BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

NEIL GALEMA, Claimant, vs. ALLAMAKEE COUNTY COURTHOUSE, Employer, and WEST BEND MUTUAL INSURANCE COMPANY, Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 20003252.01 ARBITRATION DECISION Head Note Nos: 1800; 1803; 2500; 3200; 3202

STATEMENT OF THE CASE

Claimant, Neil Galema, has filed a petition for arbitration seeking workers' compensation benefits against Allamakee County, employer, West Bend Mutual Insurance Company, insurer, and the Second Injury Fund of Iowa, as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner the hearing was held on March 30, 2023, via Zoom. The case was considered fully submitted on May 5, 2023, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-4, Claimant's Exhibits 1-6, Defendants Employer and Insurer's Exhibits A-F, Joint Exhibits 1-4, Second Injury Fund of Iowa Exhibits AA-DD, along with the testimony of the claimant.

ISSUES

Issues Pertaining to Defendant Employer/Insurance Carrier

1. Extent of permanent disability arising from claimant's left lower extremity injury sustained on February 28, 2020;

2. Whether Claimant is entitled to reimbursement of an 85.39 examination;

3. Whether costs are awarded.

Issues Pertaining to Defendant Second Injury Fund of Iowa

1. Whether Claimant sustained a first qualifying injury to his right upper extremity on or about March 1977 and, if so,

2. The extent of industrial loss suffered by the combined first and second qualifying injuries;

3. The Second Injury Fund of Iowa's credit against an award of industrial disability benefits.

4. The proper commencement date for permanent partial disability benefits owed by the Second Injury Fund of Iowa.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

On February 28, 2020, claimant sustained an injury arising out of and in the course of his employment with the defendant employer. As a result of the injury to his left lower extremity, claimant sustained both temporary and permanent disability.

The commencement date for permanent partial disability benefits owed by the employer is January 6, 2021. The claimant's average weekly wages at the time of his injury on February 28, 2020 were $998.00. At all times material hereto, claimant was married and entitled to two exemptions. The claimant's weekly benefit rate is $649.82 based on the foregoing. Prior to hearing, claimant was paid 33 weeks of permanent partial disability benefits at the rate of $649.82 per week.

FINDINGS OF FACT

Claimant was a 57-year-old person at the time of the hearing. His education consisted of graduation from high school in 1984 and various certificates obtained at Northeast Iowa Community College including an EMT certificate, a coaching certification, and a welding certificate. While in high school, claimant played four years of football in the offensive and defensive lineman position.

His work history includes work as a floor foreman at Lansing Fisheries, a self-employed wholesale fish buyer and seller, and a laborer. Since 1998, claimant has been employed by defendant employer as a Maintenance Man I. Per the Maintenance Person

l job description, claimant's work duties for defendant employer required the ability to perform routine heavy manual labor for extended periods under adverse weather conditions and unpleasant physical environment. (Claimant's Exhibit 5:26) On March 9, 1977, claimant fell down and sustained a right scaphoid fracture. (Joint Exhibit 1:1) He was placed in a cast. On May 4, 1977, claimant was released with full range of motion and no tenderness over the scaphoid. (JE 1:2) He was to return for care as needed. Id. Claimant has sought no further treatment for his scaphoid fracture and has had no work restrictions as a result. He testified that his handwriting was poor due to his wrist injury and that throwing the football would increase discomfort in his wrist. He also testified that he regularly experiences stiffness and popping in the right wrist. Sometimes, after a great deal of activity, he will massage his wrist due to soreness.

On or about February 28, 2020, claimant was working on the roadside removing brush. A log struck the left side of his left knee, causing him to fall to the ground. He was taken to the emergency room where he was seen by Chad Rasmussen, ARNP. (JE 1:42) Mr. Rasmussen diagnosed claimant with "post-traumatic joint pain." (JE 2:44) While in the hospital, claimant's primary concern was his left knee pain but later that evening his right wrist began to hurt. The following day, he was seen at Veterans Memorial Hospital Urgent Care for the wrist pain. (JE 2:47) His right wrist showed no signs of fractures or dislocations, and it was decided that with the analgesics prescribed for the left knee, no further treatment was necessary at the time. Id.

Claimant followed up on his left knee and right hand at Winneshiek Medical Center Occupational Health on March 3, 2020, where he was seen by Jessica M. Johnson, ARNP. (JE 3: 49) He reported pain in the left medial knee, right wrist, and right hand. He described the pain as stabbing and aching. Id. Ms. Johnson recommended an MRI for the left knee. Id. Restrictions included keeping work close to the body, alternate tasks and positions as needed for pain but no squatting or twisting. Standing and walking could be performed, but not for extended periods of time. (JE 3:51)

An MRI of the left knee was conducted on March 6, 2020. (JE 1:23, 2:48) It revealed a grade 2-3 medial collateral ligament strain, horizontal tear at the posterior horn of the medial meniscus, small knee joint effusion, chondromalacia patella, and mild osteoarthritis at the medial joint compartment. Id.

