included in the record for this case, they would need to file the documents as exhibits in File Number 5047944.01. I afforded the parties additional time to file the proposed exhibits. Moyer proposed Exhibit 10 and Interstate proposed Exhibits G through K. Moyer objected to Interstate's proposed Exhibits G through K. On February 4, 2021, I held a hearing before the certified shorthand reporter for this case on the objections. During the hearing Moyer only objected to Exhibit J, which is a portion of a brief filed by the Fund, a party to the original Arbitration proceeding, but not a party in this case. I sustained Moyer's objection to Exhibit J because it is not evidence, but rather argument by a party in the original arbitration proceeding that is not a party in this review-reopening proceeding. Exhibit J is not an admission made by Moyer. Exhibits 10, G through I, and K were admitted into the record. The record was held open through March 1, 2021, for the receipt of post-hearing briefs. The parties filed their briefs, and the record was closed.

After the record was closed, I determined the parties had stipulated to the wrong injury date. The parties had stipulated the injury occurred on August 8, 2016, the date of the hearing before Deputy Fitch. The record was reopened to reflect the correct stipulated injury date of March 20, 2012, and closed again on April 28, 2021.

At the time of the January 11, 2021 review-reopening hearing, the parties submitted a hearing report, listing stipulations and issues to be decided. Interstate raised the affirmative defenses of claim preclusion, issue preclusion, and res judicata for claiming a whole body condition, including the right leg, low back, right knee, or mental health, and waived all other affirmative defenses. The hearing report was approved

STIPULATIONS

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

2. Moyer sustained an injury on March 20, 2012, which arose out of and in the course of his employment with Interstate.

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

4. Interstate paid Moyer healing period benefits from February 14, 2019 through January 9, 2020.

5. Although entitlement to healing period benefits from January 9, 2020 through October 16, 2020 is disputed, Moyer was off work during this period of time.

6. The alleged injury is the cause of permanent disability.

7. At the time of the alleged injury Moyer's gross earnings were $1,351.41 per week, he was married and entitled to four exemptions and his weekly rate is $866.74.

8. Interstate agreed to pay Moyer's costs of $880.00.

ISSUES

1. Has Moyer sustained a change of condition since the August 8, 2016 arbitration hearing?

2. Has Interstate proven Moyer's claim of a whole body condition, including the right leg, low back, right knee, and mental health, is barred by claim preclusion, issue preclusion, or res judicata?

3. If Moyer has sustained a change of condition, has Moyer sustained a scheduled member disability to the right leg or an industrial disability?

4. Is Moyer entitled to healing period benefits from January 9, 2020 through October 16, 2020?

5. What is the extent of disability?

6. Has Moyer established he is permanently and totally disabled under the statute or under the common law odd-lot doctrine?

7. What is the commencement date for permanent partial disability benefits?

8. Is Moyer entitled to medical expenses set forth in Exhibit 1?

9. Is Moyer entitled to alternate medical care?

10. Are the benefits that have been paid since February 14, 2019 healing period or permanency benefits for purposes of the credit Interstate is entitled to?

FINDINGS OF FACT

Deputy Fitch's arbitration decision was affirmed on appeal by Commissioner Cortese and by the district court. In the arbitration decision, Deputy Fitch considered and analyzed all exhibits produced by the parties, including medical records. I am bound by Deputy Fitch's factual findings contained in the arbitration decision and I may not revisit her findings in this proceeding.

Moyer is a high school graduate. (Ex. 7, Arbitration Decision, p. 2) After high school Moyer worked as a laborer, loading and unloading trucks, mixing and applying mortar and plaster, and loading and unloading barges. (Ex. 7, Arbitration Decision, p. 2) At the time of the review-reopening hearing Moyer was 52. (Tr., p. 134)

In 1998, Moyer commenced employment with Interstate. (Ex. 7, Arbitration Decision, p. 2) Moyer worked as an apprentice conveyor and relief tractor/crane operator for one year, which required heavy lifting and climbing of ladders and rails. (Ex. 7, Arbitration Decision, p. 3) He moved to a plant operator position for three years, which required lifting a minimum of 50 pounds. (Ex. 7, Arbitration Decision, p. 3). Moyer then worked as a driver/groundman/operator for two years, which required climbing and heavy lifting. (Ex. 7, Arbitration Decision, p. 3) In 2004, Moyer moved into a mechanical maintenance apprenticeship program, and he obtained journeyman status in 2006. (Ex. 7, Arbitration Decision, p. 3) The position required lifting a minimum of 50 pounds. (Ex. 7, Arbitration Decision, p. 3) In March 2011, Moyer began a line mechanic apprenticeship program. (Ex. 7, Arbitration Decision, p. 3) The position description describes the work as very heavy, with climbing, balancing, stooping, crawling, standing, and working in weather extremes. (Ex. 7, Arbitration Decision, p. 3)

Moyer had a history of problems with his right and left knees before the March 2012 work injury. (Ex. 7, Arbitration Decision, p. 2) In August 2006 Scott Schemmel, M.D., performed an arthroscopic chondroplasty of Moyer's left patella after receiving conservative treatment. (Ex. 7, Arbitration Decision, p. 2) Moyer returned to work without restrictions in October 2006, but he continued to experience soreness and stiffness with kneeling, squatting, and stair use, and he stopped playing sports due to increased pain. (Ex. 7, Arbitration Decision, pp. 2-3)

On March 20, 2012, Moyer was working on a three-man crew using a boom truck. (Ex. 7, Arbitration Decision, p. 3) A coworker lowered the outriggers designed to support the boom truck and one of the outriggers came down on Moyer's right foot. (Ex. 7, Arbitration Decision, p. 3) Moyer received emergency medical treatment. (Ex. 7, Arbitration Decision, p. 3) The physician who examined Moyer assessed him with crush injuries and fractures of the 2nd, 3rd, 4th, and 5th distal phalanges of the right foot, administered an injection, prescribed medication, fitted Moyer with an orthopedic shoe, advised Moyer to elevate his foot and to only stand to use the bathroom, and referred him to orthopedics. (Ex. 7, Arbitration Decision, p. 3)

Michael Chapman, M.D., an orthopedic surgeon, treated Moyer's wounds ordered physical therapy, prescribed crutches and pain medication, and restricted Moyer from working. (Ex. 7, Arbitration Decision, pp. 3-4) During an appointment on April 12, 2012, Dr. Chapman noted the tissue of Moyer's foot was healing, but he continued to experience swelling, and restricted him from working with directions to elevate his right foot the majority of the day. (Ex. 7, Arbitration Decision, p. 4) Moyer returned to Dr. Chapman on April 26, 2012, and Dr. Chapman released him to return to work without restrictions on May 7, 2012. (Ex. 7, Arbitration Decision, p. 4) After Moyer returned to work, Interstate allowed him to perform lighter work and to take frequent breaks, but he continued to experience problems. (Ex. 7, Arbitration Decision, p. 4)

During a follow-up appointment with Dr. Chapman on May 16, 2012, Moyer complained of significant pain and swelling while standing and reported he could not tolerate working an eight-hour shift. (Ex. 7, Arbitration Decision, p. 4) Dr. Chapman imposed a restriction of four-hour shifts for two weeks, and then six-hour shifts. (Ex. 7, Arbitration Decision, p. 4)

On June 13, 2012, Moyer returned to Dr. Chapman complaining of significant pain and swelling after working six-hour shifts. (Ex. 7, Arbitration Decision, p. 4) Dr. Chapman imposed restrictions of six-hour shifts with the ability to change positions frequently, and he referred him for a podiatric evaluation. (Ex. 7, Arbitration Decision, p. 4)

Terry Boyle, DPM, examined Moyer, dispensed a prefabricated orthotic, and prescribed a rocker-bottom sole to apply to his right shoe. (Ex. 7, Arbitration Decision, p. 4) Jason Keppler, DPM, also treated Moyer for skin changes between the digits of his right foot and he advised Moyer on how to clean and pad his foot, but he did not recommend any specific treatment or restrictions. (Ex. 7, Arbitration Decision, p. 4)

Moyer returned to Dr. Chapman on July 11, 2012, complaining of continued pain and swelling, and reporting his symptoms had not improved with orthotics. (Ex. 7, Arbitration Decision, p. 4) Dr. Chapman continued Moyer's restrictions and referred Moyer to a foot and ankle specialist. (Ex. 7, Arbitration Decision, p. 4)

On August 16, 2012, Phinit Phisitkul, M.D., an orthopedic surgeon specializing in the foot and ankle, who was then at the University of Iowa Hospitals and Clinics ("UIHC"), examined Moyer and ordered x-rays. (Ex. 7, Arbitration Decision, p. 5) Dr. Phisitkul observed Moyer's fractures had healed well, but he had great stiffness at the metatarsophalangeal and phalangeal joints of digits 2 through 4, resulting in metatarsal head pain from tenodesis. (Ex. 7, Arbitration Decision, p. 5) Dr. Phisitkul opined Moyer's symptoms were likely due to the position of the gastrocnemius tendon over the preceding six-week period, and he prescribed physical therapy, a night splint, orthotic insole, and a custom insert. (Ex. 7, Arbitration Decision, p. 5)

Moyer returned to Dr. Phisitkul on September 27, 2012, reporting his custom shoes had not arrived. (Ex. 7, Arbitration Decision, p. 5) Dr. Phisitkul documented Moyer's condition had improved slowly, he recommended Moyer continue physical therapy and night splinting, and he continued Moyer's six-hour workday restriction. (Ex. 7, Arbitration Decision, p. 5)

During an appointment on November 8, 2012, Moyer reported his pain had improved with physical therapy to near baseline, but he continued to experience numbness. (Ex. 7, Arbitration Decision, p. 5) Dr. Phisitkul placed Moyer at maximum medical improvement, ordered one additional month of physical therapy, recommended weight bearing, as tolerated, and imposed no permanent restrictions. (Ex. 7, Arbitration Decision, p. 5)

On January 31, 2013, Dr. Phisitkul sent Interstate's representative a letter confirming Moyer reached maximum medical improvement on November 8, 2012, and he did not need permanent restrictions. (Ex. 7, Arbitration Decision, p. 5) Dr. Phisitkul opined Moyer had sustained an 11 percent permanent impairment to his right lower extremity based on mild loss of metatarsophalangeal extension of the 2nd, 3rd, and 4th toes and sensory deficit of the superficial peroneal nerve. (Ex. 7, Arbitration Decision, p. 5)

On May 30, 2013, Moyer returned to Dr. Phisitkul, complaining of persistent and worsening right foot pain, causing him to limp, resulting in pain in other parts of his foot, right hip and back, due to an altered gait. (Ex. 7, Arbitration Decision, p. 6) Moyer told Dr. Phisitkul he had difficulty tolerating his pain when working eight hours and reported he had recently been asked to work 10 hours. (Ex. 7, Arbitration Decision, p. 6) Dr. Phisitkul examined Moyer, ordered x-rays, assessed Moyer with interdigital neuritis at the 2nd and 3rd web spaces related to the crush injury and contracture of the gastrocnemius tendon, prescribed physical therapy for the calf muscles and a night splint and insole, and restricted Moyer to working eight hours per day. (Ex. 7, Arbitration Decision, p. 6)

On June 19, 2013, Dr. Phisitkul sent Interstate a letter opining Moyer's nerve symptoms were related to the crush injury and his gastrocnemius tightness was due to an abnormal gait, his use of his foot and ankle, and to the crush injury itself. (Ex. 7, Arbitration Decision, p. 6) Dr. Phisitkul recommended physical therapy for gastrocnemius stretching, an insert and night splint for gastrocnemius tightness, and imposed a restriction of an eight-hour workday. (Ex. 7, Arbitration Decision, p. 6)

During a follow-up appointment on August 1, 2013, Dr. Phisitkul assessed Moyer with 2nd and 3rd interdigital nerve pain, most likely related to varus alignment of Moyer's feet, recommended bilateral custom insoles to use with his current insoles, and continued his restriction. (Ex. 7, Arbitration Decision, p. 6)

On September 19, 2013, Moyer returned to Dr. Phisitkul. (Ex. 7, Arbitration Decision, p. 6) Dr. Phisitkul documented Interstate had not ordered orthotics from the provider he recommended, and the orthotics Interstate ordered and gave to Moyer were made incorrectly, did not relieve his existing pain, and caused new pain symptoms, noting the orthotics caused increased force on the lateral side of Moyer's right foot. (Ex. 7, Arbitration Decision, p. 6) Dr. Phisitkul directed Moyer not to use the orthotics, performed aspirations and injections of the 2nd and 3rd interdigital web spaces, and restricted Moyer to working four hours per day for three days and then eight hours per day. (Ex. 7, Arbitration Decision, p. 7)

During an appointment on October 10, 2013, Moyer reported he received three days of relief from his symptoms after the injections and then his pain returned to its prior level. (Ex. 7, Arbitration Decision, p. 7) Dr. Phisitkul assessed Moyer with failed conservative treatment of Morton's neuroma at the 2nd and 3rd web spaces, recommended an open release of the interdigital nerve at the 2nd and 3rd web spaces, with possible nerve resection, and continued Moyer's work restriction. (Ex. 7, Arbitration Decision, p. 7)

On October 16, 2013, Dr. Phisitkul performed an excision of Morton's neuroma and restricted Moyer from working with no weight bearing for two weeks. (Ex. 7, Arbitration Decision, p. 7) Dr. Phisitkul ordered physical therapy with progressive weight bearing and transitioned Moyer to regular footwear. (Ex. 7, Arbitration Decision, p. 7) On November 1, 2013, Dr. Phisitkul restricted Moyer to sedentary duty with time to ice his leg and from driving. (Ex. 7, Arbitration Decision, p. 7)

