BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DAWN ESLINGER f/k/a DAWN BAKERINK, Claimant, vs. ADAIR COUNTY MUTUAL INS. ASSOCIATION, Employer, and GRINNELL MUTUAL REINSURANCE, Insurance Carrier, Defendants.	File No. 21015112.01 A R B I T R A T I O N D E C I S I O N Head Note Nos. 1108, 2500

STATEMENT OF THE CASE

The claimant, Dawn Eslinger f/k/a Dawn Bakerink, filed a petition for arbitration on April 19, 2021, against Adair County Mutual Insurance Association, employer, and Grinnell Mutual Reinsurance, insurance carrier. The claimant was represented by James Ballard. The defendants were represented by Stephen Spencer.

The matter came on for hearing on June 2, 2022, before Deputy Workers' Compensation Commissioner Joe Walsh in Des Moines, Iowa via Zoom. The record in the case consists of Joint Exhibits 1 through 4; Claimant's Exhibits 1 through 10; and Defense Exhibits A through I. Claimant's counsel objected to Defendants' Exhibit I. The objection was overruled, and the claimant was provided an additional 30 days to secure rebuttal. The claimant testified at hearing, in addition to Marcia Kralik. Kerriann Hansen served as the court reporter for the proceedings. The matter was fully submitted on July 11, 2022, after helpful briefing by the parties.

ISSUES & STIPULATIONS

The claimant alleges she sustained an injury which arose out of and in the course of her employment on or about May 24, 2019. While the defendants concede that an incident took place on that date, they deny that the incident resulted in any temporary or permanent disability to her bilateral lower extremities. This is the primary

dispute in the case. The claimant is seeking past and future medical expenses and indemnity benefits in relation to this injury as well as payment of an independent medical examination and other costs.

The parties have stipulated to the elements which comprise the rate of compensation and have waived affirmative defenses, other than the defendants have alleged apportionment or credit under Iowa Code section 85.34(7) due to an alleged preexisting disability.

FINDINGS OF FACT

Claimant Dawn Eslinger was forty-six years old on the date of hearing. When she filed the petition, she was still using the name Bakerink, which has been changed to Eslinger at the time of hearing. The petition is hereby amended to name "Dawn Eslinger" as the claimant. (Transcript, page 84)

Ms. Eslinger testified live and under oath at hearing. She was entirely credible. She was an excellent historian. Her appearance was professional. Her testimony matches closely with other portions of the record. There was nothing about her demeanor which caused me concern for her truthfulness. In fact, the opposite is true. Her demeanor was professional and entirely appropriate.

Ms. Eslinger graduated from high school and has some college credits. She began working for Adair County Mutual in Greenfield, Iowa in March 2016 as a customer service representative. (Tr., p. 20) She quickly became licensed and started selling insurance as part of her job duties. She reported to Marcia Kralik.

Prior to May 24, 2019, Ms. Eslinger had a condition in her left knee which was not in any way related to her work at Adair County Mutual. She started having left knee symptoms in approximately October 2018. After a period of conservative treatment, she had left knee surgery on March 13, 2019. (Tr., p. 26; Joint Exhibit 1, pages 22-26) The surgery, which was for a medial meniscus tear, was performed by William Ralston, D.O. Ms. Eslinger returned to Dr. Ralston on March 27, 2019, and the following is documented: "She states she is doing very well. He [*sic*] pain has significantly improved since surgery. She has been ambulating well. She is not taking pain medication. She is without concerns." (Jt. Ex. 1, p. 30) Dr. Ralston warned her that she had some early arthritic changes in her knee, however, released her essentially to full duty.

Ms. Eslinger returned to Dr. Ralston in April 2019. Dr. Ralston documented she was doing well, however, she did have a "locking sensation" in her left knee that was causing some issues. "Her pain is significantly improved when compared to her presurgical pain." (Jt. Ex. 1, p. 34) He provided an injection for the pain and showed her some strengthening exercises. Ms. Eslinger testified that the surgery and subsequent injection completely resolved her left knee symptoms. (Tr., p. 26) There are no further documented visits to any medical provider after this April 26, 2019, visit

prior to her May 24, 2019, work injury.

