BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SCOTT LOFFGREN, Claimant, vs. LENNOX INTERNATIONAL, INC., Employer, INDEMNITY INSURANCE COMPANY OF NORTH AMERICA, Insurance Carrier, Defendants.	File Nos. 1665984.01, 1666260.01, 21002803.01 ARBITRATION DECISION Headnotes: 1108.30, 1402.30, 1803, 2203, 2205

STATEMENT OF THE CASE

Claimant Scott Loffgren seeks workers' compensation benefits from the defendants, employer Lennox International, Inc. (Lennox) and insurance carrier Indemnity Insurance Company of North America (Indemnity). Loffgren filed three petitions in this case, each of which the agency assigned a file number. The file numbers and alleged injuries are:

- Under File No. 1665984.01: Alleged injury December 17, 2018, to the lower left extremity;
- Under File No. 21002803.01: Alleged injury date of February 11, 2019, to the body as a whole for exposure to Safety-Kleen; and
- Under File No. 1666260.01: Alleged injury date of May 31, 2019, to the body as a whole for exposure to Safety-Kleen.

The undersigned presided over an arbitration hearing on January 10, 2022, held using internet-based video by order of the Commissioner. Loffgren participated personally and through attorney Greg A. Egbers. The defendants participated by and through attorney Alison Stewart.

ISSUES

Under rule 876 IAC 4.19(3)(*f*), the parties jointly submitted a hearing report defining the claims, defenses, and issues submitted to the presiding deputy commissioner. The hearing report was approved and entered into the record via an order because it is a correct representation of the disputed issues and stipulations in this case.

The parties identified the following disputed issues in the hearing report:

1) Did Loffgren sustain an injury arising out of and in the course of his employment with Lennox:

    a) To his left lower extremity on December 17, 2018, under File No. 1665984.01?

    b) To his whole body on February 11, 2019, under File No. 21002803.01?

    c) To his whole body on May 31, 2019, under File No. 1666260.01?

2) Under File No. 21002803.01, did Loffgren give timely notice of the alleged injury?

3) Is Loffgren entitled to temporary partial disability (TPD), temporary total disability (TTD), or healing period (HP) benefits for the following time periods:

    a) From February 13, 2019, for twenty-six weeks, under File No. 1665984.01?

    b) From February 11, 2019, to present under File No. 21002803.01?

    c) From May 31, 2019, to present under File No. 1666260.01?

4) What is the extent of permanent disability, if any, caused by the alleged injury?

5) What is the commencement date for permanent disability benefits, if any are awarded?

6) Is Loffgren entitled to taxation of the costs against the defendants?

STIPULATIONS

In the hearing report, the parties entered into the following stipulations:

1) An employer-employee relationship existed between Loffgren and Lennox at the time of the alleged injury.

2) Although entitlement to TPD, TTD, or HP benefits cannot be stipulated, Loffgren was off work from:

    a) February 13, 2019, for twenty-six weeks, under File No. 1665984.01.

    b) February 11, 2019, to present under File No. 21002803.01.

    c) May 31, 2019, to present under File No. 1666260.01.

3) If an alleged injury is found to be a cause of permanent disability, the disability is an industrial disability.

4) At the time of the alleged injury:

    a) Loffgren's gross earnings were:

        i. Under File No. 1665984.01, on December 17, 2018, nine hundred four dollars ($904.00) per week.

        ii. Under File No. 21002803.01, on February 11, 2019, nine hundred four dollars ($904.00) per week.

        iii. Under File No. 1666260.01, on May 31, 2019, one thousand fifty-three dollars ($1,053.00) per week.

    b) Loffgren was single.

    c) Loffgren was entitled to one exemption.

5) Medical benefits are no longer in dispute.

6) Under File No. 1665984.01, the defendants are entitled to credit for payment of sick pay/disability income in the amount of eight thousand one hundred forty-six and 22/100 dollars ($8,146.22).