On December 5, 2013, Moyer returned to Dr. Phisitkul, reporting he had taken a new position at Interstate with more office duties. (Ex. 7, Arbitration Decision, p. 7) Dr. Phisitkul opined the position change would be very beneficial given the status of Moyer's foot, continued his physical therapy, and imposed restrictions of light-duty work with limited walking and standing, and to avoid stairs, ladders, and uneven ground. (Ex. 7, Arbitration Decision, p. 7)

Moyer testified the surgery Dr. Phisitkul performed provided little symptom relief and when the surgery did not help, he looked for work with Interstate that was less physically demanding. (Ex. 7, Arbitration Decision, p. 7) Moyer testified he did not believe he was physically capable of working as a line mechanic and he applied for a relief plant operator position because the position was easier, lighter in nature, and allowed him to sit while working. (Ex. 7, Arbitration Decision, p. 7) Moyer commenced the plant operator position in January 2014. (Ex. 7, Arbitration Decision, pp. 7-8) The position description states the position requires climbing and lifting a minimum of 50 pounds. (Ex. 7, Arbitration Decision, pp. 7-8)

On January 9, 2014, Moyer attended a follow-up appointment with Dr. Phisitkul, reporting he had started his new position that required less activity. (Ex. 7, Arbitration Decision, p. 8) Dr. Phisitkul imposed no work restrictions, recommended Moyer continue using a night splint, and noted Moyer may need a 2nd web space nerve transection surgery in order to bury the interdigital nerve into the muscle of the foot. (Ex. 7, Arbitration Decision, p. 8)

Robin Sassman, M.D., an occupational medicine physician, performed an independent medical examination for Moyer on January 22, 2014. (Ex. 7, Arbitration Decision, p. 8) Dr. Sassman assessed Moyer with a right foot crush injury with 2nd through 5th open distal phalanx fractures, status post excision of Morton's neuroma, with continued pain and neuritis, and right hip and knee pain secondary to his gait change caused by the crush injury. (Ex. 7, Arbitration Decision, p. 8)

Dr. Sassman found Moyer had not reached maximum medical improvement and recommended a second opinion by a podiatrist, but in the absence of additional treatment, she assigned a permanent impairment rating of 10 percent to the lower extremity for fractures and subsequent deformity of the foot, 4 percent for hypersensitivity over Moyer's scar in the distribution of the superficial peroneal nerve, and 4 percent for hypersensitivity over Moyer's scar in the distribution of the sural nerve, for a combined 16 percent lower extremity impairment. (Ex. 7, Arbitration Decision, p. 8) Dr. Sassman opined Moyer had sustained no ratable impairment to his right knee or hip. (Ex. 7, Arbitration Decision, p. 8) Dr. Sassman recommended permanent restrictions of occasional sitting, standing, walking, and use of stairs, and rare use of ladders or walking on uneven surfaces. (Ex. 7, Arbitration Decision, p. 8)

After additional physical therapy, Dr. Phisitkul determined Moyer had failed conservative treatment and recommended additional surgery. (Ex. 7, Arbitration Decision, p. 9) On April 11, 2014, Dr. Phisitkul performed an excision of the interdigital neuroma and gastrocnemius recession. (Ex. 7, Arbitration Decision, p. 9) Dr. Phisitkul diagnosed Moyer with right Morton metatarsalgia and acquired equinus deformity of the

right foot, restricted Moyer from working, ordered him to be non-weight bearing, and ordered physical therapy. (Ex. 7, Arbitration Decision, p. 9) Dr. Phisitkul released Moyer to return to sedentary duty on June 5, 2014. (Ex. 7, Arbitration Decision, p. 9)

On July 24, 2014, Moyer attended a follow-up appointment with Dr. Phisitkul reporting no improvement in his symptoms after surgery. (Ex. 7, Arbitration Decision, p. 9) Dr. Phisitkul noted Moyer's hypersensitivity had improved with desensitization therapy and that he expected him to improve, ordered physical therapy, and continued his sedentary restriction. (Ex. 7, Arbitration Decision, p. 9)

During an appointment on October 23, 2014, Moyer reported a slight improvement since surgery, but complained of significant pain on the bottom of his foot. (Ex. 7, Arbitration Decision, p. 9) Dr. Phisitkul assessed Moyer with residual nerve pain, recommended a pain consult, ordered new orthotics, and imposed restrictions of light-duty work with no lifting over 20 pounds and a 10-minute break after each hour Moyer is on his feet. (Ex. 7, Arbitration Decision, p. 9) Interstate provided Dr. Phisitkul with a copy of Moyer's relief plant operator job description and he opined he believed Moyer's restrictions were adequate and that he did not need any additional restrictions to perform his position. (Ex. 7, Arbitration Decision, p. 10)

On December 3, 2014, Moyer attended an appointment with Foad Elahi, M.D., for an evaluation of his nerve pain. (Ex. 7, Arbitration Decision, p. 10) Dr. Elahi opined Moyer's symptoms were most consistent with neuropathic pain, and he recommended pain medication, which Moyer declined. (Ex. 7, Arbitration Decision, p. 10) Moyer agreed to undergo a recommended corticosteroid injection and Dr. Elahi indicated he would seek authorization for the injection. (Ex. 7, Arbitration Decision, p. 10)

Interstate scheduled a second opinion appointment for Moyer with Michael Pyevich, M.D. on December 15, 2014. (Ex. 7, Arbitration Decision, p. 10) Dr. Pyevich assessed Moyer with right cavovarus foot deformity with chronic metatarsalgia and decreased sensation, recommended right foot magnetic resonance imaging, and released Moyer to return to work, as tolerated, with respect to a combination of sitting, standing, and walking tasks. (Ex. 7, Arbitration Decision, p. 10) Moyer underwent the imaging and the reviewing radiologist listed an impression of mild degenerative changes of the 1st metatarsophalangeal joint, but the study was otherwise unremarkable. (Ex. 7, Arbitration Decision, p. 10)

During an appointment on January 23, 2105, Dr. Pyevich opined Moyer's magnetic resonance imaging was relatively normal, assessed Moyer with a right cavovarus foot deformity with chronic metatarsalgia, possibly neuritic from autonomic nerve function, and recommended Tim Miller, M.D., evaluate Moyer for a possible ganglion block, noting if Moyer did not receive relief from the block he would consider surgery. (Ex. 7, Arbitration Decision, p. 10) Moyer underwent the block, which did not provide him any relief. (Ex. 7, Arbitration Decision, p. 11)

On February 23, 2015, Moyer returned to Dr. Pyevich. (Ex. 7, Arbitration Decision, p. 11) Dr. Pyevich opined Moyer's symptoms were not likely nerve-related given he did not respond to the block, he assessed Moyer with right cavovarus foot deformity with chronic 2nd, 3rd, and 4th metatarsalgia, and recommended Moyer either

learn to live with his symptoms, undergo a repeat evaluation by Dr. Miller to determine if any treatment options were available, or undergo surgery consisting of a partial calcanectomy, tarsal tunnel release, and plantar fascial release. (Ex. 7, Arbitration Decision, p. 11) During an appointment a month later Dr. Pyevich recommended Moyer exhaust all conservative treatment options before considering surgery, cautioned that there was no guarantee surgery would alleviate his symptoms, and continued his restrictions. (Ex. 7, Arbitration Decision, p. 11)

Moyer continued to work as a relief plant operator until April 2015, when, due to an impending plant closure, he sought to transfer to an engineering coordinator position. (Ex. 7, Arbitration Decision, p. 11) The job description notes physical demands of standing, prolonged walking, and lifting. (Ex. 7, Arbitration Decision, p. 11) Pursuant to an inquiry from Interstate, Dr. Pyevich opined Moyer was capable of performing the position of engineering coordinator without restrictions. (Ex. 7, Arbitration Decision, p. 11) The engineering coordinator position allowed Moyer to work half time in the office and half time outside of the office. (Tr., pp. 90-91) When he was in the office Moyer designed power supplies for customers using a computer. (Tr., p. 91) Moyer met with customers in the field. (Tr., p. 92)

On April 8, 2015, Moyer returned to Dr. Miller, and he prescribed meloxicam and Ultram. (Ex. 7, Arbitration Decision, p. 12) During an appointment on June 16, 2015, Dr. Miller opined Moyer had received no benefit from nonsteroidal medications, tramadol, or topic gel, and he prescribed Butrans. (Ex. 7, Arbitration Decision, p. 12)

Dr. Phisitkul provided a second opinion regarding Dr. Pyevich's surgery recommendation after examining Moyer on June 26, 2015. (Ex. 7, Arbitration Decision, p. 12) Dr. Phisitkul assessed Moyer with residual metatarsalgia after a failed Morton's neuroma excision, and opined it was unlikely the recommended surgery would provide Moyer with relief because his symptoms were not caused by the cavovarus deformity, noting the surgery might exacerbate his metatarsalgia pain. (Ex. 7, Arbitration Decision, p. 12) Dr. Phisitkul recommended an ultrasound-guided injection of the residual nerve stump, and he imposed restrictions of no lifting over 20 pounds and a 10-minute break after each hour Moyer was on his feet. (Ex. 7, Arbitration Decision, p. 12)

On August 5, 2015, Moyer underwent an ultrasound-guided corticosteroid injection of the 2nd and 3rd web spaces. (Ex. 7, Arbitration Decision, p. 12) The next day he returned to Dr. Phisitkul and reported he received no relief from the injection. (Ex. 7, Arbitration Decision, p. 12) Based on the diagnostic tool, Dr. Phisitkul opined Moyer was not a surgical candidate, and recommended treatment modalities to control his pain, including a pain clinic referral and either insoles or rocker-bottom shoes. (Ex. 7, Arbitration Decision, p. 12) Dr. Phisitkul opined Moyer had reached maximum medical improvement, continued Moyer's restrictions, noted he believed Moyer's pain was not indicative of additional damage and that he should perform activities as tolerated, and recommended a functional capacity evaluation ("FCE") to determine his permanent restrictions. (Ex. 7, Arbitration Decision, p. 12)

Moyer's counsel arranged a functional capacity evaluation on September 22, 2015, with Charles Goodhue, M.S. (Ex. 7, Arbitration Decision, p. 12) Goodhue opined

Moyer gave maximum, consistent effort and found the evaluation was valid, noting Moyer demonstrated significant abilities in elevated work, crawling, kneeling, and gross dynamic balance and significant deficits with deep static crouching, repetitive squatting, standing tolerance, walking, stair climbing, and step ladder climbing. (Ex. 7, Arbitration Decision, p. 12) Goodhue opined Moyer's greatest functional limitations were in prolonged weight bearing activities of standing and walking, step ladder and stair climbing, repetitive squatting, and prolonged deep static crouching, and noted the deficits were primarily due to Moyer's right forefoot symptoms and the resulting altered mechanics in progressive weight bearing tasks. (Ex. 7, Arbitration Decision, pp. 12-13)

Goodhue found Moyer demonstrated the ability to work in the lower end of the medium physical demand category and recommended Moyer limit prolonged standing in one spot and walking to an occasional basis, sitting, standing, and walking as needed, rare ambulation on uneven surfaces and inclines, occasional stair climbing, step ladder climbing, prolonged deep static crouching, repetitive squatting, and standing tolerance. (Ex. 7, Arbitration Decision, p. 13) Goodhue noted Moyer progressively relied more on his left leg than his right in testing, and noted he had the maximum ability to horizontal lift 70 pounds rarely, 60 pounds occasionally, 45 pounds frequently, and 30 pounds constantly, to front carry 65 pounds rarely, 55 pounds occasionally, 40 pounds frequently, and 25 pounds constantly. (Ex. 7, Arbitration Decision, p. 13) Goodhue further found Moyer demonstrated the ability to engage in constant crawling or kneeling, occasional walking, with walking resulting in progressive right lower extremity limp, and occasional stair climbing or step ladder climbing, with a caveat regarding potential balance concerns and specific placement of his right foot. (Ex. 7, Arbitration Decision, p. 13)

Pursuant to an inquiry from Interstate, Dr. Phisitkul sent a letter on September 28, 2015, confirming Moyer reached maximum medical improvement as of August 6, 2015, and future treatment could include anti-inflammatory or nerve pain medication, custom orthotics and/or bracing, physical therapy, and surgery. (Ex. 7, Arbitration Decision, p. 13) Dr. Phisitkul opined Moyer had sustained a 6 percent permanent partial impairment to the right foot, or 4 percent right lower extremity, based on metatarsal fracture with metatarsalgia of the 3rd and 4th metatarsal heads and assigned no permanent impairment ratings for gait derangement. (Ex. 7, Arbitration Decision, p. 13) Dr. Phisitkul noted Moyer had previously been assigned an impairment of 17 percent for the lower extremity, noting the 6 percent he assigned did not represent additional impairment, but an evaluation of his overall impairment on August 6, 2015. (Ex. 7, Arbitration Decision, p. 13)

Moyer's attorney provided Dr. Phisitkul with a copy of the functional capacity evaluation results for review. (Ex. 7, Arbitration Decision, p. 13) On October 14, 2015, Dr. Phisitkul issued an opinion letter adopting the restrictions in the functional capacity evaluation, placing Moyer in the medium physical demand category. (Ex. 7, Arbitration Decision, p. 13)