I find that Ms. Eslinger's left knee condition was healing very well by May 24, 2019. I find her testimony that she was not having any difficulties with this condition following her knee injection credible. Based upon the record, however, it is impossible to tell whether she would have had any permanent ongoing symptoms related to this condition.

On May 24, 2019, at approximately 4:00 p.m., Ms. Eslinger slipped and fell while delivering mail for her employer. This occurred about a block away from the Adair County Mutual office. (Claimant's Exhibit 8) Ms. Eslinger testified in detail about the incident. (Tr., pp. 29-31) She twisted her left knee as she slipped and then fell face first on the ground. She immediately reported the incident to her supervisor, Marcia Kralik, who confirmed that Ms. Eslinger returned from the delivery with dirt on her clothes and a scratch or wound near her eye. I find that Ms. Eslinger did, in fact, sustain an injury which arose out of and in the course of her employment on May 24, 2019. When Ms. Eslinger reported the injury, she did not report it specifically as a left knee injury. In fact, her left knee was not symptomatic immediately. She had a contusion on her face and pain in her right wrist. Ms. Eslinger did not request treatment or ask to file paperwork for the injury and Ms. Kralik did not offer.

Ms. Eslinger went to her primary clinic the following morning to seek treatment. The clinic documented an injury to her right wrist. In fact, Ms. Eslinger denied any new injury to her left knee. (Jt. Ex. 2, pp. 71-72) The defendants point to this record in particular as evidence that Ms. Eslinger did not, in fact, sustain an injury to her left knee. Specifically, defendants challenge her credibility. I have already found the claimant to be credible. I believe her explanation that she was initially more concerned about her face and her wrist after she first fell and simply did not notice any knee symptoms. She testified that within a few days she did start to notice pain in her left knee. (Tr., p. 33) Again, I believe her, and I am not particularly surprised that she did not notice the pain early in the morning the day following her 4:00 p.m. fall.

Ms. Eslinger, however, did not immediately return to her employer reporting that she had developed knee symptoms from the fall. Rather, she seemed to just assume that the employer knew she was injured and should have been aware that her knee was aggravated in the fall.

In any event, Ms. Eslinger sought a return appointment to her treating surgeon, Dr. Ralston, on June 11, 2019. Dr. Ralston documented the following:

> [Dawn] re-injured her left knee on 5/24/19. She states that she slipped in mud and landed on her knee and face. She had immediate knee pain and swelling after her fall. She states that her knee is locking and catching along the posterolateral aspect of her knee. Most of her pain is posterolateral. She feels like her knee "is not lining up." Her knee gives out on her when she is walking. Her symptoms are progressively

> worsening. She has tried home therapy exercise since her fall. Her knee felt a lot better after her last cortisone injection until she fell again.

(Jt. Ex. 1, p. 39) Ms. Eslinger testified that her knee was bruised and she had swelling. (Defendants' Exhibit G, page 30) Dr. Ralston documented tenderness, moderate swelling, and "effusion" on his objective examination. (Jt. Ex. 1, p. 41) These symptoms were undoubtedly new and different from her condition at her last examination before the work accident. Dr. Ralston ordered a new MRI. (Jt. Ex. 1, p. 42)

On June 15, 2019, a new MRI was performed. The MRI was interpreted by a radiologist whose impression was radial tearing at the posterior medial meniscotibial root, as well as a small horizontal tear through the residual posterior horn, and a moderate-sized grade 4 chondral defect overlying the medial femoral condyle at the site of the microfracture. (Jt. Ex. 2, p. 76) These changes were new compared to the previous MRI from January 2019. (Jt. Ex. 2, p. 77) She returned to Dr. Ralston on June 25, 2019, where he again documented that she was doing quite well following her March surgery. (Jt. Ex. 1, p. 43) Dr. Ralston seemed to confirm that her pathology on the MRI was new.

> She must have landed very hard on her knee with her fall, due to the changes present on the MRI exam. The catching and locking in the lateral side of her knee may be a loose piece of cartilage from her chondral defect. I am concerned about the chondral defect in her knee. We discussed treatment options for the chondral defect in her knee.