The parties' stipulations in the hearing report are accepted and incorporated into this arbitration decision. The parties are bound by their stipulations. This decision contains no discussion of any factual or legal issues relative to the parties' stipulations except as necessary for clarity with respect to disputed factual and legal issues.

FINDINGS OF FACT

The evidentiary record in this case consists of the following:

- Joint Exhibits (Jt. Ex.) 1 through 7;
- Claimant's Exhibits (Cl. Ex.) 1 through 13;
- Defendants' Exhibits (Def. Ex.) A through U; and

- Hearing testimony by Loffgren.

After careful consideration of the evidence and the parties' post-hearing briefs, the undersigned enters the following findings of fact.

Loffgren was sixty-two years of age at the time of hearing. (Hrg. Tr. p. 14) He began smoking cigarettes as a teenager. (Hrg. Tr. p. 63) Between the ages of twenty and forty-five, Loffgren smoked more than one pack per day on average. (Hrg. Tr. pp. 17–18) He then reduced his smoking to less than a pack per day. (Hrg. Tr. pp. 18, 63) Loffgren ultimately quit smoking entirely in 2019. (Hrg. Tr. p. 18)

Loffgren graduated from high school in 1977. (Hrg. Tr. p. 14) After graduating, he earned about $35,000 per year managing Country Kitchen restaurants, performing tasks like hiring and firing employees, payroll, scheduling, and inventory. (Hrg. Tr. p. 15) In 1997, Loffgren got a job making dough at the Mississippi Bakery. (Hrg. Tr. pp. 15–16) Loffgren moved to Nashville, Tennessee, and got a job at a hotel in room service. (Hrg. Tr. p. 16) He then worked as a cook. (Hrg. Tr. p. 17) Loffgren moved back to Iowa to help his family after his mother became ill. (Hrg. Tr. p. 17)

Lennox hired Loffgren in or around 1998. (Hrg. Tr. p. 21) He worked multiple jobs there before becoming a machine operator in the "copper group." (Hrg. Tr. p. 21) Washing copper with Safety-Kleen, a liquid chemical, was among his various job duties. (Hrg. Tr. p. 22; Jt. Ex. 1, p. 18) Loffgren washed copper with Safety-Kleen for approximately the last four years of his employment with Lennox. (Hrg. Tr. pp. 36, 65)

According to the Safety Data Sheet, Safety-Kleen is a solvent used for cleaning and degreasing metal parts. (Cl. Ex. 5, p. 2) The recommended precautions for the safe handling of Safety-Kleen include not breathing the vapor or mist and avoiding contact with eyes, skin, clothing, and shoes. (Cl. Ex. 5, p. 4) General ventilation is needed to maintain concentration of vapor or mist below applicable exposure limits. (CL. Ex. 5, p. 5) The minimum required PPE are safety glasses, gloves, and a lab coat or apron. (Cl. Ex. 5, p. 5)

The Safety Data Sheet warns Safety-Kleen "may contain a detectable amount of benzene CAS 71-43-2, p-dichlorobenzene CAS 106-46-7, ethylbenzene CAS 100-41-4, and naphthalene CAS 91-20-3," which "are known to cause cancer." (Cl. Ex. 5, p. 9) However, none of these substances are an ingredient in Safety-Kleen; their presence occurs after contamination of the solvent. (Cl. Ex. 5, p. 9) With respect to carcinogenicity, none of Safety-Kleen's components are listed by the American Conference of Governmental Industrial Hygienists (ACGIH), the International Agency for Research on Cancer (IARC), the Occupational Safety and Health Administration (OSHA) within the U.S. Department of Labor, the National Institute for Occupational Safety and Health (NIOSH), or the National Toxicology Program (NTP) within the U.S. Department of Health and Human Services. (Cl. Ex. 5, p. 9) At the time of hearing, there was no known mutagenicity associated with Safety-Kleen. (Cl. Ex. 5, p. 7)