Moyer returned to Dr. Sassman on February 3, 2016, for an independent medical examination. (Ex. 7, Arbitration Decision, p. 14) Dr. Sassman diagnosed Moyer with right foot crush injury with 2nd through 5th open distal phalanx fractures, status post

excision of Morton's neuroma, with continued pain and neuritis, and right hip pain and right knee pain secondary to gait change due to the right foot crush injury. (Ex. 7, Arbitration Decision, p. 14) Dr. Sassman assigned Moyer permanent impairment to the lower extremity of 10 percent for fractures and subsequent deformity of the foot, 4 percent for hypersensitivity in the distribution of the superficial peroneal nerve, and 4 percent for hypersensitivity of the sural nerve, for a combined 16 percent to the lower extremity, which equates to a 6 percent whole person impairment. (Ex. 7, Arbitration Decision, p. 14) Dr. Sassman opined the functional rating was insufficient to reflect the impact of Moyer's current symptoms upon his activities of daily living and assigned an additional 3 percent whole person impairment, for a combined 9 percent of the whole person. (Ex. 7, Arbitration Decision, p. 14) Dr. Sassman recommended permanent restrictions of occasional sitting, standing, and walking, an ability to change positions frequently, rare use of ladders or walking on uneven surfaces, and occasional use of stairs. (Ex. 7, Arbitration Decision, p. 14)

Dr. Sassman later revised her opinion, adding an additional 4 percent to the lower right extremity for neuritis in the distribution of the medial plantar nerve for a combined impairment of 20 percent to the lower right extremity, or 8 percent to the whole person, for a combined 11 percent to whole person. (Ex. 7, Arbitration Decision, pp. 14-15)

Erin Kennedy, M.D., an occupational medicine physician, conducted an independent medical examination for Interstate on June 20, 2016. (Ex. 7, Arbitration Decision, p. 15) Dr. Kennedy assessed Moyer with a crush injury to the right foot, resulting in open distal phalanx fractures of digits 2 through 5 and open middle phalanx fractures of digits 2 and 3, with chronic neuropathic foot and toe pain. (Ex. 7, Arbitration Decision, p. 15) Dr. Kennedy indicated the fractures were without intraarticular involvement and no metatarsal fractures were sustained. (Ex. 7, Arbitration Decision, p. 15) Dr. Kennedy noted Moyer had underwent neurolysis of the 2nd and 3rd interdigital nerves of the right foot and subsequently, Morton's neuroma excision of the 2nd and 3rd web spaces and gastrocnemius resection and he continued to suffer with pain. (Ex. 7, Arbitration Decision, p. 15)

Dr. Kennedy also assessed Moyer with right medial knee pain, lateral hip pain, and low back myofascial pain secondary to poor gait body mechanics, representing myofascial discomfort without injury, opining Moyer's right low back, hip, and knee pain developed due to his self-imposed gait change designed to avoid right foot pain and causally related Moyer's symptoms to his gait derangement due to foot pain, opining the pain represented "stress and fatiguing," as opposed to injury to or derangement of the pain sites. (Ex. 7, Arbitration Decision, p. 15) Dr. Kennedy recommended physical therapy to normalize Moyer's gait and to strengthen his low back and right leg, a podiatry or dermatology consult with respect to the condition of his skin in the right foot web spaces, and an evaluation by a pain clinic should Moyer seek additional medication management in the future. (Ex. 7, Arbitration Decision, p. 15) Dr. Kennedy declined to recommend chiropractic care and stated that if Moyer wanted chiropractic care he should seek chiropractic care through his personal health insurance. (Ex. 7, Arbitration Decision, p. 15)

Dr. Kennedy stated she considered Dr. Phisitkul's January 31, 2013 11 percent lower extremity rating invalid because his report did not include range of motion measurements and did not apply a grade modifier with respect to sensory deficit. (Ex. 7, Arbitration Decision, p. 16) Dr. Kennedy opined Dr. Sassman used an improper methodology with respect to her March 17, 2014 rating of 16 percent lower extremity because the section of the AMA Guides Dr. Sassman referenced pertains to metatarsal fractures and Moyer had been diagnosed with metatarsalgia, but not with metatarsal fractures, and found Dr. Sassman incorrectly combined ratings. (Ex. 7, Arbitration Decision, p. 16) Dr. Kennedy also disagreed with Dr. Phisitkul's September 28, 2015 rating of 6 percent to the foot or 4 percent lower extremity because his rating was also based on metatarsal fractures, when no such fractures had occurred. (Ex. 7, Arbitration Decision, p. 16) Dr. Kennedy disagreed with Dr. Sassman's May 26, 2016 rating based on metatarsal fracture that had not occurred and opined Dr. Sassman's 3 percent whole person rating for pain was improper because it should have been limited to a lower extremity rating, as opposed to a whole person impairment, and she expressed the belief the separate rating for pain was redundant, given Dr. Sassman had previously rated for neuritis and scar sensitivity. (Ex. 7, Arbitration Decision, p. 16)

Dr. Kennedy assigned Moyer a right lower extremity impairment of 3 percent for motor dysfunction, 4 percent for sensory dysfunction of the superficial peroneal nerve, 4 percent for sensory dysfunction of the medial plantar nerve, and 4 percent for dysesthesia of the superficial peroneal nerve, for a combined 15 percent right lower extremity impairment, due to peripheral nerve dysfunction of the right foot and toes. (Ex. 7, Arbitration Decision, p. 16) Dr. Kennedy recommended permanent restrictions allowing for ambulation up to 50 percent of an eight-hour shift or four hours maximum, regardless of shift length, ambulation on uneven surfaces up to 25 percent of an eight-hour shift or two hours maximum, and occasional crouching, squatting, stair use and step ladder use, but no use of ladders taller than step ladders. (Ex. 7, Arbitration Decision, p. 16)

After receiving a copy of Dr. Kennedy's report, Dr. Sassman issued a letter opining the AMA Guides do not address every type of injury, and as a result she used her clinical experience and chose an impairment rating consistent with Moyer's status, the AMA Guides allow discretion and are not strictly formulaic in nature, and the AMA Guides afford the examining physician discretion to add additional impairment due to pain symptoms when the examiner believes the rating fails to adequately reflect the claimant's true level of impairment, which is what she found in Moyer's case. (Ex. 7, Arbitration Decision, p. 17)

During the original arbitration hearing, Moyer asserted the March 2012 work injury caused him to sustain permanent injuries to the right foot, right leg, right hip, and lower back, contending his right hip, right knee, and low back problems are the result of a gait disturbance. (Ex. I) Moyer testified he spoke with Dr. Phisitkul about additional surgical treatment and noted he was walking with his foot turned out to the side and walking on the outside of his foot, putting pressure on his heel. (Ex. H, p. 49) As far back as March 2013, Moyer was experiencing right knee, hip, and lower back pain. (Ex. H, p. 50) Moyer reported he discussed his low back, hip, and knee pain with all of his

treating physicians. (Ex. H, p. 50) Moyer testified that at the time of the arbitration hearing he was experiencing a burning pain on the ball of his foot that never went away, noting his pain was a three out of ten at its best and an eight out of ten at its worst. (Ex. H, pp. 51-52)

In the arbitration decision Deputy Fitch found the March 20, 2012 work injury necessitated treatment and/or caused pain in Moyer's right foot, right leg, right hip, and low back. Deputy Fitch concluded Moyer "did not carry his burden to demonstrate the work injury of March 20, 2012 was a cause of permanent disability to [his] right knee, right hip, or low back" because no physician had opined he sustained a permanent impairment to his low back, right hip, or right knee or imposed any permanent restrictions for these body parts. (Ex. 7, Arbitration Decision, p. 19) Deputy Fitch gave Dr. Kennedy's opinion the greatest weight, noting she performed a detailed rating where she considered multiple rating methodologies, her process and methodology were clear and not questioned by another medical provider, and found Moyer sustained a 15 percent right lower extremity disability as a result of the March 20, 2012 work injury. (Ex. 7, Arbitration Decision, pp. 19-21)

During the arbitration hearing, Moyer requested alternate care for his right hip and low back symptoms. (Ex. 7, Arbitration Decision, p. 22) Deputy Fitch found Moyer's right hip and low back symptoms are causally related to the work injury and ordered Interstate to pay for ongoing chiropractic care for Moyer's right hip and low back symptoms due to his altered gait under the direction of Dr. Stangl with Kobusch Chiropractic. (Ex. 7, Arbitration Decision, pp. 22-23)

After the arbitration hearing, Moyer sought treatment with Ryan Cloos, D.O., an orthopedic surgeon. (JE 2) During an appointment on February 1, 2017, Dr. Cloos documented Moyer complained of right hip pain, "especially when he gets up from a seated position or if he sits for any length of time, any kind of seated position, he has to kind of keep his leg out straight in order to feel better" and noted Moyer did not complain of numbness, tingling, or pain radiating down his leg. (JE 2, p. 14) Dr. Cloos documented Moyer had slight hip dysplasia on the right side with a slightly shallow acetabulum and no significant degenerative changes, assessed Moyer with greater trochanteric bursitis, and recommended and administered a cortisone injection. (JE 2, p. 14)

Moyer continued to treat with Kobusch Chiropractic, complaining of soreness in his right foot, hip on the right side, neck and shoulders. (JE 3, p. 16)

On June 6, 2017, Moyer attended an appointment with Jeffrey Westpheling, M.D., an occupational medicine physician, with the nurse case manager, for an independent medical examination. (JE 4, p. 20) Dr. Westpheling reviewed Moyer's medical records and examined him. (JE 4) Dr. Westpheling noted on exam:

> [r]ange of motion of the lumbosacral spine is full. He has no particular low back tenderness with palpation. Spinal curvature is within normal limits. He is able to heel and toe walk without difficulty. She is [*sic*] a full squat with good recovery. Reflexes are intact and symmetric throughout the lower extremities area he has tenderness over the right greater trochanter.

> Range of motion of the right hip is full. There is no shortening or external rotation of the right lower extremity when compare [*sic*] to the left in a supine position. Gait pattern is slightly antalgic to the right and he appears to weight-bear on the lateral aspect of the right foot.

(JE 4, p. 21) Dr. Westpheling assessed Moyer with chronic right foot metatarsalgia, right low back pain, and right trochanteric bursitis. (JE 4, p. 21) Dr. Westpheling opined Moyer's hip and lower back complaints were causally related to the right foot injury and recommended physical therapy for his right low back and hip. (JE 4, p. 21)

On June 30, 2017, Delos Carrier, M.D., an occupational medicine physician, conducted a comprehensive consult for Interstate after reviewing Moyer's medical records and examining him. (JE 5, pp. 28-34) Dr. Carrier diagnosed Moyer with a crushing injury of the right lesser toes, right hip pain, and right knee pain. (JE 5, p. 33) Dr. Carrier opined Moyer's right knee and right hip pain are "secondary to biomechanical changes caused by his right foot crush injury, recommended gabapentin and physical therapy for gait training, and recommended work restrictions of occasionally sitting, standing, and walking as tolerated with the ability to change positions frequently, and to avoid ladders, stairs, and walking on uneven terrain. (JE 5, pp. 33-34)

On August 21, 2017, Moyer returned to Dr. Carrier, who administered an injection into the right greater trochanteric bursa, discontinued his gabapentin, continued his physical therapy, continued his restrictions, and recommended a referral to a pain specialist. (JE 5, pp. 37-38)

On September 20, 2017, Moyer attended an appointment with Dr. Miller, complaining of hip, knee, and back pain. (JE 6) Dr. Miller documented, "I would state that I watched him walk in here and I had him walk in the room and I somewhat doubt he walks without any limp. He states he turned his food outward a little bit to have this landed on the inside of his foot but I did not observe that at all when he was here." (JE 6, p. 86) Dr. Miller stated he would be hesitant to describe his foot as causing his other concerns and he did not recommend any further treatment for Moyer. (JE 6, p. 86)

Moyer attended a follow-up appointment with Dr. Carrier on October 2, 2017. (JE 5, p. 40) Moyer relayed he had been disappointed because he had been sent back to Dr. Miller, who he believed was upset by the situation. (JE 5, p. 40) Dr. Carrier wrote that he did not understand why Moyer had been sent back to Dr. Miller because he wanted a second opinion, not a repeat opinion. (JE 5, p. 40) Dr. Carrier stated he would try to have him seen by Rahul Rastogi, M.D. at the UIHC. (JE 5, p. 40) Moyer reported his hip pain had improved since the injection, but was starting to get worse. (JE 5, p. 40) Dr. Carrier documented he told Moyer he could not repeat the injection until late December 2017. (JE 5, p. 40) Dr. Carrier prescribed cyclobenzaprine and Flexeril, recommended Moyer return to regular duty effective October 3, 2017, recommended a second opinion by Dr. Rastogi, and follow-up care with his partner, Camilla Frederick, M.D., an occupational medicine physician. (JE 5, p. 41)

On November 27, 2017, Moyer attended an appointment with Dr. Rastogi, who noted Moyer had been seen at his clinic in 2014 for the same pain and the UIHC had

recommended gabapentin, a shoe insert, lidocaine ointment, and an injection at the site of the neuroma, noting he did not undergo the injection with the UIHC and had a steroid injection with orthopedics. (JE 7, p. 89) Moyer complained of localized and burning pain in the ball of his right foot, noting he walks on the lateral edge of his right foot. (JE 7, p. 89) Dr. Rastogi administered a posterior tibial nerve block and prescribed Keppra and cyclobenzaprine. (JE 7, p. 90)

Moyer returned to Dr. Rastogi on January 10, 2018, and Dr. Rastogi noted the nerve block had failed and Keppra offered him no benefit. (JE 7, p. 91) Dr. Rastogi diagnosed Moyer with neuropathic pain, right foot pain, noted there was little else to offer Moyer and recommended a trial spinal cord stimulator. (JE 7, p. 91)