(Jt. Ex. 1, p. 46) Dr. Ralston provided treatment options including a potential surgery or injections. She opted for injections. (Jt. Ex. 1, pp. 46-47)

Ms. Eslinger continued to follow up with Dr. Ralston's office for injections thereafter, which ultimately did not help. (Jt. Ex. 1, pp. 51-54) In August 2019, another physician, Timothy Rankin, M.D., at Dr. Ralston's office recommended or offered a referral to the University of Iowa Hospitals and Clinics for surgical evaluation. After her August 14, 2019, appointment, Ms. Eslinger notified her supervisor for the first time that she believed her knee condition was aggravated by the May 24, 2019, work injury. (Def. Ex. G, Claimant Depo, pp. 32-33) Ms. Eslinger testified she did not return to Dr. Rankin.

Marcia Kralik testified live and under oath at hearing as well. I find her testimony to be generally credible. She testified that Ms. Eslinger did, in fact, report a work injury on May 24, 2019. (Tr., p. 89) She did not report any knee injury. She testified she was aware of Ms. Eslinger's prior knee condition and surgery. She testified that throughout the summer, Ms. Eslinger never came to her contending her ongoing knee symptoms were related to the fall at work until sometime in August. (Tr., pp. 90-92) Ms. Kralik then submitted the claim to workers' compensation as requested. (Tr., p. 92) Once Ms. Kralik turned in the claim to the insurance company, she testified that she essentially

had no further involvement in the claim.

The insurance carrier arranged for Ms. Eslinger to be evaluated by Craig Mahoney, M.D., on November 1, 2019. A nurse case manager from Grinnell Mutual set forth a detailed letter to Dr. Mahoney outlining the circumstances of her evaluation and three questions for him to answer. (Jt. Ex. 3, pp. 96-98) Dr. Mahoney reviewed this information and examined Ms. Eslinger thoroughly. He diagnosed arthritis and also a significant meniscus tear. He offered the following medical opinions: "I do believe that the patient had arthritis and knee problems prior to the work injury dated 05/24/2019. I do believe that the injury itself, however, could have caused a meniscal tibial root tear as documented on the magnetic resonance imaging." (Jt. Ex. 3, p. 101) He further opined that Ms. Eslinger "is symptomatic both from the work-related injury and pre-existing arthritis." (Jt. Ex. 3, p. 101)

Defendants apparently determined that Ms. Eslinger's "current complaints are a result of her work injury" on November 12, 2019. (Cl. Ex. 3, p. 26)

In response to this report, on November 20, 2019, defendants forwarded Ms. Eslinger's medical records to Matthew Bollier, M.D. (Def. Ex. B) The nurse case manager set forth the same history and asked the same three questions of Dr. Bollier. Dr. Bollier did not examine Ms. Eslinger and only reviewed records. On November 25, 2019, he opined that there was not a new meniscus tear and that all of her symptoms were related exclusively to her underlying condition. (Def. Ex. B, pp. 9-10) The claim was apparently denied after Dr. Bollier's report. (Cl. Ex. 3, p. 26)

The employer terminated Ms. Eslinger on December 10, 2019. (Cl. Ex. 4; Def. Ex. E, p. 26) There is little information in the record regarding the basis for the termination although the record indicates there was no misconduct.

Ms. Eslinger testified that her symptoms have progressed. (Tr., pp. 48-50) She testified that she has developed symptoms in her right knee.

On February 25, 2020, Teri Formanek, M.D., examined Ms. Eslinger. For the first time, right knee symptoms were noted. "She had spontaneous onset of right knee pain since October 2019." (Jt. Ex. 2, p. 86) There was some medical workup for this condition, and she was referred to DMOS. (Jt. Ex. 4) Ms. Eslinger filed this claim in April 2021.

In addition to the treatment records in evidence, a number of physicians have prepared expert medical reports recording their opinions.