Lennox installed a ventilation system where employees wash copper with Safety-Kleen. (Hrg. Tr. p. 34) The system consists of three boxes that ventilate through ducts into the ceiling of the work area. (Hrg. Tr. p. 34) It provides ventilation in a specific area where parts dry but not the area around the vats where Loffgren worked washing copper in baskets. (Hrg. Tr. p. 34)

Loffgren typically followed a series of steps when washing copper. (Hrg. Tr. pp. 38–39) He would turn on the ventilation system. (Hrg. Tr. p. 38) Then he would load a batch of copper parts to be cleaned into a metal basket, turn a switch, and the basket would load into a vat of Safety-Kleen. (Hrg. Tr. p. 38) The machine's lid would close and a motor inside the vat would move the Safety-Kleen around to pass it through the copper parts, which were of various shapes and sizes. (Hrg. Tr. p. 39)

After the cycle, Loffgren would flip a switch to open the lid to the vat and raise the basket. (Hrg. Tr. p. 39) He would then shake the basket and parts to try to get as much of the Safety-Kleen out of the parts as possible. (Hrg. Tr. p. 39) After that, if necessary, he would use an air hose to blow air through the parts to further expel the Safety-Kleen. (Hrg. Tr. p. 39)

Lennox assigned orders to groups of workers and an allotted amount of time for each order. (Hrg. Tr. p. 35) Lennox paid a bonus to groups that completed orders in less time than that the company identified. (Hrg. Tr. p. 35) If the group failed to meet the time target, no one in the group received a bonus. (Hrg. Tr. p. 40) Washing copper was the only task Loffgren performed during some of his shifts. (Hrg. Tr. pp. 30–32) Such specialization helped groups meet their time targets and earn bonuses for exceeding them. (Hrg. Tr. p. 35)

Safety-Kleen has a strong smell. (Hrg. Tr. p. 22) Loffgren testified long exposure to the fumes made him nauseous and dizzy. (Hrg. Tr. pp. 32, 37) The odor was strong enough that, after Loffgren completed a shift, his clothes would smell of Safety-Kleen. (Hrg. Tr. p. 53) The smell was such that Loffgren's fiancée refused to wash her clothes with his because she did not want her clothes to smell like Safety-Kleen. (Hrg. Tr. p. 54)

When Loffgren started washing copper, Lennox did not provide personal protective equipment (PPE) such as chemical resistant gloves, chemical resistant aprons, chemical resistant covers for boots, and safety glasses. (Hrg. Tr. p. 36) He got Safety-Kleen in his eyes on occasion, which burned and made it so he could not see. (Hrg. Tr. p. 37) Loffgren had to flush his eyes with water. (Hrg. Tr. p. 37)

About two years after Loffgren started working in the group, Lennox provided PPE after another employee sustained an injury. (Hrg. Tr. p. 36) It would discipline employees who did not follow the safety procedures. (Hrg. Tr. p. 66) However, the PPE did not protect Loffgren from inhaling the fumes of Safety-Kleen. (Hrg. Tr. p. 37)

On December 17, 2018, a basket fell on Loffgren's left foot while he was wearing steel-toe boots. (Hrg. Tr. pp. 41–42; Jt. Ex. 4, p. 174) The blow caused Loffgren pain in his left great toe, but he did not think he needed medical care and kept working. (Hrg.

Tr. pp. 42–43; Jt. Ex. 2, p. 174) Loffgren's pain worsened to the point where he sought care. (Hrg. Tr. p. 43; Jt. Ex. 2, p. 174) Loffgren was diagnosed with gangrene of his toe and ultimately lost approximately one-fifth of his toe. (Jt. Ex. 4, p. 174; Hrg. Tr. p. 47) On February 13, 2019, Bryce Jolley, D.P.M., took Loffgren off work for twelve weeks. (Jt. Ex. 1, p. 9) Loffgren received short-term disability benefits through Lennox from February 15, 2019, through August 15, 2019. (Hrg. Tr. p. 45) It is more likely than not he was off work during this time period due to his left lower extremity injury.