To determine whether he was a candidate for a trial spinal cord stimulator, Dr. Rastogi arranged a pain psychological consultation for Moyer with Katherine Hadlandsmyth, PhD, at the UIHC. (JE 7, p. 93) Moyer reported irritability, social withdrawal, low frustration tolerance, that he feels down "at times" during the day, a loss of interest and pleasure, some feeling of helplessness, fatigue, some lower concentration, occasional passive fleeting suicidal ideation, anxiety about whether a spinal cord stimulator will help and possible disappointment if it does not work and there are no other options. (JE 7, p. 94) Dr. Hadlandsmyth diagnosed Moyer with pain disorder with psychological factors and related to a medical condition, right foot pain, major depressive disorder, single episode, moderate, and a history of alcohol abuse, and recommended Moyer undergo treatment for depression before he undergo a spinal cord stimulator trial. (JE 7, p. 96)

Moyer returned to Dr. Rastogi on March 2, 2018. (JE 7, p. 97) Dr. Rastogi documented it would be reasonable to proceed with a trial spinal cord stimulator, discussed expectations with the trial, and advised Moyer to follow up with his primary care provider regarding his depression. (JE 7, p. 99)

On April 19, 2018, Richard Corfman, LISW, conducted a psychosocial assessment of Moyer as recommended by the UIHC before he undergo a neurostimulator trial and commence therapy. (JE 8, pp. 173-76) Moyer attended therapy sessions with Corfman on May 3, 2018, and May 17, 2018. (JE 8, pp. 177-178)

Moyer presented to the emergency room on May 17, 2018, complaining of back pain that was new for less than 28 days and hip pain. (JE 9, p. 221) Moyer reported his back pain was the result of an injury to his back and right foot that had been gradually worsening over the past several years, which he reported was located in his right lower back and he described as aching, throbbing, severe, and radiating to the right foot. (JE 9, p. 221)

On May 22, 2018, Terrence Augspurger, M.D., a psychiatrist, and Amy Mooney, Ph.D., a psychologist, conducted an independent mental health and psychiatric evaluation of Moyer for Interstate. (Ex. A) Drs. Augspurger and Mooney reviewed Moyer's records, administered testing and examined him. (Ex. A) Drs. Augspurger and Mooney listed an impression of major depressive disorder, single episode, moderate, with anxious distress, opined there is no scientific evidence to prove major depressive disorders are caused by pain or other life experiences and that they could not endorse a

causal relationship between Moyer's depression and his work injury. (Ex. A, p. 7) Drs. Augspurger and Mooney opined psychotherapy and antidepressant medication would be reasonable and necessary treatment, the condition would likely resolve, and Moyer did not require any work restrictions for his mental health condition. (Ex. A, p. 7)

On May 30, 2018, Moyer attended an appointment with Mark Mittauer, M.D., a psychiatrist, reporting he sustained a foot injury in 2012 and began feeling depressed three years later. (JE 8, p. 179) Dr. Mittauer diagnosed Moyer with a "depressive disorder due to foot injury with major depression-like episodes," insomnia disorder, and alcohol use disorder in remission, found his suicide risk was moderate, recommended psychotherapy with Corfman, prescribed Cymbalta, and recommended Moyer try melatonin for insomnia. (JE 8, p. 180) Moyer attended psychotherapy with Corfman on May 31, 2018, and July 5, 2018. (JE 8, pp. 182-84)

Dr. Rastogi implanted a lumbar neurostimulator at T11 on June 28, 2018. (JE 7, p. 100) During an appointment on July 25, 2018, Dr. Rastogi documented the trial spinal cord stimulator failed and provided Moyer with no pain relief or increase in functionality and that he continued to experience burning pain in his right foot that had been unresponsive to multiple interventions and multiple failed medications, noting the pain remains located at the plantar surface of his right foot that is worse with movement and pressure of any kind applied to the foot. (JE 7, p. 102)

On July 25, 2018, Moyer attended an appointment with Dr. Mittauer. (JE 8, p. 185) Dr. Mittauer diagnosed Moyer with depressive disorder due to foot injury, "with major depression-like episodes," prescribed amitriptyline for insomnia, depression, and pain. (JE 8, pp. 185-86)

Moyer's attorney conducted a telephone consultation with Dr. Mittauer on August 1, 2018, after he reviewed Drs. Augspurger and Mooney's report. (JE 8, p. 186) Dr. Mittauer disagreed with their conclusion "there is no scientific evidence to prove major depressive disorders are caused by pain or other life experiences," noting the literature provides that chronic pain can cause or exacerbate major depressive disorders and that major depressive disorders can also exacerbate pain. (JE 8, p. 186) Dr. Mittauer further disagreed with their conclusion that there was no causal relationship between Moyer's work injury and his depressive disorder, opining his pain and chronic disability are the cause of his depressive disorder diagnosis. (JE 8, p. 186) Dr. Mittauer opined because Moyer has had persistent pain and associated disability "it would be more likely than not that is [*sic*] major depressive disorder condition would persist and be permanent." (JE 8, p. 186) Dr. Mittauer also disagreed with their conclusion that Moyer does not need any permanent restrictions, opining Moyer's depressive disorder "has caused difficulties with concentration, lack of focus, and less efficiency at work, resulting in him making more mistakes. I do not feel that the lack of concentration are [*sic*] lack of focus were the result of Mister Moyers [*sic*] insomnia or pain, or at least that these were not the sole cause." (JE 8, p. 186) Dr. Mittauer further opined Moyer's depressive disorder causes him to be irritable, which "would result in him having difficulties interacting appropriately with customers, coworkers, and supervisors." (JE 8, p. 187) Dr. Mittauer found Moyer's major depressive disorder, insomnia, and pain cause him to be fatigued, which interferes with his work and concentration, and that his major

depressive disorder causes him to be less motivated to work, and that his lack of concentration and fatigue make it unsafe for him to drive at work. (JE 8, p. 187) Dr. Mittauer recommended restrictions of being able to take breaks when he is fatigued, irritable, or having trouble concentrating, and he "would require a shorter workday, less than the customary 8 hours." (JE 8, p. 187)

On September 14, 2018, Moyer attended an appointment with John Femino, M.D., an orthopedic surgeon with the UIHC on a referral from the UIHC pain clinic. (JE 7, p. 104) Dr. Femino assessed Moyer with neuritis of the right foot, right foot pain, and gastrocnemius equinus of the right lower extremity, instructed Moyer on IT band stretches, recommended an ultrasound-guided injection of the tibial nerve, requested Moyer bring his orthotics to his next appointment, and imposed permanent restrictions established by Goodhue's functional capacity evaluation. (JE 7, pp. 107-08)

On October 9, 2018, Moyer attended a functional capacity evaluation with Goodhue, ordered by Dr. Westpheling to determine restrictions. (JE 10, p. 222) Goodhue found Moyer gave maximal, consistent effort and he opined the test was valid regarding his current abilities and any needed changes from the September 2015 FCE. (JE 10, pp. 223-24) Goodhue found Moyer had the ability to: (1) floor to waist lift up to 45 pounds rarely, up to 30 pounds occasionally, up to 20 pounds frequently, and up to 10 pounds constantly; (2) waist to overhead lift up to 45 pounds rarely, up to 35 pounds occasionally, up to 25 pounds frequently, and up to 15 pounds constantly; (3) horizontal lift up to 50 pounds rarely, up to 40 pounds occasionally, up to 30 pounds frequently, and up to 20 pounds constantly; (4) static push up to 40 pounds rarely, up to 25 pounds occasionally, up to 15 pounds frequently, and up to 10 pounds constantly; (5) static pull up to 45 pounds rarely, up to 30 pounds occasionally, up to 20 pounds frequently, and up to 15 pounds constantly; (6) right single upper extremity carry up to 35 pounds rarely, up to 25 pounds occasionally, up to 15 pounds frequently, and up to 5 pounds constantly; (7) left single upper extremity carry up to 45 pounds rarely, up to 30 pounds occasionally, up to 20 pounds frequently, and up to 10 pounds constantly; (8) front carry up to 45 pounds rarely, up to 30 pounds occasionally, up to 20 pounds frequently, and up to 10 pounds constantly. (JE 10, pp. 227-28) Goodhue further found Moyer could occasionally engage in elevated work with prolonged use and repetitive reaching, repetitive trunk rotation sitting, repetitive trunk rotation standing, crawling, kneeling, deep-static crouching, repetitive squatting, sitting, standing, walking on even terrain, stair climbing, step ladder climbing, and rarely engage in prolonged forward trunk posturing/sitting, prolonged forward trunk posturing/standing, and walking on uneven terrain, (JE 10, pp. 229-31)

Goodhue reviewed Moyer's job description and opined he believed there would be safety concerns if Moyer returned to Interstate as an engineer coordinator, finding his functional abilities do not match with the physical demands required to perform the tasks in the job description. (JE 10, pp. 225-26) Based on his testing, Goodhue found Moyer falls within the upper end of the light work category and that he should limit prolonged standing in one spot and prolonged walking to no more than an occasional basis and should be allowed to alternate between sitting, standing, and walking as

needed, minimize walking on uneven terrain to no more than a rare basis, and limit stair climbing and step-ladder climbing to no more than an occasional basis. (JE 10, p. 226)

On October 11, 2018, Dr. Westpheling issued a Fitness for Duty Release after reviewing Moyer's job description. (JE 4, pp. 22-24) Dr. Westpheling found he was capable of performing the essential functions of the job with accommodation for right foot pain and right hip pain, and imposed permanent restrictions of light work, lifting, carrying, pushing or pulling up to 20 pounds occasionally, up to 10 pounds frequently, and exert negligible forces constantly, standing and walking up to four hours per day, sitting up to four hours per day, operating a motor vehicle up to four hours per day, never crawl, occasionally crouch, climb, and kneel, constantly reach, and he should be able to alternate sitting, standing, and walking. (JE 4, pp. 22-24)

On October 30, 2018, Camilla Frederick, M.D. conducted a comprehensive consult for Interstate. (JE 5, pp. 43-52) Dr. Frederick reviewed Moyer's medical records and examined him. Dr. Frederick noted Moyer was negative for ADHD, PTSD, anxiety, depression, mood swings, panic, and stress. (JE 5, p. 44) Dr. Frederick diagnosed Moyer with a crushing injury of the right lesser toes, right hip pain, right knee pain, and low back pain. (JE 5, p. 51) Dr. Frederick opined Moyer's conditions are related to his work activities, recommended a change in his orthotics, and consideration of a peripheral stimulator. (JE 5, p. 51)

On November 12, 2018, in response to an inquiry from Interstate regarding Moyer's work on uneven ground in the field, Dr. Westpheling opined Moyer was capable of performing the essential functions of the job with accommodation for right foot pain and right hip pain, and imposed permanent restrictions of light work, no lifting, carrying, pushing or pulling up over 20 pounds occasionally, or over 10 pounds frequently, and exert negligible forces constantly, standing and walking up to four hours per day, sitting up to four hours per day, operating a motor vehicle up to four hours per day, never crawl, occasional crouching, climbing, and kneeling, constant reaching, and noted he should be able to alternate sitting, standing, and walking, and walk on uneven terrain on a rare basis, less than five percent of the time. (JE 4, pp. 25-27)

On November 20, 2018, Interstate sent Moyer a letter noting that Dr. Westpheling, his treating physician, had assigned him permanent restrictions and "it has been determined that you are unable to perform the essential functions of your job as Engineering Coordinator," and informing Moyer he had until January 20, 2019 to bid for open positions within his restrictions. (Ex. 4, p. 61) The letter further informed Moyer that if he had not successfully bid into another position for which he was qualified by January 20, 2019, he could either apply for short- or long-term disability benefits or terminate his employment. (Ex. 4, p. 61) Moyer continued to work for Interstate after January 20, 2019. (Tr., p. 66)

On December 12, 2018, Moyer returned to Dr. Frederick regarding his right foot, hip, and low back pain. (JE 5, p. 53) Dr. Frederick examined Moyer and recommended regular duty effective December 12, 2018, noted she believed his upslip and rotation were due to his walking pattern, and recommended magnetic resonance imaging of his right hip and low back. (JE 5, p. 55)

On December 24, 2018, Moyer received magnetic resonance imaging of his lumbar spine and pelvis. (JE 11, pp. 239-41) The reviewing radiologist listed an impression for the lumbar spine of "[m]ild lumbar degenerative changes, including mild-moderate neural foraminal narrowing on the right at L3-4 and on the left at L4-5; no spinal stenosis or evidence of direct nerve root impingement," and for the pelvis listed an impression of "[n]egative." (JE 11, pp. 239, 241)

Moyer continued to treat with Drs. Femino and Rastogi, complaining of constant burning pain in his right foot and numbness and tingling extending to his toes. (JE 7, pp. 109-111) Moyer received a sympathetic block to the lumbar plexus, which he reported provided no relief, and Dr. Famino noted he would proceed with a gastrocnemius tendon release after he was seen again by the pain clinic. (JE 7, pp. 112-13)

On February 19, 2019, Dr. Femino performed a gastrocnemius release on Moyer, listing a pre- and postoperative diagnosis of lower extremity chronic/neuropathic pain secondary to work-related complex foot injury, and released him to be weight bearing as tolerated in a boot with crutches. (JE 7, pp. 118-20) Following surgery Moyer developed a fever and he was treated with intravenous antibiotics. (JE 7, pp. 121-22) Moyer continued to work for Interstate up through the surgery with Dr. Femino. (Tr., p. 66)