Dr. Ralston signed a report prepared by defense counsel on counsel letterhead. (Def. Ex. A) He agreed with the following: "The history contained in the May 25, 2019, office note of Jenna Evans-PA is inconsistent with the history Ms. Bakerink [n/k/a Eslinger] gave you during your next visit with her June 11, 2019." (Def. Ex. A, p. 1) This is not a true medical opinion per se. I read this opinion to mean that he did not

believe she had "immediate" pain in her left knee because she did not report such pain less than 24 hours later to her primary medical provider. She testified that she started noticing the left knee pain on Sunday, May 26, 2019. He also signed the opinion that he could not state to a reasonable degree of medical certainty the knee pain was due to the alleged fall. (Def. Ex. A, p. 2) I find that this opinion was a reversal of his previous documented opinion that she had been doing fine until the fall on May 24, 2019. (*See* Jt. Ex. 1, p. 39) The only basis for this abrupt reversal of his opinion on this topic is that he did not know that Ms. Eslinger had been to her primary care provider on May 25, 2019. I read this opinion to mean that Dr. Ralston did not find Ms. Eslinger to be credible.

Dr. Formanek prepared a report for defendants on July 28, 2021. After reviewing his own note, he opined that there was nothing about her degenerative right knee condition which was caused by her May 2019, work injury. (Def. Ex. C, p. 12)

John Kuhnlein, D.O., prepared an IME report on behalf of Ms. Eslinger on April 18, 2022. (Cl. Ex. 1) He thoroughly reviewed all relevant medical records, took history, and examined Ms. Eslinger. (Cl. Ex. 1, pp. 1-12) His evaluation of claimant was in January 2022. I find that Dr. Kuhnlein had a full and complete history as it relates to this claim. Dr. Kuhnlein diagnosed left knee medial meniscus tear, microfracture of grade III chondromalacia of the medial femoral condyle, and abrasion chondroplasty of the patella and trochlear groove. (Cl. Ex. 1, p. 12) He documented her significant symptoms present at the time of the examination. (Cl. Ex. 1, pp. 9-10)

For the right side he diagnosed right knee medial meniscus tear, degenerative joint disease, and chronic pain. He provided a detailed causation opinion as to why he opined this condition was caused by or substantially aggravated by her work injury.

> When the June 15, 2019, MRI scan was compared to the January 9, 2019, MRI scan, it was thought that there were new interval changes in the medial meniscus and the medial compartment chondromalacia in the left knee, consistent with a new injury. There are no other known injuries besides the work-related fall on May 24, 2019. It is more likely than not that the new knee pathology is related to the fall.

(Cl. Ex. 1, p. 13) Dr. Kuhnlein further opined that the right knee condition "represents a 'lighting up' of the pre-existing asymptomatic changes in the right knee, making them clinically apparent." (Cl. Ex. 1, p. 13) He opined she is not at maximum medical improvement and recommended temporary medical restrictions and further medical treatment through Dr. Mahoney.

In addition to the foregoing opinions, Dr. Bollier was actually deposed, and his testimony was entered into evidence. (Def. Ex. H) He provided a number of explanations for the opinions in his November 25, 2019, medical report. He provided an explanation for why it was unnecessary for him to ever actually evaluate Ms. Eslinger. I have reviewed this testimony in its entirety. I find it is largely inconsistent with the other

credible medical opinions in the record.

Dr. Mahoney also prepared a report for claimant's counsel. (Jt. Ex. 3, p. 103)

Finally, on the eve of hearing, May 31, 2022, Dr. Ralston provided a supplemental report signing off on further opinions on defense counsel letterhead. (Def. Ex. I, pp. 38-40) For example, he signed off in agreement that the significant changes between her January 2019 MRI with her June 2019 MRI "is a strong indication that Ms. Bakerink's left knee was rapidly deteriorating or degenerating at that time." (Def. Ex. I, p. 39) I have reviewed all ten of these signed opinions written by defense counsel and I give them little weight. These opinions seem to contradict his earlier opinions which were contained in his medical notes. (*See* Jt. Ex. 1, p. 39)

CONCLUSIONS OF LAW

The first question submitted is whether the claimant sustained an injury which arose out of and in the course of her employment on May 24, 2019.

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. 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 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition

of personal injury. Iowa Code section 85.61(4)(b); Iowa Code section 85A.8; Iowa Code section 85A.14.