As part of the care for his injured toe, Loffgren underwent blood testing, which revealed he had a myeloproliferative disorder, also known as a JAK2 mutation, which causes irregular bone marrow regulation resulting in the bone marrow making too many cells which can lead to clotting or bleeding. (Hrg. Tr. p. 46; Jt. Ex. 7, p. 237, Depo. p. 6) None of Loffgren's treating physicians at the Iowa Clinic have told him Safety-Kleen is the likely cause of his JAK2 diagnosis. (Hrg. Tr. p. 24) Marie Prow, M.D., was Loffgren's primary physician for treatment of his JAK2 condition and remained so at the time of hearing. (Hrg. Tr. pp. 68–69) During a deposition for this case, Dr. Prow testified that while benzenes are known to affect bone marrow, she could not opine on whether Loffgren's employment at Lennox caused him such exposure because she was not there at the time in question and therefore does not know what exposures he had. (Jt. Ex. 7, p. 237, Depo. pp. 11–12)

After learning of his diagnosis, Loffgren performed internet research from which he concluded his condition was caused by Safety-Kleen. (Hrg. Tr. pp. 26–27, 46–47) After reaching this conclusion, Loffgren sent an email to Brent McDowel, a manager at Lennox. (Hrg. Tr. p. 26; Cl. Ex. 13) He informed McDowel that he believed his JAK2 was caused by using Safety-Kleen while working at Lennox. (Hrg. Tr. p. 26) The weight of the evidence shows Loffgren sent the email to McDowel within ninety days of investigating the cause of his JAK2 and reaching the conclusion his condition was caused by Safety-Kleen. (Jt. Ex. 1, p. 18) Loffgren's last day of employment with Lennox was February 11, 2019. (Hrg. Tr. P. 23)

Loffgren retained Harry Jacob, M.D., as an expert in this case. (Cl. Ex. 8) Dr. Jacob issued a report dated September 25, 2020, in which he diagnosed Loffgren with a myeloproliferative disorder, Essential Thrombocytosis (ET). (Cl. Ex. 8, p. 20) This condition is also referred to as a JAK2 mutation. (Cl. Ex. 8, p. 20; Hrg. Tr. p. 66)

On causation, Dr. Jacob opined benzene was the most likely cause of Loffgren's JAK2 mutation, stating:

> [T]he JAK2 mutation that he has acquired not only is associated with a 5–6 fold increased risk of developing acute myelogenous leukemia (AML), his risk is worsened by a need for leukemogenic drugs, such as Hydrea used to control the excessive platelet counts of ET.
>
> In that regard, benzene exposure increases several-fold the development of AML—a well established fact known for decades; such exposure is also a common promoter of the JAK2 mutations he developed with their

> accompanying production of myeloproliferative and myelodysplastic entities.
>
> Mr. Loffgren's multi-year exposure to benzene in cleaning solvents at his workplace must be a significant cause for concern and relates, in my opinion, to his medical disorders at present as well as his increased risk of developing often-fatal AML or cardiovascular/CNS occlusions in the future. His present medical disorders attributable to his prolonged exposure to benzene are: (1) multiple vasoocclusive episodes causing painful gangrene of the lower extremity as well as ischemic episodes of the central nervous system that underlie his psychological and visual abnormalities[;] (2) chronic bleeding propensity in the [gastrointestinal] tract and wounds leading to chronic iron deficiency; (3) the latter is significantly responsible for his chronic fatigue, anxiety, depression, and his addictive behavior involving anxiety/depression medications.