On March 7, 2019, Moyer returned to Dr. Frederick. (JE 5, p. 58) Dr. Frederick recommended no work effective March 7, 2019, and considered an epidural steroid injection on the right at L3-L4. (JE 5, p. 59)

On March 8, 2019, Moyer returned to Dr. Femino for a postoperative evaluation. (JE 7, pp. 124-25) Dr. Femino documented Moyer reported his pain had improved somewhat, but it was difficult to tell, and complaining of some bruising and pain at the posterior aspect of his heel. (JE 7, p. 125)

Moyer returned to the UIHC on April 11, 2019, and he was examined by Rhonda Dunn, ARNP, in orthopedics and Dr. Rastogi. (JE 7, pp. 126-29) Moyer complained to Dunn he was experiencing stabbing pain at the right plantar heel and continued burning pain at the ball of right foot, reporting he had been using a night splint and performing home stretching, but he was having difficulty with heel raises due to pain. (JE 7, p. 127) He also complained of low back pain and hip pain to Dr. Rastogi. (JE 7, p. 129) Dr. Rastogi documented Moyer's complaints were new and "[t]here is a focal point of tenderness on the lateral aspect of his hip, and he feels that he has weakness now on the right leg" and low back pain radiating into his buttocks on the right that is sharp with bending forward. (JE 7, p. 129) Dr. Rastogi diagnosed Moyer with lumbar radicular pain and neuroforaminal stenosis of the lumbar spine, noting Dr. Rastogi reviewed a magnetic resonance imaging report that showed lumbar stenosis on the right at the L3-L4 foramen, and requesting the imaging records, recommended a right GTB injection, ordered physical therapy for his low back and right hip, and advised Moyer to continue his stretching exercises at home. (JE 7, pp. 129-30) On April 22, 2019, Moyer returned to the pain clinic at the UIHC for the GTB injection. (JE 7, p. 131)

On May 10, 2019, Moyer attended an appointment with Dr. Femino, complaining of burning pain at the ball of his right foot, sharp pain at the heel of his right foot with aching at the right medial knee and aching pain at the right side of the low back to the buttock, and reporting walking without shoes causes his heel pain to be worse. (JE 7, pp. 132-33) Moyer relayed he was still walking the way he did before surgery, he questioned a lump in his calf distal to the gastrocnemius lengthening procedure incision, and he reported he was not working. (JE 7, p. 133)

Moyer returned to the UIHC on June 7, 2019. Dunn examined Moyer and he reported his right calf pain had improved, but he had not received any improvement in the pain at the ball of his foot or heel, and he requested the cushioning placed in his shoe insert during his last clinic visit be removed because it had increased his pain. (JE 7, p. 136) While at the UIHC, Moyer told Dr. Rastogi he received some short-term pain relief from the GTB injection. (JE 7, p. 138) Dr. Rastogi reviewed his lumbar spine magnetic resonance imaging, which he found showed lumbar stenosis on the right at L3-L4. (JE 7, p. 138) Dr. Rastogi diagnosed Moyer with lumbar radicular pain, greater trochanteric bursitis of the right hip, neuropathic pain, neuroforaminal stenosis of the lumbar spine, and other chronic pain, and recommended a trial of a right L3-L4 transforaminal lumbar epidural steroid injection and continued physical therapy and home stretching. (JE 7, pp. 138-39) Dr. Rastogi administered a right L3-L4 transforaminal lumbar epidural steroid injection on June 13, 2019. (JE 7, p. 142)

On June 5, 2019, Moyer returned to Dr. Mittauer, reporting his pain was worse than before surgery in February 2019. (JE 8, p. 196) Dr. Mittauer noted Moyer was continuing to take Fetzima with side effects. (JE 8, p. 196) Moyer attended additional therapy sessions with Corfman between October 29, 2018 and September 30, 2019. (JE 8, p. 188-195, 197-98)

Moyer returned to Dr. Femino on July 25, 2019, complaining of persistent pain in his right foot limiting him from some activities. (JE 7, p. 147) Dr. Femino documented he observed Moyer walked with an antalgic gait without the need for assistive devices, found he had reached maximum medical improvement, recommended Moyer wear shoe orthotics as needed, and imposed permanent restrictions of occasional lifting up to 40 pounds, limited stair climbing, no ladders, and no work on uneven ground or slanted surface. (JE 7, pp. 147-48)

On August 8, 2019, Moyer attended an appointment with Dr. Frederick reporting he had received an epidural steroid injection and a hip injection and received one to two days of relief from the epidural steroid injection, and two days of relief from the hip injection. (JE 5, p. 61) Dr. Frederick noted his hip appeared normal on imaging and that his lumbar spine showed narrowing on the right at L3-L4 and L4-L5, and that he had not received relief after heel cord lengthening and that he developed additional heel pain following the procedure. (JE 5, p. 61) Dr. Frederick released Moyer to regular duty effective August 8, 2019, noting she believed his low back pain and right hip pain were related to his altered gait. (JE 5, p. 63)

After receiving Dr. Femino's restrictions, Interstate sent Moyer a letter on September 12, 2019, stating as a result of Dr. Femino's permanent restrictions

Interstate had determined he could not perform the essential functions of his engineering coordinator position. (Ex. B) Interstate informed Moyer he had until November 11, 2019, to bid on an open position for which he was qualified and able to perform within his restrictions, and if he did not find another position by that date he would be terminated. (Ex. B)

On September 16, 2019, Moyer returned to Dr. Rastogi, reporting his symptoms had not changed and that he continued to experience lower back pain with radiation into his hip and lateral part of his right thigh with no associated numbness, tingling, or weakness. (JE 7, p. 153) Dr. Rastogi diagnosed Moyer with lumbar facet arthropathy, greater trochanteric bursitis of the right hip, and lumbar spondylosis, administered a right L3-L4-L5 medial branch block, and recommended duloxetine for "chronic pain and ancillary benefits to mood" and over the counter Aspercreme or diclofenac gel. (JE 7, pp. 153-54)

Moyer attended an appointment with Andrew Pugely, with the UIHC for his back and right hip pain on October 3, 2019. (JE 7, p. 155) Moyer relayed the injections he received provided incomplete or no pain relief and that physical therapy had not been very helpful, noting his most recent medial branch block provided more relief, but it only lasted until the evening following the injection. (JE 7, p. 155) Moyer also complained of right-sided low back pain and sharp, stabbing right hip pain, reporting his buttock and hip pain was worse than his back pain, and also reporting occasional sharp pain at the right side of his low back with slight trunk flexion in the morning, and he complained the duloxetine made him groggy and did not help his pain. (JE 7, p. 156) Dr. Pugely assessed Moyer with low back and right greater trochanteric pain, recommended no restrictions for his spine and right hip specifically and not impacting the restrictions for his foot, and documented he told Moyer there is no surgery for his problems. (JE 7, p. 160) Dr. Pugely opined **"**I do not think [his degenerative lumbar spine changes] are related to his work injury nor [are] they causing him substantial symptoms." (JE 7, p. 161)

Moyer testified in the fall of 2019 he bid on a buyer's position in purchasing with Interstate, which was inside and did not require any work outside. (Tr., pp. 66, 95-96) He also bid on a substation maintenance and construction job, a management position. (Tr., pp. 67, 95-96) Moyer testified both positions would have involved a lot of decision-making and work with others, which are difficult for him. (Tr., p. 67) Interstate did not interview Moyer for either position. (Tr., p. 67)

Moyer applied for and received long-term disability benefits backdated to September 1, 2019. (Tr., p. 68) Moyer received $386.00 per month in long-term disability benefits for one year. (Tr., p. 68) Moyer reported the maximum he could have received was $3,800.00 per month, but it was reduced because of his workers' compensation benefits. (Tr., p. 69) While Moyer has not worked since February 2019, he remains an employee of Interstate. (Tr., pp. 69-70)

On October 15, 2019, Moyer returned to Dr. Rastogi for right medial branch blocks targeting the facet joints of L3-L4 and L4-L5. (JE 7, pp. 162-63) Moyer returned

to Dr. Rastogi on November 21, 2019, for radiofrequency ablation following two successful medial branch blocks at the right L3, L4, and L5. (JE 7, pp. 164-65)

On October 27, 2019, Dr. Mittauer sent Moyer's attorney a letter stating he provided psychiatric treatment to Moyer for depressive disorder due to foot injury, "with major depression-like episode," and an insomnia disorder both caused by the work injury. (JE 8, pp. 199-200) Dr. Mittauer noted he had met with Moyer 11 times from May 30, 2018 through October 23, 2019 and that he had prescribed multiple antidepressant medications for him and that he was currently taking Fetzima. (JE 8, p. 199)

Dr. Mittauer opined Moyer's depressive disorder causes him to be irritable, which impairs his ability to work with supervisors and coworkers, impairs his concentration which causes him to make mistakes and be less efficient, causes him to be fatigued, lack energy and motivation, impairs his ability to work for sustained periods at a rapid pace, and to maintain concentration, which are symptoms primarily caused by his depressive and insomnia disorders and are not primarily caused by his chronic pain. (JE 8, p. 200) Dr. Mittauer recommended restrictions of being allowed to take a break for 10 minutes every 30 minutes, working no more than 4 hours per day, not assigning work tasks requiring sustained attention for more than 10 minutes, not assigning work tasks that require working at a rapid pace, multitasking, or handling several tasks at once, and not assigning work tasks that could result in Moyer making mistakes that could harm himself or others, or damage equipment or products. (JE 8, p. 200) Moyer continued to attend therapy with Corfman on November 7, 2019, December 19, 2019, and February 3, 2020. (JE 8, pp. 203–05)

Moyer returned to Dr. Frederick on January 9, 2020. (JE 5, p. 64) Dr. Frederick diagnosed Moyer with a crushing injury of the right lesser toes, right hip pain, low back pain, and spondylosis without myelopathy or radiculopathy in the lumbar region, caused by his work injury. (JE 5, p. 69) Dr. Frederick recommended regular duty, asked for a copy of the second functional capacity evaluation, found he had reached maximum medical improvement for his back, hip, and right leg, and assigned permanent restrictions of lifting, pushing, and pulling up to 45 pounds rarely, up to 30 pounds occasionally, up to 20 pounds frequently, lifting up to 10 pounds constantly, pushing and pulling up to 15 pounds constantly, occasional climbing, frequent use of stairs, to alternate sitting with standing, and walking, and rare walking on uneven ground. (JE 5, pp. 69-71, 75) Using the AMA Guides 6th Edition, Dr. Frederick found Moyer's range of motion loss equates to a three percent loss in both ankles, so "Dr. Kennedy's rating of 15% of the lower extremity is unchanged." She found he was entitled to no additional impairment for his right hip, and she assigned a zero percent impairment rating for his lumbar spine. (JE 5, pp. 69-70)

Moyer returned to Dr. Mittauer on February 12, 2020, reporting the increase in his Fetzima dosage did not result in any benefit, with side effects of sweating and nausea. (JE 8, p. 206) Dr. Mittauer diagnosed Moyer with depressive disorder due to foot injury, with major depression-like episodes and an insomnia disorder, noting he may try additional medications if Moyer cannot afford Fetzima. (JE 8, p. 207)

On February 13, 2020, Dr. Frederick responded to a letter from Interstate's representative after receiving an updated functional capacity evaluation from October 9, 2018. Dr. Frederick opined Moyer did not need additional restrictions for his hip and low back, but she would adjust his restrictions based on an updated functional capacity evaluation. (JE 5, p. 73)

Moyer testified he applied for vocational rehabilitation services through Iowa Vocational Rehabilitation Services ("IVRS") in October 2019. (Tr., p. 76) Moyer listed a goal of self-employment in boat repair. (Ex. D) During a meeting with IVRS on May 12, 2020, Moyer's counsel documented Moyer had decided not to purchase the business due to the risk financially, but he continued to be interested in self-employment in the boat repair industry. (Ex. D, p. 28) Moyer testified he spoke with his banker and his banker did not recommend using his home as collateral because it was too risky. (Tr., p. 78) After receiving a copy of Dr. Mittauer's records in August 2020, Moyer's IVRS counselor moved Moyer into a higher severity category to the most severely disabled with significant limitations in mobility, self-direction, and work tolerance. (Ex. D, p. 36) Moyer continued to express an interest in self-employment.