On March 17, 2020, claimant was seen by Chad Rudie, PA-C. (JE 1:3) At this visit, he reported no prior injuries to the left knee or right hand. Id. His left knee was unstable and he suffered constant pain in the medial aspect of the joint line. Id. He was quite tender to touch along that area and had limited range of motion and notable laxity with valgus stressing. (JE 1:4) There were no acute abnormalities in the wrist. Id. Mr. Rudie recommended a hinged knee brace and physical therapy for the knee and a splint for the right wrist. Id. Claimant was to perform sit-down work only. Id.

On March 30, 2020, claimant had an orthopedic consult with Justin J. Mitchell, M.D., via telephone due to COVID protocols. (JE 1:6) Claimant reported left knee pain at 2 on a 10 scale that increased to 4 with activity. (JE 1:7) He felt that his knee was stiff

secondary to the brace and wondered what alternative treatment options existed. Id. Dr. Mitchell recommended physical therapy with the hopes that both the MCL and meniscus tear would heal without surgery. (JE 1:7) Dr. Mitchell explained that most MCL injuries heal without surgical intervention. Id.

On April 28, 2020, claimant consulted with Amanda Weiss, PA-C regarding the right wrist sprain. (JE 1:11) Ms. Weiss recommended a custom-made wrist splint and a consult with occupational therapy. Id.

On June 8, 2020, Dr. Mitchell recommended surgical repair for the MCL and meniscus tear. (JE 1:17) While many MCL injuries repair without surgery, claimant was suffering persistent laxity and the MCL was not completely healed. Id. Dr. Mitchell believed that given that claimant's injury was largely grade 2 in nature, a repair/tightening procedure with an internal brace was a reasonable treatment pathway. (JE 1:18) Surgery took place on July 7, 2020. (JE 1:26-27) Claimant underwent left knee open MCL repair with internal brace augmentation; left knee arthroscopy with abrasion chondroplasty to the femoral trochlea; and left knee arthroscopy with partial medial meniscectomy. (JE 1:26)

On June 9, 2020, claimant was seen by Ms. Weiss again for the right wrist. (JE 1:24) He reported some improvement of his pain which he rated 1 or 2 on a 10 scale, mostly over the index and middle finger knuckles and in the wrist. Id. He had mild edema over the radial dorsal portion of the wrist, and was mildly tender over the radial styloid and over the ECU insertion over the dorsal ulnar border of the wrist. (JE 1:24) His range of motion was limited although he had full supination. Id. His grip strength was 60 on the right and 120 on the left. Id. Under fluoroscopy, no abnormalities were detected, and Ms. Weiss continued the diagnosis of unresolved wrist strain. (JE 1:25) She referred him to occupational therapy. Id. Claimant testified that he returned to his pre-February 2020 work injury baseline for his right upper extremity.

On August 24, 2020, claimant returned to Dr. Mitchell for follow up. (JE 1:33) At this visit, he was approximately six weeks status post surgery. Id. He had been doing well, and on a daily basis his knee pain was one on a 10 scale. Id. With increased physical therapy or exercises, some pain increased to three out of 10. Id. He had no significant tenderness to palpation, his knee was ligamentously stable throughout. (JE 1:34) Dr. Mitchell recommended that claimant begin a gentle progression to weight-bearing as tolerated. (JE 1:34) He was to start ambulation with two crutches, followed by one crutch, and then ambulation with just a brace. Id. Physical restrictions included no cutting, twisting, pivoting, or impact-type activity. Id. No deep squatting or bending until at least four months following the surgery and no running until four months following the surgery. Id. Physical therapy was to focus on increasing range of motion, strength, and transition claimant to normal walking. Id.

At the October 7, 2020 follow up, claimant reported gradual improvement, although he continued to have mild discomfort localized over the medial knee with the figure four position, deep squatting, and lunges. (JE 1:35) He also noted low-grade persistent swelling in the left knee. Id. It was recommended the claimant begin wearing

the hinged-knee brace when walking on uneven ground, and it was safe for him to return to biking, swimming, and elliptical for physical activity. (JE 1:35-36) He was not ready yet to return to running, or any high impact cutting or twisting type of activities. It was also recommended that he refrain from any lifting, pushing, or pulling activities. Id. Physical therapy was continued and he was instructed to follow up in six weeks. Id.