(Cl. Ex. 8, pp. 20–21)

The defendants retained Charles Mooney, M.D., M.P.H. as an expert. (Def. Ex. O) He reviewed documents relating to Loffgren's care and work environment. (Def. Ex. O, pp. 132–34) On causation, Dr. Mooney opined exposure to Safety-Kleen would not cause the JAK2 mutation and the most likely cause were personal risk factors. (Def. Ex. O, p. 134)

Dr. Jacob reviewed Dr. Mooney's report, which concluded Loffgren had not been exposed to benzene at Lennox, and provided a rebuttal report dated March 17, 2021. (Def. Ex. O, pp. 132–35; Cl. Ex. 8, p. 24) In it, he opined he disagreed with Dr. Mooney because "he emphasizes the 2021 study of air contamination at the Lennox facility as definitive in ruling out solvent exposure as relevant to Mr. Loffgren's blood disorder." (Cl. Ex. 8, p. 24) Dr. Jacob reviewed the same study and concluded it did not support Dr. Mooney's conclusion because it was not based on air samples taken during active work, when employees were present and exposed to solvents. (Cl. Ex. 8, p. 24) Further, according to Dr. Jacob, "solvents like benzene are lipophilic and readily absorbed through the skin, especially glabrous skin." (Cl. Ex. 8, p. 24) Dr. Jacob also opined the anecdotal description from Loffgren that his clothes reeked of chemical when he returned home from work suggested benzene exposure because of the strong odor it creates as an aerosol. (Cl. Ex. 8, p. 24)

The defendants retained Ernest Chiodo, M.D., J.D., M.P.H., M.S., M.B.A., C.I.H., to perform an independent medical examination (IME) of Loffgren relating to his JAK2 condition. (Def. Ex. K, p. 32) Dr. Chiodo reviewed Loffgren's medical records, documents relating to his employment at Lennox, and interviewed Loffgren. (Def. Ex. K, pp. 32–35) Dr. Chiodo opined Loffgren was not exposed to benzene while working at Lennox and that, even if he was, the incubation period for benzene to cause such a condition was not long enough in Loffgren's case. (Def. Ex. K, pp. 39–52) He opined Loffgren's history of smoking and age were more likely the cause. (Def. Ex. K, p. 52)

After reviewing Dr. Chiodo's IME report in this case, Dr. Jacob issued a supplemental opinion in response, dated May 22, 2021. (Cl. Ex. 8, p. 25) Dr. Jacob disagreed with Dr. Chiodo's causation opinion, stating:

> His claim that he could find no literature regarding a role for SAFETY KLEEN in causing hematologic malignancy (or the myeloproliferative disorder ET) is obfuscatory. The petroleum distillates, particularly benzene, in this agent are well-known toxins associated with excess development of myeloid leukemia. In fact, on this basis a new regulation was proposed by OSHA in 1998 that limited benzene exposure in an 8-hour time-weighted average from 10 ppm to 1 ppm (see reference #4 by Austin et al. in the Am J Epidemiology…) In fact, the SAFETY KLEEN Safety Data Sheet itself, as provided to me, does indicate malignancy risk; to wit: "This compound may contain a detectable amount of benzene …. WARNING[:] these chemicals are known by the state of California to cause cancer … and cause birth defects and other reproductive harm".

(Cl. Ex. 8, p. 26)

Dr. Jacob did not visit the Lennox facility where Loffgren worked. He reviewed documentation relating to Loffgren's employment and spoke to Loffgren. Dr. Jacob opined the most likely cause of Loffgren's JAK2 was benzene exposure at Lennox. The basis for this conclusion was the Safety Data Sheet, Loffgren's clothes "reeked" after he worked at Lennox using Safety-Kleen, and the fact that Lennox workplace testing results were not conducted during active work hours in Loffgren's area and did not specifically test for benzene.

The Safety Data Sheet states benzene is not an ingredient in Safety-Kleen. It does not identify benzene as a carcinogen. However, the Safety Data Sheet does state Safety-Kleen "may contain a detectable amount" of various types of benzene, each a known cause of cancer. Thus, the Safety Data Sheet shows it is possible benzene was present in Safety-Kleen at times when Loffgren used it.