During appointments on May 20, 2020, August 12, 2020, and November 11, 2020, Dr. Mittauer recommended Moyer increase his Fetzima to 120 milligrams, but Moyer elected to stay at his current dosage, due to the cost. (JE 8, pp. 211, 215-16, 218-20)

On June 11, 2020, Moyer returned to Dr. Rastogi, complaining of continued pain in his lower back and right hip. (JE 7, p. 166) Dr. Rastogi documented Moyer reported the radiofrequency ablation helped with his pain, but his pain had gradually returned to baseline, and Moyer noted sitting makes his pain in his right hip worse. (JE 7, p 166) Dr. Rastogi diagnosed Moyer with lumbar facet arthropathy and myofascial pain syndrome, and documented Moyer had failed multiple attempts at interventional procedures and trials of medications, noting the ablation helped with about 20 percent of his pain relief, and recommended a right medial branch block at L1, L2, and L3, in preparation for additional radiofrequency ablation. (JE 7, p. 168)

On August 14, 2020, Moyer attended an appointment with Kobusch Chiropractic reporting he had "weed wacked" his yard and now his low back was really tight and sore. (JE 3, p. 17)

Moyer returned to Dr. Rastogi on August 19, 2020, for his right hip and back pain. (JE 7, p. 169) Moyer reported he was taking Baclofen with minimal improvement and no change in his symptoms. (JE 7, p. 169) During an appointment on September 25, 2020, Moyer underwent a right piriformis injection with Dr. Rastogi. (JE 7, pp. 170-71)

During a follow-up visit with Kobusch Chiropractic on August 28, 2020, Moyer reported his low back and hip were very sore since he moved his daughter. (JE 3, p. 17) Moyer returned on September 8, 14, 21, and 28, 2020, complaining of hip tightness and soreness and knee pain. (JE 3, p. 17) During an appointment on October 7, 2020, he complained of his hip giving out and back tightness. (JE 3, p. 18) He complained of right shoulder pain, and relayed his hip and low back were really tight during an

appointment on October 14, 2012. (JE 3, p. 18) During an appointment on October 22, 2020, Moyer reported he fell on his right shoulder on Tuesday evening and complained his hip gave out. (JE 3, p. 18) On December 1, 2020, Moyer complained his back and hip were really tight and sore. (JE 3, p. 19)

Moyer attended an appointment with Dr. Frederick on October 16, 2020. (JE 5, p. 76) Dr. Frederick noted on exam, Moyer "is able to move with no difficulty. His gait initially was very antalgic but after he had sat for a period, both for myself in room and Curtis he only had a slightly foreshortened of gait on RT, He didn't limp on entering the building, then limped markedly on coming down the hall towards me but then on requesting him to walk it appeared just slightly altered." (JE 5, p. 79) Dr. Frederick diagnosed Moyer with right hip pain and right hip trochanteric bursitis, found his right hip pain was due to an altered gait from his foot problem and is work-related, noted injections had not provided much relief and she did not recommend any additional injections or a bursectomy, and found Moyer had reached maximum medical improvement. (JE 5, pp. 79-80)

On November 28, 2020, Drs. Augspurger and Mooney performed an independent mental health and psychiatric evaluation after receiving additional records from Interstate's counsel. (Ex. 6) Drs. Augspurger and Mooney examined Moyer and determined his attention, concentration, and vigilance were deemed to be within normal limits. (Ex. 6, p. 70) Drs. Augspurger and Mooney listed a diagnostic impression of depressive disorder due to another medical condition, the March 2012 work-related injury and its multiple sequelae, insomnia, and alcohol use disorder in sustained remission. (Ex. 6, p. 73) Drs. Augspurger and Mooney opined "[w]hile we cannot say his work related injury is the sole cause of his current mental health condition, we do believe it to be a substantial contributing factor in producing his current mental health condition," recommended a combination of psychotropic medication and psychotherapy for treatment of his condition, opined his condition "in all likelihood will be permanent," and found Dr. Mittauer's work restrictions from October 27, 2019, would still seem appropriate should he find employment again. (Ex. 6, p. 73)

John Kuhnlein, D.O., an occupational medicine physician, conducted an independent medical examination for Moyer on October 14, 2019, and issued his report on June 22, 2020. (Ex. 2) Dr. Kuhnlein examined Moyer and reviewed his medical records both before and after October 14, 2019. (Ex. 2)

Dr. Kuhnlein diagnosed Moyer with a right foot crush injury, second, third, fourth, and fifth open distal phalangeal fractures, resolved, Morton's neuroma/neuralgia of the second and third interdigital web spaces with October 16, 2013 Morton's neuroma excision, persistent neuralgia and equinus deformity with April 11, 2014 repeat Morton's neuroma excision and gastrocnemius release, February 14, 2019, gastrocnemius lengthening with posterior, superficial, and deep compartment releases, chronic second, third, and fourth metatarsalgia and neuropathic pain with a failed spinal cord stimulator trial, right knee pain, right greater trochanteric bursitis with hip pain, and lumbar spondylosis with chronic musculoskeletal low back pain. (Ex. 2, p. 21)

Dr. Kuhnlein noted that after his work injury Moyer developed fairly significant gait changes that caused him to develop right knee pain, right greater trochanteric bursitis, and right lateral hip pain as sequelae to the March 2012 injury, related to changes in gait dynamics and opined, it is more likely than not that Moyer had preexisting degenerative changes to his lumbar spine, but the gait changes after his injury served to aggravate his preexisting asymptomatic facet arthropathy, making the condition clinically symptomatic and so his lumbar spine condition was "lit up" and materially aggravated as a sequela of the March 2012 injury because of the gait changes. (Ex. 2, p. 22)

Dr. Kuhnlein documented after the original arbitration hearing Moyer described no significant changes in his foot pain, other than new right heel pain he developed after the February 14, 2019 surgery and that the heel pain is a sequela of the March 2012 work injury. Dr. Kuhnlein further noted Moyer reported his medial calf and gastrocnemius tenderness had changed from the time of the arbitration hearing, and that he told Dr. Kuhnlein his right hip pain is more intense in the same location as before "though it has improved somewhat since he has been less active after the February 14, 2019, surgery," noting he believes his right hip gives way when it did not before. (Ex. 2, p. 22)

Moyer relayed to Dr. Kuhnlein his right low back pain was present before the arbitration hearing, but he believed the pain radiating to his right buttock was new. (Ex. 2, p. 22) Dr. Kuhnlein found this was not the case because it was mentioned by Dr. Kennedy during her June 20, 2016 examination before the arbitration hearing, and that what had changed since the hearing was that Moyer now sees a chiropractor on a weekly, rather than on a monthly basis. (Ex. 2, p. 22)

Dr. Kuhnlein opined Moyer's physical and functional disability had changed since the August 2016 arbitration hearing, noting the September 2015 functional capacity evaluation that was valid placed him in the lower end of the medium physical demand level and Dr. Phisitkul released him to return to work with permanent restrictions in accord with the functional capacity evaluation, which Dr. Kuhnlein related to the March 2012 work injury. (Ex. 2, p. 22) Dr. Kuhnlein noted after the arbitration hearing, Moyer changed jobs to a less physical position, and the October 9, 2018 functional capacity evaluation, which was thought to be valid, placed him at the upper end of the light work physical demand level and noted he was not a good candidate to return to work as an engineer coordinator for Interstate for a variety of reasons. (Ex. 2, pp. 22-23) Dr. Kuhnlein noted Dr. Westpheling adopted the restrictions in the functional capacity evaluation, which he related to the March 2012 work injury, and further noted Moyer's statement to him that his pain symptoms develop with less activity than they did at the time of the arbitration hearing is consistent with increased disability, and found Moyer had a change in his functional disability after the August 2016 arbitration hearing. (Ex. 2, p. 23)

Dr. Kuhnlein found Moyer's treatment changed from the August 2016 arbitration hearing, noting because of his chronic right foot and neuropathic pain, Moyer received lumbar sympathetic blocks and a spinal cord stimulator trial, which were unsuccessful, he underwent the February 14, 2019 gastrocnemius lengthening surgery, which is a

change in treatment, and he performs stretching exercises he did not perform before the arbitration hearing, and takes medications he did not take before the arbitration hearing. (Ex. 2, p. 23) Dr. Kuhnlein further found Moyer's work status had dramatically changed because at the time of the arbitration hearing Moyer had not requested accommodations for his position, he changed jobs following the hearing to a job that was less physically demanding, and after the 2018 functional capacity evaluation and change in his permanent restrictions, he no longer works for Interstate. (Ex. 2, p. 23)

Dr. Kuhnlein found Moyer reached maximum medical improvement on February 14, 2020, and using the AMA Guides, he assigned the following impairment:

> **RANGE OF MOTION IMPAIRMENT**
>
> Turning to Table 17-9, Page 537, and when comparing the right hip to the unaffected left hip, I could assign 5% right lower extremity impairment for decrements in hip motion in external rotation. Turning to Table 17-4, Page 537, I could assign 2% right lower extremity impairment for decrements in right toe range of motion. This is an overall 7% right lower extremity impairment for range of motion deficits.
>
> **DIAGNOSIS BASED ESTIMATE**
>
> Turning to Table 17-33, Page 546, I could assign 7% right lower extremity impairment for the chronic trochanteric bursitis with abnormal gait. 2% right lower extremity impairment could be assessed for the mild right cavovarus deformity. This is an overall 9% right lower extremity impairment.
>
> **PERIPHERAL NERVE IMPAIRMENT**
>
> Turning to Table 17-37, Page 552, I could assign an initial 5% right lower extremity impairment for the sensory dysesthesias in the superficial peroneal nerve distribution. However, this value must be multiplied by the modifier from Table 16-10, Page 482, following the instructions on page 550. I would use an 80% modifier. When these values are multiplied together (5% x80%) and rounded according to the instructions on page 20, this could be a 4% right lower extremity impairment for the sensory deficit.
>
> Turning to Table 17-37, Page 552, I could assign an initial 7% right lower extremity impairment for the sensory dysesthesias in the saphenous nerve distribution. The saphenous nerve is a branch of the femoral nerve, so the femoral nerve values will be used for impairment. This value must be multiplied by the modifier from Table 16-10, Page 482, following the instructions on page 550. I would use an 80% modifier. When these values are multiplied together (7% x80%) and rounded according to the instructions on page 20, this could be a 6% right lower extremity impairment for the sensory deficit.

> For the motor deficits in the toes related to the peripheral nerve injury, and turning to Table 17-37, Page 552, an initial 5% right lower extremity impairment would be assigned for the motor deficit in the medial plantar nerve. This value must be multiplied by the modifier from Table 16-10, Page 482, following the instructions on Page 550. I would use a 50% modifier. When these values are multiplied (5% x50%) and rounded according to the instructions on page 20, this is a 3% right lower extremity impairment.
>
> When these values are combined (6% x4% x3%) this is a 13% right lower extremity impairment for peripheral nerve involvement.
>
> **COMBINED VALUES**
>
> Not all values in the lower extremity may be combined together. This is covered in Table 17-2, Page 526. In this particular case, it is most appropriate to combine all values for the right lower extremity. Using the Combined Values Chart on Page 604, when these values are combined (13% x 9% x 7%), this is a 27% right lower extremity impairment. Turning to Table 17-3, page 527, this would convert to 11% whole person impairment if indicated.
>
> The DRE method is indicated according to pages 379-380. Turning to Table 15-3, page 384, I would place Mr. Moyer between DRE Lumbar Category I and II and assign 3% whole person impairment.
>
> Turning to the Combine Values Chart on Page 604, when these values are combined (11% x3%) this is a 14% whole person impairment.

(Ex. 2, pp. 23-24)

Dr. Kuhnlein recommended material handling restrictions of occasional lifting up to 10 pounds from floor to waist, up to 20 pounds from waist to shoulder as long as weights are kept close to the axial plane of his body, and up to 10 pounds over the shoulder, nonmaterial handling restrictions of occasional sitting, standing, or walking with the ability to change positions for comfort, occasional stooping, squatting, bending, crawling, kneeling, climbing stairs, work at or above shoulder height, and no work on ladders or at heights or operating foot operated industrial machinery with his right leg. (Ex. 2, p. 25) Dr. Kuhnlein noted Moyer can travel for work, as long as he can take stretch breaks from time to time, he can use hand or power tools on an occasional basis, and if working on uneven surfaces good footgear would be appropriate. (Ex. 2, p. 25)

Interstate conducted surveillance of Moyer on June 13, 2019 and November 7, 2019. The June 13, 2019 video clips show Moyer walking for brief periods of time. I observed he was walking on the outside of his right foot with a slight limp. (Ex. F) The November 7, 2019 video clips also show Moyer walking for brief periods of time, but not extended periods of time. I observed Moyer walking with a slight limp while walking to his truck and from a store. (Ex. F) Moyer testified his limp varies in terms of its severity

over the course of the day and it is generally worse toward the end of the day. (Tr., pp. 87-88) Moyer reported his gait has changed since 2019 and he is now using a cane because his hip is giving out more and more. (Tr., pp. 88-89) Dr. Frederick prescribed Moyer a single prong cane for walking on October 16, 2020. (Tr., pp. 34-35)

During the review-reopening hearing Moyer testified since the August 2016 arbitration the pain in the ball of his foot has become worse and he now has pain in his heel following the surgery Dr. Femino performed and tenderness at the location of the scar from the surgery Dr. Femino performed. (Tr., pp. 17, 19) Moyer reported his foot pain causes him to walk on the outside of his foot to avoid putting pressure on the ball and the heel of his foot. (Tr., p. 18) The tendon lengthening procedure did not provide Moyer with any relief from his symptoms. (Tr., pp. 24-25) Moyer reported a few days after the surgery he experienced new pain in his heel. (Tr., p. 25)

Moyer reported his right hip is more painful and it gives out and he actually falls when it gives out. (Tr., p. 28) Moyer reported his hip started catching during the spring or summer of 2018. (Tr., p. 28) Moyer testified he has fallen between 10 to 15 times since 2018. (Tr., p. 29) Moyer reported his hip gives out on the outside of his hip, which is new and different from the time of the arbitration hearing. (Tr., p. 29) Moyer testified his knee pain has not changed since the original arbitration hearing. (Tr., p. 31)

Moyer testified he continues to see Corfman. (Tr., p. 73) Dr. Mittauer has left the clinic where he went and he requested alternate care with Dr. Kassas. (Tr., pp. 52-53) At the time of the hearing he was still taking the Fetzima Dr. Mittauer prescribed and the baclofen Dr. Rastogi prescribed. (Tr., p. 73) Moyer goes to the chiropractor weekly and he uses the orthotics the UIHC prescribed for his feet. (Tr., p. 73)

CONCLUSIONS OF LAW

I. Applicable Law

This case involves the issues of whether a change of condition has occurred, nature and extent of disability, temporary benefits, and entitlement to payment of medical bills and alternate care under Iowa Code sections 85.27, 85.33, 85.34 and 86.14, and whether the claims are barred by the common law doctrine of res judicata. In 2017, the Iowa Legislature enacted changes to Iowa Code chapters 85, 86, and 535 effecting workers' compensation cases. 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 sections 85.16, 85.18, 85.23, 85.26, 85.33, 85.34, 85.39, 85.71, 86.26, 86.39, and 86.42 apply to injuries occurring on or after the effective date of the Act. This case involves an injury occurring well before July 1, 2017; therefore, the new provisions of Iowa Code sections 85.33 and 85.34 involving nature and extent of disability and temporary benefits do not apply to this case.