Claimant was seen on January 6, 2021, for a six-month status post-surgery visit. (JE 1:39) At this visit, he reported that his pain was zero out of 10. Id. With increased ambulation or walking on uneven surfaces he would get some mild ache in the knee, which he rated a two out of 10. Id. He denied any mechanical symptoms or knee instability. He felt that he was ready to return to work without restrictions. Id. The examination revealed no swelling, drainage, erythema, infection, or significant tenderness to palpation. Id. He had full range of motion without pain and no pain with gentle McMurray's examination or free body weight squat or lunge. Id.

Dr. Mitchell placed claimant's return to work date as January 11, 2021 due to it typically taking 2 to 4 weeks to fully progress back to unrestricted activity. (JE 1:40) Dr. Mitchell also advised the claimant that it could take several more months before he was fully ready for full activity. He was instructed to continue with physical therapy exercises at home to continue his strengthening progression. Id.

On February 15, 2021, Dr. Mitchell filled out a form wherein he opined that claimant reached maximum medical improvement on January 6, 2021 with no permanent restrictions or need for additional medical treatment. He assigned a 15 percent impairment rating due to the meniscectomy and ligament injury. (JE 4:58)

William C. Jacobson, M.D. performed a records review at the request of the defendants. (Defendants' Exhibit D) Dr. Jacobson concluded that a 2 percent impairment rating was more appropriate than the 15 percent assigned by Dr. Mitchell. Dr. Jacobson relied on the diagnosis-based estimates using Table 17-33 on Page 546. Table 17-33 indicates a partial medial meniscectomy would result in a two (2) percent lower extremity impairment.

Dr. Jacobson conceded that he did not have the individual ratings for the meniscus and ligament as the records of Dr. Mitchell did not contain those and Dr. Jacobson did not examine the claimant personally. However, the Guides apply a rating for the medial collateral ligament injury based on the laxity remaining following an appropriate recovery time or rehabilitation period. (DE D:15) Based on Dr. Mitchell's note of January 6, 2021, wherein Dr. Mitchell indicates that claimant has a stable knee to varus and valgus stress testing at zero and 30 degrees, Dr. Jacobson concluded claimant had no laxity and therefore only 2 percent based on the partial medial meniscectomy was appropriate as an impairment rating. Id.

Claimant underwent an independent medical examination with John D. Kuhnlein, D.O., on October 7, 2022. (CE 1) Based upon this evaluation, Dr. Kuhnlein rendered an opinion on October 24, 2022, assessing a 3 percent left lower extremity impairment and 1 percent whole person impairment. (CE 1:10-11)

At the time of the examination, claimant was taking Tylenol once or twice a day to treat "multiple aches and pains for these and other complaints." (CE 1:6) He takes the Tylenol mostly for back pain but it also helps the left knee symptoms. Id. Claimant did not mention using Tylenol to treat the wrist pain. Id. Instead, he occasionally iced his right wrist but not recently. Id. He stated that he suffers aching in the left knee with activity but that it is more pain-free than painful. Id. He denied any range of motion deficits but believed that there was weakness in the left knee compared to the right. Id.

He had no right hand or wrist pain at the examination, and his biggest symptom is cracking of the distal right index finger distal interphalangeal joint. Id. This becomes stiff and numb until claimant cracks it and then the symptoms resolve. Id. Claimant denied having any problems with his right hand or wrist with his home activities. (CE 1:7).

Claimant also mentioned that he had a self-diagnosed carpal tunnel syndrome that he sustained from his repetitive work as a fish cutter. (CE 1:7) He never received medical care but described right wrist pain with motion and numbness in the thumb and index fingers. Id. He treated this with ice. Id.

On examination, claimant had tenderness in the lateral femoral condyle and there was a cystic structure lateral to the inferior patella at the arthroscopy scar. (CE 1:9) Dr. Kuhnlein opined that

> It is more likely not that the chondromalacia patella predated the injury, as did the mild medial joint compartment osteoarthritis. However, they were asymptomatic before this injury, and there is nothing in the currently available file that would suggest otherwise. The February 28, 2020, work-related injury served to "light up" the pre-existing asymptomatic degenerative changes and make them clinically apparent.

(CE 1:10)

For the right wrist, Dr. Kuhnlein opined that claimant sustained a right hand and wrist strain and contusion due to the February 28, 2020, work-related injury. The dorsal and ulnar symptoms were on the opposite side of the pre-existing radial wrist injury. However, all injury-related symptoms had resolved, and the symptoms claimant continued to experience in the right index finger were on the same side as the old scaphoid fracture and more likely than not unrelated to the February 28, 2020, injury. (CE 1:10) He complained of mild tenderness in the scaphoid area of the wrist and experienced painless popping in the right wrist with no pain on the ulnar side. (CE 1:8) All other testing was normal for the right and left wrists. Id.