There is an insufficient basis in the record from which to make findings with respect to how benzene might come to be present in Safety-Kleen. Is it related to use with other chemicals, how it is handled, the objects cleaned, or how it is stored? The record does not contain probative information on the subject. Likewise, the evidence does not establish that the circumstances that make it likely for benzene to be in Safety-Kleen occurred with respect to the Safety-Kleen Loffgren used at Lennox.

Dr. Jacob gives weight to the strong smell of Loffgren's clothing after he completed a shift at Lennox cleaning parts with Safety-Kleen. He infers from the fact that Loffgren's clothes reeked that the Safety-Kleen had benzene in it because benzene has a strong odor. However, there is an insufficient basis in the evidence from which to conclude Safety-Kleen made Loffgren's clothing smell after he worked with it because it was contaminated with benzene. It is just as likely Safety-Kleen, an industrial solvent, has a strong odor independent of whether it is contaminated with benzene.

Further, there is no testing in evidence that shows benzene was present in Loffgren's work area at the Marshalltown Lennox facility. The fact that there are no test results finding benzene present does not support the finding that there was benzene present. The lack of testing for benzene shows only that contamination was possible, not that it is more likely than not to have occurred.

For these reasons, the evidence shows benzene exposure was possible; however, there is an insufficient basis in the evidence from which to conclude it is more likely than not Loffgren's work at Lennox exposed him to benzene at a level high enough to cause his JAK2 mutation.

CONCLUSIONS OF LAW

In 2017, the Iowa legislature amended the Iowa Workers' Compensation Act. See 2017 Iowa Acts, ch. 23. The 2017 amendments apply to cases in which the date of an alleged injury is on or after July 1, 2017. Id. at § 24(1); see also Iowa Code § 3.7(1). Because the injury at issue in this case occurred after July 1, 2017, the Iowa Workers' Compensation Act, as amended in 2017, applies. Smidt v. JKB Restaurants, LC, File No. 5067766 (App. Dec. 11, 2020).

1. File No. 1665984.01: Lower Left Extremity Injury on December 17, 2018.

a. TTD Benefits.

An injured employee is entitled to temporary total disability (TTD) or healing period (HP) benefits when the employee is unable to work during a period of convalescence caused by a work injury. Iowa Code §§ 85.33(1), 85.34(1); see also Evenson v. Winnebago Indust. Inc., 881 N.W.2d 360, 373 (Iowa 2016). Temporary benefits compensate an employee for lost wages until the employee is able to return to work. Evenson; see also Mannes v. Fleetguard Inc., Travelers Ins. Co., 770 N.W.2d 826, 830 (Iowa 2009).

Whether an employee's injury causes a permanent disability dictates whether the employee's temporary benefits are considered TTD or HP. Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010) (citing Clark v. Vicorp Rests., Inc., 696 N.W.2d 596, 604–05 (Iowa 2005)). If there is a permanent disability, the benefits are considered HP; if not, they are TTD. See id.

The parties stipulated Loffgren was off work for twenty-six weeks beginning on February 13, 2019. The evidence shows he was off work during this period of time due to his left toe injury and collected short-term disability. The parties stipulated the defendants are entitled to a credit for the short-term disability benefits Loffgren received during this time period. As found above, there is an insufficient basis in the evidence from which to conclude Loffgren sustained a permanent disability to his left lower extremity from the injury. Because the evidence does not establish Loffgren sustained a

permanent disability to his left lower extremity, he is therefore entitled to TTD benefits for the twenty-six weeks from February 13, 2019, through August 15, 2019.

b. Rate.

The parties stipulated Loffgren's gross earnings at the time of the injury were nine hundred four dollars. They also stipulated he was single and entitled to one exemption. Based on these stipulations, Loffgren's weekly workers' compensation rate is five hundred sixty-three and 07/100 dollars.