The calculation of interest is governed by Deciga-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. Res Judicata

Interstate avers Moyer's claim that he has sustained a change of condition entitling him to benefits with respect to his right hip, right knee, low back, and mental health is barred by the doctrine of res judicata. Res judicata embraces the concepts of claim and issue preclusion. Braunschweig v. Fahrenkrog, 773 N.W.2d 888, 893 (Iowa 2009) To invoke the doctrine of claim preclusion: (1) the parties to the first and second proceeding must be the same; (2) the claim made in the second case could have been "fully and fairly adjudicated in the prior case;" and (3) a final judgment on the merits was issued in the first case. Id. "Issue preclusion, or collateral estoppel, 'prevents parties from relitigating issues previously resolved in prior litigation if certain prerequisites are established.'" Grant v. Iowa Dep't of Human Servs., 722 N.W.2d 169 (Iowa 2006). A party seeking to invoke the doctrine of issue preclusion must prove the following elements: "(1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment." Hunter v. City of Des Moines Mun. Hous. Auth., 742 N.W.2d 578, 584 (Iowa 2007) (quoting Grant, 722 N.W.2d at 174 (quoting Hunter v. City of Des Moines, 300 N.W.2d 121, 123 (Iowa 1981)).

A. Depressive Disorder

Interstate concedes Deputy Fitch did not make a finding whether Moyer had sustained a mental health condition necessary to raise issue preclusion, rather, Interstate relies on the doctrine of claim preclusion, alleging Moyer was aware of his mental health condition at the time of the arbitration hearing and his mental health claim could have been fully and fairly adjudicated in the prior case, contending the only thing that has changed is that he sought treatment for his condition.

After other conservative treatment failed to improve Moyer's pain, Dr. Rastogi recommended a trial spinal cord stimulator. (JE 7, p. 92) Before the trial spinal cord stimulator could be implanted, Dr. Rastogi sent Moyer to Dr. Hadlandsmyth, a psychologist, in February 2018 for a psychological evaluation to determine whether to proceed with the trial. (JE 7, p. 93) There is no evidence Moyer ever complained of depression or sought treatment for depression prior to Dr. Hadlandsmyth's evaluation. Her records indicate Moyer had "[n]o history of psychiatric medications," and that while he received counseling to stop drinking in his early 20s, he had not had a history of psychiatric hospitalizations. (JE 7, p. 95)

When questioned by Dr. Hadlandsmyth, Moyer acknowledged he was irritable, he had low frustration tolerance, he had withdrawn socially, he felt down "at times," for parts of the day, he had a loss of interest and pleasure, he felt remorseful and helpless, fatigued, he had lower concentration, and passive feelings of suicidal ideation. (JE 7, p.

94) There is no evidence in the record Moyer connected these feelings to a psychological condition caused by the work injury before he met with Dr. Hadlandsmyth. I find Interstate's claim lacks merit.

B. Right Knee Pain

In the Arbitration Decision, Deputy Fitch determined Moyer did not sustain a permanent impairment to his knee. Moyer testified his right knee pain has not changed since the August 2016 arbitration hearing. (Tr., p. 31) Based on this testimony, I find Moyer's right knee claim is barred by the doctrine of issue preclusion.

C. Right Hip and Low Back

Interstate avers Moyer's claim that he has sustained permanent impairments to his right hip, right knee, and low back caused by the work injury are barred by res judicata, given Deputy Fitch's prior finding. Moyer does not address res judicata in his brief, focusing on the change of condition analysis.

Interstate relies on the case of Green v. North Central Iowa Regional Solid Waste Agency, 2020 WL 599656, File No. 5042527 (Jan. 16, 2020, Iowa Workers' Comp. Comm'n), to support its assertion that Moyer is barred from alleging a permanent impairment to his right hip and low back symptoms due to his altered gait. In the 2014 arbitration decision the deputy commissioner found Green sustained a "mild (at most) brain injury and some relatively minor physical injury, all of which *resolved* without any permanency," and that Green's temporary disability was resolved. On appeal from the arbitration decision, Commissioner Cortese affirmed the decision, finding Green failed to prove she had sustained a permanent disability and that the defendants were not responsible for any additional medical care or treatment beyond what had already been paid. The district court reversed a finding on reimbursement of past medical expenses only and but affirmed the remaining findings.

Green later filed a review-reopening petition. Defendants filed for summary judgment alleging because Green suffered no disability, there was nothing that could be reviewed in the review-reopening proceeding. Green resisted, asserting she had seen a number of new healthcare providers and that the new treatment created an issue as to whether her condition had worsened or developed into a permanent disability. The deputy commissioner and Commissioner Cortese agreed with the defendants. Commissioner Cortese held it had previously been determined that Green's injuries had resolved and she failed to prove her work injury caused any permanent disability or loss of earning capacity and that she had failed to prove the causal relationship between her work injury and future medical care given her injuries had resolved and Green had been given the opportunity to litigate the entirety of her case.

While Deputy Fitch found Moyer failed to establish he sustained permanent impairments to his right hip and low back caused by the March 2012 work injury, unlike Green, Deputy Fitch did not find Moyer's right hip and low back conditions had resolved without any permanency. Deputy Fitch granted Moyer's request for alternate care with Dr. Stangl with Kobusch Chiropractic for ongoing treatment for his right hip and low back symptoms due to his altered gait. (Ex. 7, Arbitration Decision, pp. 22-23) If his

conditions had resolved, there would have been no need for future medical care. I do not find Moyer's mental health, right hip, or low back claims are barred by the doctrine of res judicata.

III. Change of Condition

Iowa Code section 86.14 governs review-reopening proceedings. When considering a review-reopening petition, the inquiry "shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded." Iowa Code § 86.14(2). The deputy workers' compensation commissioner does not re-determine the condition of the employee adjudicated by the former award. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 391 (Iowa 2009). The deputy workers' compensation commissioner must determine "the condition of the employee, which is found to exist subsequent to the date of the award being reviewed." Id. (Quoting Stice v. Consol. Ind. Coal Co., 228 Iowa 1031, 1038, 291 N.W. 452, 456 (1940)). In a review-reopening proceeding, the deputy workers' compensation commissioner should not reevaluate the claimant's level of physical impairment or earning capacity "if all of the facts and circumstances were known or knowable at the time of the original action." Id. at 393.

The claimant bears the burden of proving, by a preponderance of the evidence that, "subsequent to the date of the award under review, he or she has suffered an *impairment or lessening of earning capacity proximately caused by the original injury*." Simonson v. Snap-On Tools Corp., 588 N.W.2d 430, 434 (Iowa 1999) (emphasis in original).

In the Arbitration Decision, Deputy Fitch found Moyer failed to prove the March 2012 work injury was a cause of permanent disability to his right hip or low back, and concluded Moyer established he sustained a permanent impairment of 15 percent to his right lower extremity as opposed to his right foot entitling him to 33 weeks of permanent partial disability benefits at the rate of $866.74, commencing on November 8, 2012. Deputy Fitch ordered Interstate to pay Moyer's chiropractic bills and awarded him alternate care for his right hip and low back due to his altered gait with Kobusch Chiropractic.

In this Review-Reopening proceeding, Moyer alleges he has sustained a change of condition to his right lower extremity, right hip, and low back, and a mental health sequela entitling him to permanent total disability benefits. Interstate rejects his assertion, contending he has not sustained a change of condition to his right lower extremity, right hip, low back, or a mental health sequela, asserting he is not a credible witness.

During the hearing I assessed Moyer's credibility by considering whether his testimony was reasonable and consistent with other evidence I believe, whether he had made inconsistent statements, his "appearance, conduct, memory and knowledge of the facts," and his interest in the case. State v. Frake, 450 N.W.2d 817, 819 (Iowa 1990). Moyer has an obvious interest in the outcome of this case. I had the opportunity to observe Moyer testify under oath. During his testimony he engaged in direct eye contact, his rate of speech was appropriate, and he did not engage in any furtive

movements. His memory was clear and consistent. And while Moyer's statement to Dr. Kuhnlein regarding when he first developed low back pain symptoms was incorrect, I find his testimony reasonable and consistent with the other evidence I believe. Based on my personal observations at hearing, I found Moyer to be a credible witness. And while Moyer's reporting of the levels of his pain have remained similar or the same as during the original arbitration hearing, I do find that several changes have occurred in Moyer's condition since the original arbitration hearing.

During the August 2016 hearing, Moyer did not assert he had sustained a mental health impairment, nor is such a condition analyzed in Deputy Fitch's decision. Moyer commenced treatment for depressive disorder after the August 2016 hearing. Drs. Augspurger, Mooney, and Mittauer all agree Moyer has sustained depressive disorder caused by the March 2012 work injury, his condition is permanent, and that he needs work restrictions. I find Moyer has sustained a change of condition based on the development of depressive disorder.

In 2019, Dr. Femino performed a gastrocnemius release on January 10, 2019, listing a pre and postoperative diagnosis of lower extremity chronic/neuropathic pain secondary to work-related complex foot injury, and released him to be weight bearing as tolerated in a boot with crutches. (JE 7, pp. 118-20) Following surgery Moyer developed new right heel pain, which has affected his ability to put weight on his heel. I find Moyer has sustained a change of condition regarding his right heel pain following the 2019 surgery.

Interstate selected Dr. Phisitkul as Moyer's treating physician for his right lower extremity. Moyer's attorney provided Dr. Phisitkul with a copy of Goodhue's first functional capacity results from September 2015 that were found to be valid for review. (Ex. 7, Arbitration Decision, p. 13) On October 14, 2015, Dr. Phisitkul issued an opinion letter adopting the restrictions in the functional capacity evaluation, placing Moyer in the medium physical demand category. (Ex. 7, Arbitration Decision, p. 13) After the August 2016, arbitration hearing Moyer received additional treatment for his right lower extremity, low back and right hip conditions. During an appointment in September 2018, Dr. Femino, a treating physician selected by Interstate, also imposed restrictions established by Goodhue's earlier functional capacity evaluation. (JE 7, pp. 107-08)

On October 9, 2018, Moyer attended a second functional capacity evaluation with Goodhue, ordered by Dr. Westpheling, a treating physician, to determine restrictions. (JE 10, p. 222) Goodhue again stated the results were valid, and based on his testing, Goodhue found Moyer falls within the upper end of the light work category. (JE 10, p. 226) As noted by Dr. Kuhnlein, Dr. Westpheling adopted the functional capacity evaluation results and found Moyer was no longer able to return to work with Interstate as an engineering consultant. (Ex. 2, pp. 22-23) Dr. Frederick, a treating physician selected by Interstate, requested a copy of Goodhue's 2018 functional capacity evaluation and on February 13, 2020, she opined while Moyer did not need additional restrictions for his right hip and low back, but she would adjust his restrictions based on the updated functional capacity evaluation. (JE 5, p. 73) The change in Moyer's functional status from the medium physical demand level to the upper end of the light work category is a change in condition.

IV. Causation

Interstate next avers Moyer has failed to establish a causal connection between his right hip and low back symptoms and his work injury and altered gait. Moyer rejects Interstate's assertion.

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

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

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

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa 1997). 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).

While Deputy Fitch did not find Moyer established he sustained permanent impairments to his right hip and low back, Deputy Fitch found Moyer had sustained right hip and low back pain caused by the March 2012 work injury and she ordered Interstate to pay Moyer's chiropractic bills for treatment he received for his right hip and low back and granted Moyer's request for alternate care. Moyer has continued to receive regular chiropractic care as well as treatment from Drs. Cloos, Westpheling, Miller, Carrier, Frederick, and Pugely for his right hip and low back conditions. Four physicians have given causation opinions in this case, Dr. Carrier, a treating physician, Dr. Frederick, a treating physician, Dr. Pugely, a treating physician, and Dr. Kuhnlein, a physician who performed an independent medical examination for Moyer. I find Dr. Kuhnlein's opinion to be the most persuasive based on the record evidence.