There is little doubt in this record that Ms. Eslinger sustained an injury which arose out of and in the course of her employment on May 24, 2019. The employer's actual contention is that Ms. Eslinger cannot prove that she injured either of her knees as a result of the injury which occurred. This is a causal connection question, not a question regarding the injury itself.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

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

It has long been the law of Iowa that Iowa employers take an employee subject to any active or dormant health problems and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). A material aggravation, worsening, lighting up or acceleration of any prior condition has been viewed as a compensable event ever since initial enactment of our workers' compensation statutes. Ziegler v. United States Gypsum Co., 252 Iowa 613; 106 N.W.2d 591 (1961). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established in Iowa that a cause is "proximate" when it is a substantial factor in bringing about that condition. It need not be the only causative factor, or even the primary or the most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

Having reviewed all of the evidence in the file, I find that the claimant has proven by a preponderance of the evidence that her left knee condition is causally connected to her May 24, 2019, work injury. I find that claimant has failed to prove that her right knee condition is connected.

Left Knee

I based my finding regarding the left knee on claimant's credible testimony, as well as the expert opinions of Dr. Mahoney and Dr. Kuhnlein. I further find that the contemporaneous medical notes of Dr. Ralston support this finding. Specifically, on June 11, 2019, he documented the following:

> [*Dawn*] *reinjured her left knee on 5/24/19*. She states that she slipped in mud and landed on her knee and face. She had immediate knee pain and swelling after her fall. She states that her knee is locking and catching along the posterolateral aspect of her knee. Most of her pain is posterolateral. She feels like her knee "is not lining up." Her knee gives out on her when she is walking. Her symptoms are progressively worsening. She has tried home therapy exercise since her fall. *Her knee felt a lot better after her last cortisone injection until she fell again*.

(Jt. Ex. 1, p. 39) (emphasis added) Dr. Ralston also documented in his examination tenderness, moderate swelling, and effusion, which refers to an abnormal collection of fluids.

I understand that Dr. Ralston changed his opinion on this topic. After defense counsel showed him the medical note from her primary care provider dated May 25, 2019, he essentially changed his opinion based upon the fact he no longer believed her because she had told him that her pain and swelling were "immediate." (Def. Ex. A) I read Dr. Ralston's opinion less as a medical opinion. It appears to be more of a credibility determination.

The facts, however, are as follows. Ms. Eslinger was having no symptoms in her left knee before 4:00 p.m. on Friday May 24, 2019. She had been released without restrictions following an injection to her left knee in April 2019. (Jt. Ex. 1, p. 37) She sustained her work injury at approximately 4:00 p.m. on Friday May 24, 2019. She slipped, twisted her left knee, and then fell hard to the ground. Her main concern at the time of the injury was her wrist and a scrape on her eye. She was checked out by her primary care provider the following morning, less than 20 hours later. She testified at that time, she was still more concerned about her wrist and eye. She testified, and I believe her, that she started feeling pain progressively in her left knee over the next few days, ultimately prompting her to return to her treating left knee surgeon, Dr. Ralston. Importantly on June 11, 2019, just a couple weeks after the injury, she returned to Dr. Ralston. On examination, she had tenderness, moderate swelling, and effusion in her left knee. Dr. Ralston opined that she reinjured her knee, which he confirmed had been doing quite well before the injury. The June 2019, MRI seemed to confirm new tears

and new pathology according to all of the physicians except Dr. Bollier, who never saw Ms. Eslinger.

For the defendants' theory of the case to prevail, I would have to find that Ms. Eslinger was dishonest about the foregoing timeline. She either must not have been asymptomatic following her injection in April 2019, or she must have sustained a new injury, which she is covering up and lying about at hearing. Having listened to her live and under oath, and reviewing the entire file, including her sworn deposition testimony, I do not find this is likely. While this is certainly possible, it is not likely.

For these reasons I find Ms. Eslinger has met her burden of proving causal connection for her left knee condition.

Right Knee

The right knee condition is more complicated.

When an injury occurs in the course of employment, the employer is liable for all of the consequences that "naturally and proximately flow from the accident." Iowa Workers' Compensation Law and Practice, Lawyer and Higgs, section 4-4. The Supreme Court has stated the following. "If the employee suffers a compensable injury and thereafter suffers further disability which is the proximate result of the original injury, such further disability is compensable." Oldham v. Scofield & Welch, 222 Iowa 764, 767, 266 N.W. 480, 481 (1936). The Oldham Court opined that a claimant must present sufficient evidence that the disability was naturally and proximately related to the original work injury. The burden of proof is on the claimant.