2. File Nos. 1666260.01 and 21002803.01: Whole Body Injury From Toxic Exposure on February 11, 2019, or May 31, 2019.

The fighting factual issue with respect to medical causation is whether the evidence shows it is more likely than not Loffgren's employment at Lennox exposed him to benzene. Dr. Jacob opined benzene is the most likely cause of Loffgren's JAK2 mutation. Drs. Mooney and Chiodo believe Loffgren was not exposed to benzene at Lennox.

The legislature enacted the Iowa Workers' Compensation Act, Iowa Code chapter 85, for injuries arising out of and in the course of employment. It passed the Iowa Occupational Disease Law, Iowa Code chapter 85A, to govern occupational diseases. Both statutory schemes are enforced by the agency. See Iowa Code § 86.8.

The laws present an either-or proposition for compensation. See IBP, Inc. v. Burress, 779 N.W.2d 210, 214 (Iowa 2010). The statutory definition of "injury" or "personal injury" under chapter 85 excludes occupational diseases under chapter 85A. Iowa Code § 85.61(4)(*b*). Section 85A.8 defines "occupational disease" as follows:

> Occupational diseases shall be only those diseases which arise out of and in the course of the employee's employment. Such diseases shall have a direct causal connection with the employment and must have followed as a natural incident thereto from injurious exposure occasioned by the nature of the employment. Such disease must be incidental to the character of the business, occupation or process in which the employee was employed and not independent of the employment. Such disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have resulted from that source as an incident and rational consequence. A disease which follows from a hazard to which an employee has or would have been equally exposed outside of said occupation is not compensable as an occupational disease.

Iowa Code § 85A.8.

With respect to this definition, the Iowa Supreme Court has held, "The term 'exposure' indicates a passive relationship between the worker and his work environment rather than an event or occurrence, or series of occurrences, which constitute injury under the Worker's Compensation Act." Burress, 779 N.W.2d at 215 (quoting Noble v. Lamoni Prods., 512 N.W.2d 292, 295 (Iowa 1994).

> "[A]n 'injury' is distinguished from a 'disease' by virtue of the fact that an injury has its origin in a specific identifiable trauma or physical occurrence or, in the case of repetitive trauma, a series of such occurrences. A disease, on the other hand, originates from a source that is neither traumatic nor physical...."

Id. at 215 (quoting Perkins v. HEA of Iowa, Inc., 651 N.W.2d 40, (Iowa 2002)).

Despite the differences in applicability, both chapter 85 and 85A include the express textual requirement that, in order to be compensable under the law, an employee's injury, condition, or disease must arise:

1) Out of the claimant's employment; and

2) In the course of the claimant's employment.

Iowa Code §§ 85.3(1), 85A.8; see also St. Luke's Hosp. v. Gray, 604 N.W.2d 646, 652 (Iowa 2000); Burress, 779 N.W.2d at 214.

"'The two tests are separate and distinct.'" Blue, 743 N.W.2d at 174 (quoting Miedema, 551 N.W.2d at 311). Under Iowa law, "'both must be satisfied in order for an injury to be deemed compensable.'" Id. (quoting Miedema, 551 N.W.2d at 311). In this case, the parties dispute whether the injury arose out of employment.

A disease arises out of employment if there is a causal connection between it and the employment. Iowa Code § 85A.8; see also Blue, 743 N.W.2d at 652. "'In other words, the injury must not have coincidentally occurred while at work, but must in some way be caused by or related to the working environment or the conditions of [the] employment.'" Blue, 743 N.W.2d at 174. (quoting Miedema, 551 N.W.2d at 311). "When one speaks of an event "arising out of employment," the initiative, the moving force, is something other than the employment; the employment is thought of more as a *condition* out of which the event arises than as the force producing the event in affirmative fashion." Meyer v. IBP, Inc., 710 N.W.2d 213, 223 (Iowa 2006) (quoting 1 Arthur Larson & Lex K. Larson, *Larson's Workers' Compensation Law* (2005) § 3.06, at 3-7 to 3-8 (emphasis in original)).