On June 30, 2017, Dr. Carrier, examined Moyer and diagnosed him with a crushing injury of the right lesser toes, right hip pain, and right knee pain. (JE 5, p. 33) Dr. Carrier opined Moyer's right knee and right hip pain are "secondary to biomechanical changes caused by his right foot crush injury," recommended gabapentin and physical therapy for gait training, and recommended work restrictions of occasionally sitting, standing, and walking as tolerated with the ability to change positions frequently, and to avoid ladders, stairs, and walking on uneven terrain. (JE 5, pp. 33-34)

During an appointment on October 30, 2018, Dr. Frederick, a treating physician selected by Interstate, found Moyer's conditions were related to his work activities. (JE 5, p. 51) Dr. Frederick continued to treat Moyer while he was also being treated by Drs. Femino and Rastogi at the UIHC. On February 13, 2020, Dr. Frederick adjusted Moyer's restrictions based on the 2018 functional capacity evaluation, and found Moyer did not need any additional restrictions for his low back and right hip. (JE 5, p. 73) In October 2020, Dr. Frederick found on exam Moyer was "able to move with no difficulty. His gait initially was very antalgic but after he had sat for a period, both for myself in room and Curtis he only had a slightly foreshortened of gait on RT, He didn't limp on entering the building, then limped markedly on coming down the hall towards me but then on requesting him to walk it appeared just slightly altered." (JE 5, p. 79) During an earlier appointment in September 2017, Dr. Miller wrote that he did not observe a change in foot position that Moyer described with his altered gait and doubted whether he walked with a limp. (JE 6, p. 87) Despite her observations, Dr. Frederick continued to find Moyer's right hip pain was due to an altered gait and was work-related. (JE 5, pp. 79-80)

In October 2019, Dr. Pugely, a treating physician, opined he did not believe Moyer's degenerative lumbar spine changes were related to his work injury or that the changes were causing him substantial symptoms and imposed no restrictions for his low back and right hip. (JE 7, p. 161) Dr. Pugely did not issue an opinion regarding whether the work injury had lighted up or aggravated Moyer's low back and hip pain. (JE 7, pp. 155-161)

Dr. Kuhnlein prepared an extensive and thorough report following his examination of Moyer. Dr. Kuhnlein observed Moyer's gait changes and opined his gait changes aggravated Moyer's preexisting asymptomatic facet arthropathy, making the condition clinically symptomatic, and lighting up and materially aggravating the condition as a sequela of the March 2012 injury because of the gait changes and also caused his hip pain. (Ex. 2, p. 22) After Dr. Kuhnlein issued his opinion, Interstate did not request an opinion from Dr. Frederick or Dr. Pugely on whether Moyer's gait changes caused by the work injury aggravated or lighted up his facet arthropathy or hip condition. There is no evidence in the record that Moyer had symptomatic low back pain or hip pain prior to the gait changes observed by multiple medical providers over the course of many years. Moyer has established a causal connection between his right hip and low back symptoms and his work injury and altered gait.

V. Extent of Disability

Given Moyer has established a change of physical condition, it is necessary to determine whether the change in condition warrants an award of additional compensation benefits. "Industrial disability is determined by an evaluation of the employee's earning capacity." Pease, 807 N.W.2d at 852. In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u). When considering the extent of disability, the deputy commissioner considers all evidence, both medical and nonmedical. Evenson v. Winnebago Indus., Inc., 881 N.W.2d 360, 370 (Iowa 2016).

The Iowa Supreme Court has held, "it is a fundamental requirement that the commissioner consider all evidence, both medical and nonmedical. Lay witness testimony is both relevant and material upon the cause and extent of injury." Evenson, 881 N.W.2d 360, 369 (Iowa 2016) (quoting Gits Mfg. Co. v. Frank, 855 N.W.2d 195, 199 (Iowa 2014)). Moyer alleges he is permanently and totally disabled. Interstate rejects his assertion.

In Iowa, a claimant may establish permanent total disability under the statute, or through the common law odd-lot doctrine. Michael Eberhart Constr. v. Curtin, 674

N.W.2d 123, 126 (Iowa 2004) (discussing both theories of permanent total disability under Idaho law and concluding the deputy's ruling was not based on both theories, rather, it was only based on the odd-lot doctrine). Under the statute, the claimant may establish the claimant is totally and permanently disabled if the claimant's medical impairment together with nonmedical factors totals 100 percent. Id. The odd-lot doctrine applies when the claimant has established the claimant has sustained something less than 100 percent disability, but is so injured that the claimant is "unable to perform services other than 'those which are so limited in quality, dependability or quantity that a reasonably stable market for them does not exist.'" Id. (quoting Boley v. Indus. Special Indem. Fund, 130 Idaho 278, 281, 939 P.2d 854, 857 (1997)).

"Total disability does not mean a state of absolute helplessness." Wal-Mart Stores, Inc. v. Caselman, 657 N.W.2d 493, 501 (Iowa 2003) (quoting IBP, Inc. v. Al-Gharib, 604 N.W.2d 621, 633 (Iowa 2000)). Total disability "occurs when the injury wholly disables the employee from performing work that the employee's experience, training, intelligence, and physical capacity would otherwise permit the employee to perform." IBP, Inc., 604 N.W.2d at 633.

As noted above I found Moyer has sustained a change of condition in this case. Moyer asserts he is permanently and totally disabled based on a worsening of his right lower extremity, right hip, and low back conditions, and the development of a mental health sequela. Interstate rejects Moyer's assertion claiming his physical condition has not substantially changed and further avers Moyer has not sustained a permanent mental health impairment, noting Moyer did not request mental health care while he was working and that he did not present any evidence he had interpersonal difficulties or problems he had performing his work based on a mental health condition. I do not find Interstate's argument persuasive. I find Moyer is permanently and totally disabled. I would reach this same conclusion even in the absence of the worsening of his physical symptoms, based on his mental health sequela alone.

During their initial examination, Drs. Augspurger and Mooney opined Moyer's depressive disorder was not caused by the March 2012 work injury. After receiving additional records, including psychotherapy and psychiatric records, on November 28, 2020, Drs. Augspurger and Mooney changed their opinion and found Moyer's work injury to be a substantial contributing factor in producing his depressive disorder, recommended a combination of psychotropic medication and psychotherapy for treatment of his condition, opined his condition "in all likelihood will be permanent," and found Dr. Mittauer's work restrictions from October 27, 2019, would still seem appropriate should he find employment again. (Ex. 6, p. 73) I find based on the opinions of Drs. Augspurger, Mooney, and Mittauer that Moyer has sustained a permanent mental health impairment, depressive disorder, caused by the work injury, entitling him to industrial benefits.

In his October 27, 2019, opinion, Dr. Mittauer opined Moyer's depressive disorder causes him to be irritable, which impairs his ability to work with supervisors, coworkers, impairs his concentration which causes him to make mistakes and be less efficient, causes him to be fatigued, lack energy, and motivation, impairing his ability to work for sustained periods at a rapid pace, and to maintain concentration, which are

symptoms primarily caused by his depressive and insomnia disorders and are not primarily caused by his chronic pain. (JE 8, p. 200) Dr. Mittauer recommended restrictions of being allowed to take a break for 10 minutes every 30 minutes, work no more than 4 hours per day, not assigning work tasks requiring sustained attention for more than 10 minutes, not assigning work tasks that require working at a rapid pace, multitasking, or handling several tasks at once, or that he be assigned work tasks that could result in him making mistakes that could harm himself or others, or damage equipment or products. (JE 8, p. 200) I adopt Dr. Mittauer's restrictions as Moyer's permanent restrictions.

Two physicians have given opinions on extent of physical disability in this case, Dr. Frederick, a treating occupational medicine physician, and Dr. Kuhnlein, an occupational medicine physician who conducted an independent medical examination for Moyer. I find Dr. Kuhnlein's opinion to be the most persuasive.

In reaching her conclusions on extent of disability, Dr. Frederick used the AMA Guides 6th Edition. The Division of Workers' Compensation has adopted the AMA Guides 5th Edition for evaluating disability. 876 IAC 2.4. For this reason I do not find her opinion has merit. Dr. Kuhnlein used the AMA Guides 5th Edition in evaluating Moyer's disability in accord with the agency's rules. For the lower extremity, including the hip, Dr. Kuhnlein assigned Moyer a 27 percent lower extremity impairment, which he converted to an 11 percent whole person impairment. He also found Moyer fell between DRE Lumbar Category I and II and assigned Moyer a 3 percent whole person impairment. Using the combined values chart, Dr. Kuhnlein assigned Moyer a 14 percent whole person impairment. (Ex. 2, pp. 23-24) I also find Dr. Kuhnlein's recommended restrictions to be Moyer's permanent restrictions.

Moyer is a high school graduate. (Ex. 7, Arbitration Decision, p. 2) At the time of the review-reopening hearing Moyer was 52. (Tr., p. 134) Moyer is able to use Microsoft Word and Excel and perform searches on the internet, but he is a "two-finger typist." (Ex. C, pp. 13, 21)

After high school Moyer worked as a laborer, loading and unloading trucks, mixing and applying mortar and plaster, and loading and unloading barges. (Ex. 7, Arbitration Decision, p. 2) Moyer worked for Interstate from 1998 until he was terminated in 2019. Moyer worked as an apprentice conveyor and relief tractor/crane operator, plant operator, driver/groundman/operator, mechanical maintenance apprentice and journeyman, line mechanic apprentice, and engineering coordinator. (Ex. 7, Arbitration Decision, p. 3)

Two vocational experts provided vocational opinions in this case. Caitlin Smyth provided an opinion for Interstate on December 8, 2020 and Barbara Laughlin, M.A., provided an opinion for Moyer on November 16, 2020. (Exs. 3, C) Laughlin addressed Moyer's physical and psychological restrictions in her report and opined Moyer had sustained between a 93 to 100 percent occupational loss and is not employable given his restrictions. (Ex. 3, pp. 40-49) In her report, Smyth focused on Moyer's physical limitations. (Ex. C, pp. 19-21) Smyth opined Moyer remains employable in open positions as a customer service representative and front desk clerk. (Ex. C, p. 25)

Smyth did not address Moyer's depressive disorder or the restrictions imposed by Dr. Mittauer that were adopted by Drs. Augspurger and Mooney in her report. I do not find her opinion persuasive.

Dr. Mittauer opined Moyer's depressive disorder causes him to be irritable, which impairs his ability to work with supervisors and the public, he lacks concentration, which causes him to make mistakes and be less efficient, and he has difficulty maintaining concentration. (JE 8, p. 200) The positions of customer service representative and front desk clerk fall within Dr. Kuhnlein's physical restrictions, however, the positions require multitasking and interacting regularly with the public, and sustained attention for more than 10 minutes at a time, which do not fall within Dr. Mittauer's restrictions.

Considering all of the record evidence, I find Moyer is permanently and totally disabled. Benefits run from the date of the filing of the review-reopening petition, January 27, 2020, at the stipulated rate of $866.74 per week.

VI. Healing Period Benefits

The parties have requested a determination of whether the benefits Moyer has received since February 14, 2019 are healing period or permanency benefits and whether he is entitled to healing period benefits from January 9, 2020 through October 16, 2020. Iowa Code section 85.33 governs temporary disability benefits, and Iowa Code section 85.34 governs healing period and permanent disability benefits. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012). As noted above, this case concerns an injury occurring before July 1, 2017, so the new provisions concerning temporary and permanent disability benefits do not apply to this case.

An employee has a temporary partial disability when because of the employee's medical condition, "it is medically indicated that the employee is not capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability." Iowa Code § 85.33(2). Temporary partial disability benefits are payable, in lieu of temporary total disability and healing period benefits, due to the reduction in earning ability as a result of the employee's temporary partial disability, and "shall not be considered benefits payable to an employee, upon termination of temporary partial or temporary total disability, the healing period, or permanent partial disability, because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury." Id.

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596, 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefit depends on whether or not the employee has a permanent disability. Dunlap, 824 N.W.2d at 556. Deputy Fitch determined Moyer sustained a permanent impairment caused by the work injury following the August 2016 hearing. As a result, any additional temporary benefits Moyer is entitled to are healing period benefits.

Temporary total, temporary partial, and healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986); Stourac-Floyd v. MDF Endeavors, File No. 5053328 (App. Sept. 11, 2018); Stevens v. Eastern Star Masonic Home, File No. 5049776 (App. Dec. Mar. 14, 2018).

Moyer underwent surgery on his right lower extremity on February 14, 2019. He has not returned to work since that date. As determined above, I found Moyer has established he is permanently and totally disabled as of January 27, 2020, the date he filed the review-reopening petition. I find the benefits Moyer received from February 14, 2019 forward are healing period benefits until the filing of the review-reopening petition. Benefits paid from January 27, 2020 forward are permanent total disability benefits.

VII. Medical Bills and Alternate Care

Exhibit 1 contains a listing of charges for treatment Moyer received from Corfman and Dr. Mittauer for his mental health condition, totaling $6,745.00. Moyer also requests alternate care with Corfman and Dr. Kassas, a psychiatrist, now that Dr. Mittauer has left his practice.

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).

Interstate denied Moyer's mental health condition. As analyzed above, I found Moyer has sustained depressive disorder, a mental health sequela, caused by the March 2012 work injury. I find the treatment Moyer received from Corfman and Dr. Mittauer to be reasonable and beneficial to Moyer. Bell Bros. Heating & Air Conditioning, 779 N.W.2d at 206; Brewer-Strong v. HNI Corp. 913 N.W.2d 235 (Iowa 2018). Interstate is responsible for the medical bills set forth in Exhibit 1 and for all causally connected medical bills and care. I also find Moyer is entitled to alternate care to be paid by Interstate with Corfman and Dr. Kassas, a psychiatrist, for ongoing care for his mental health condition, now that Dr. Mittauer has left his practice.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay Claimant healing period benefits from February 14, 2019, until January 26, 2020, at the rate of eight hundred sixty-six and 74/100 dollars ($866.74) per week, and into the future during the period of the claimant's continued disability.

Defendant shall pay the Claimant permanent total disability benefits from January 27, 2020, at the rate of eight hundred sixty-six and 74/100 dollars ($866.74) per week, and into the future during the period of the claimant's continued disability.

Defendant is entitled to a credit for all benefits paid to date.

Defendant 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. Deciga-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).

Defendant is responsible for the medical bills set forth in Exhibit 1, totaling six thousand seven hundred forty-five and 00/100 dollars ($6,745.00) and all causally connected medical bills.

Claimant is entitled to alternate care for his mental health condition to be paid by Defendant, including psychotherapy and psychiatric care with Corfman and Dr. Kassas, and all future causally connected care for his mental health condition.

Defendant 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 5th day of October, 2021.

HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Mark Sullivan (via WCES)

James Peters (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.