I do believe Ms. Eslinger in that she really believes it is connected to the work accident. I do not find the required evidence (a preponderance) exists in the record, however, to demonstrate that this condition is causally connected to the work injury. I base this finding primarily on Dr. Formanek's opinion. In addition, I am less convinced by Dr. Kuhnlein's explanation for his causal connection opinion as it relates to the right knee. He opined that her "changed gait dynamic" caused a sequela injury to the right knee. (Cl. Ex. 1, p. 13) There is little support for this in the contemporaneous medical notes for this theory. Ms. Eslinger's own testimony on this point is vague and general. Moreover, her left knee condition originally appears to have developed spontaneously in 2018. It is likely that the right knee condition could have developed in the same manner.

I find that Ms. Eslinger is not at maximum medical improvement for her left knee condition; therefore, permanency is not in dispute at this time. The primary issue is past and future medical expenses. Ms. Eslinger seeks the past medical expenses set forth in Claimant's Exhibit 9.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services

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

Evidence in administrative proceedings is governed by section 17A.14. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence. The rules of evidence followed in the courts are not controlling. Findings are to be based upon the kind of evidence on which reasonably prudent persons customarily rely in the conduct of serious affairs. Health care is a serious affair.

Prudent persons customarily rely upon their physician's recommendation for medical care without expressly asking the physician if that care is reasonable. Proof of reasonableness and necessity of the treatment can be based on the injured person's testimony. Sister M. Benedict v. St. Mary's Corp., 255 Iowa 847, 124 N.W.2d 548 (1963).

It is said that "actions speak louder than words." When a licensed physician prescribes and actually provides a course of treatment, doing so manifests the physician's opinion that the treatment being provided is reasonable. A physician practices medicine under standards of professional competence and ethics. Knowingly providing unreasonable care would likely violate those standards. Actually providing care is a nonverbal manifestation that the physician considers the care actually provided to be reasonable. A verbal expression of that professional opinion is not legally mandated in a workers' compensation proceeding to support a finding that the care provided was reasonable. The success, or lack thereof, of the care provided is evidence that can be considered when deciding the issue of reasonableness of the care. A treating physician's conduct in actually providing care is a manifestation of the physician's opinion that the care provided is reasonable and creates an inference that can support a finding of reasonableness. Jones v. United Gypsum, File 1254118 (App. May 2002); Kleinman v. BMS Contract Services, Ltd., File No. 1019099 (App. September 1995); McClellon v. Iowa Southern Utilities, File No. 894090 (App. January 1992). This inference also applies to the reasonableness of the fees actually charged for that treatment.

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

Ms. Eslinger did not seek authorization for medical care until after her August 14, 2019, visit with Dr. Rankin. Prior to that, the employer had no way to know she was

seeking medical care for her May 24, 2019, work injury. She sought care primarily through her physician who treated her for her non-work-related preexisting condition, Dr. Ralston. I cannot find that this care was authorized. The defendants subsequently denied the claim sometime in late November or December 2019. I find that the treatment she sought between the date of her work injury and August 24, 2019, was not authorized.

I have reviewed the medical notes in evidence related to her visits to her primary physician. (Jt. Ex. 2, pp. 81-95) I do not find that these visits were related to her work-related left knee condition.

Ms. Eslinger, however, also seeks future medical treatment.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

I do find that claimant is entitled to future medical treatment for her left knee condition. Dr. Kuhnlein recommended following up with Dr. Mahoney. The defendants have not offered any care. I find that the claimant should return to Dr. Mahoney for further evaluation and treatment.

The final issue is IME and costs.

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

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991).

Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010) The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

I find defendants are responsible for Dr. Kuhnlein's IME as well as the other costs outlined in Claimant's Exhibit 10.

ORDER

THEREFORE IT IS ORDERED

Defendants shall promptly authorize treatment with Dr. Mahoney.

This matter is bifurcated and only the issues addressed herein are final. At such point in the future when either party contends that claimant has reached maximum medical improvement or other justiciable issues arise, said party may request a

bifurcated hearing by motion on permanency, or any other disputed issue, without filing a new petition.

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

Costs are taxed to defendants.

Signed and filed this __9th____ day of January 2023.

JOSEPH L. WALSH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Ballard (via WCES)

Stephen Spencer (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.