"Medical causation presents a question of fact." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W2d 839, 844 (Iowa 2011). The answer to this question lies "'essentially within the domain of expert testimony.'" Id. at 845 (quoting Dunlavey v. Econ. Fire. & Cas. Co., 526 N.W.2d 845, 853 (Iowa 1995)). The agency may accept or reject an expert opinion in whole or in part. Schutjer v. Algona Manor Care Ctr., 780 N.W.2d 549,

560 (Iowa 2010) (quoting Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744, 752 (Iowa 2002)). In doing so, the agency "has the duty to determine credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion." Dunlavey, 526 N.W.2d at 853. The agency determines the weight to give an expert opinion based on consideration of:

1) "[T]he accuracy of the facts relied upon by the expert," Schutjer, 780 N.W2d at 560 (quoting Grundmeyer, 649 N.W.2d at 752);

2) "[T]he completeness of the premise with which the expert is given," Dunlavey, 526 N.W.2d at 853; and

3) "[O]ther disclosed facts and circumstances," id.

Medical causation disputes can take two forms under Iowa workers' compensation law. One is whether the injury arises out of an actual risk of the claimant's employment. See Bluml v. Dee Jay's Inc., 920 N.W.2d 85, 85–86 (Iowa 2018); see also Lakeside Casino v. Blue, 743 N.W.2d 169, 173–74 (Iowa 2007); Meyer v. IBP, Inc., 710 N.W.2d 213, 223 (Iowa 2006); Almquist v. Shenandoah Nurseries, 254 N.W. 35 (Iowa 1934). The other is whether the injury caused a compensable disability. See Schutjer, 780 N.W.2d at 560 (quoting Grundmeyer, 649 N.W.2d at 752). In this case, the parties dispute medical causation—specifically, whether Loffgren's JAK2 mutation arose out of his employment at Lennox.

The factual dispute in this case centers on whether Loffgren's JAK2 mutation was caused by benzene exposure by way of Safety-Kleen. As found above, Dr. Jacob's causation opinion rests on the foundation that Loffgren was exposed to benzene while using Safety-Kleen as part of his employment with Lennox. However, the evidence shows only that benzene exposure was possible. There is an insufficient basis in the evidence from which to conclude Loffgren was more likely than not exposed to benzene while working at Lennox.

Because there is an insufficient basis in the evidence from which to conclude Loffgren's employment with Lennox exposed him to benzene, he has failed to meet his burden of proof on the question of causation. There is an insufficient basis in the evidence from which to conclude Loffgren's JAK2 mutation arose out of his employment with Lennox. Consequently, this decision does not address the other disputed issues relating to this claim.

ORDER

Based on the above findings of fact and conclusions of law, it is ordered:

1) Under File Nos. 1666260.01 and 21002803.01, Loffgren shall take nothing from this case.

2) Under File No.1665984.01, the defendants shall pay to Loffgren twenty-six (26) weeks of temporary total disability benefits at the rate of five hundred sixty-three and 07/100 dollars ($563.07) per week.

3) The defendants shall receive a credit in the stipulated amount of eight thousand one hundred forty-six and 22/100 dollars ($8,146.22).

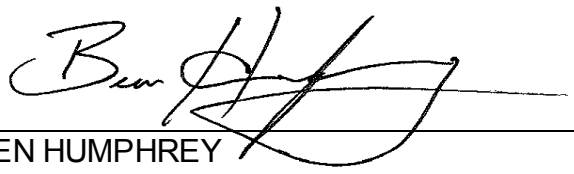
4) The defendants shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).

5) The following costs are taxed against the defendants:

    a) One hundred dollars ($100.00) for the filing fee to file the petition; and

    b) One hundred thirty-five and 75/100 dollars ($135.75) for the deposition of Loffgren.

Signed and filed this 29th day of June, 2022.



BEN HUMPHREY
Deputy Workers' Compensation Commissioner

The parties have been served, as follows:

Greg A. Egbers (via WCES)

Alison Stewart (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.