Dr. Kuhnlein opined claimant reached maximum medical improvement on or about January 6, 2021 for the left knee and June 9, 2020 for the right hand and wrist contusion and sprain. (CE 1:10) For impairment, Dr. Kuhnlein assessed 3 percent to the left lower extremity based upon the partial medial meniscectomy and sensory deficit in the left lateral sural cutaneous nerve distribution. (CE 1:10-11) He noted no laxity at the

time of the evaluation but awarded an additional 1 percent based on a modifier derived from Table 2–10, Page 482, following the instructions on page 550. Id.

For the right hand. Dr. Kuhnlein opined that due to claimant's residual mild scaphoid tenderness with painless popping, snapping, and cracking sensations, he would assign a 1 percent right upper extremity impairment based on Chapter 18 of the Guides as there are no tissue rating methods in the Guides. (CE 1:11)

For restrictions, Dr. Kuhnlein recommended material handling restrictions of no lifting greater than 40 pounds occasionally from floor to waist, 50 pounds occasionally from waist to shoulder, and 40 pounds occasionally over the shoulder. (CE 1:11) Nonmaterial handling restrictions would include unrestricted sitting, standing, or walking with the ability to change positions for comfort. He can occasionally stoop, crawl, kneel or squat and occasionally climb stairs. Id.

On February 24, 2023, Joseph Chen, M.D. wrote an opinion letter in reply to an inquiry from the Second Injury Fund of Iowa. (Fund Exhibit BB:3) Dr. Chen reviewed the independent medical examination report from Dr. Kuhnlein dated October 24, 2022. Id. Based on the IME, Dr. Chen opined that Dr. Kuhnlein improperly applied chapter 18 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, to rate the pain symptoms of the claimant. (Fund Ex BB:4) Because Dr. Kuhnlein's measurements for range of motion of the wrist were essentially zero, no additive pain rating should be applied. (Fund Ex BB:3) Dr. Chen's opinion supported the measurements obtained by Dr. Kuhnlein, but the claimant should be more appropriately assigned a 0 percent impairment of the right upper extremity as he has better than normal range of motion. Id.

Claimant testified that he suffers from weakness, swelling and pain in his left knee that worsens with activity. He stretches every morning, occasionally uses ice and takes Tylenol three to four times a week. He hunts on a limited basis because it is difficult to walk through the woods. He used to forage for berries, mushrooms, or asparagus, but can no longer do so due to uneven and hilly terrain. He also no longer can provide the labor he used to in maintaining a shared piece of farmland with his brother.

In January 2021, claimant had returned to work for defendant employer in the same position as he worked prior to the February 2020 injury. Claimant has no formal restrictions related to the February 2020 injury but testified that he has informal ones that are accommodated by his foreman. Claimant testified that he does not perform brush removal but instead will direct traffic or remain behind in the shop. He does not perform culvert repair or replacement and only does small welding jobs due to his knee.

Permanent partial disability benefits were paid to the claimant based upon Dr. Justin Mitchell's impairment rating. Claimant was paid temporary total benefits from March 11, 2020, in the amount of $649.82 per week until December 15, 2020. From December 15, 2020, through January 12, 2021, claimant was paid temporary partial disability benefits in the amount of $300.99, $295.31, $162.17, $295.31, and $295.31. (DE A:1-2) The benefits changed to PPD on February 25, 2021, with a lump sum

amount of $4,567.85 and $652.55 paid weekly thereafter until August 26, 2021. (DE A:2)

Claimant seeks reimbursement of expert witness fees of Dr. Kuhnlein in the amount of $1,594.00 for the examination, $2,081.50 for the report, and $400.00 for an exam and report pertaining to issues regarding the Second Injury Fund entitlement. (CE 6:27)

Claimant seeks reimbursement of the filing fee of $103.00 and claimant deposition fee of $96.35. (CE 6:27)

CONCLUSIONS OF LAW

Claimant has sustained a permanent disability to his left knee arising out of the February 28, 2020, work injury. Defendants have stipulated that claimant sustained both temporary and permanent disability as a result of that work injury but dispute the extent.

Claimant also seeks a finding he sustained a first qualifying injury in March 1977 to his right upper extremity and a second qualifying injury on February 28, 2020, entitling him to benefits from the Second Injury Fund of Iowa.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.904(3).

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.

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).

According to Iowa Code Section 85.34(2), the Guides to the Evaluation of Permanent Impairment, Fifth Edition, published by the American Medical Association are adopted as a guide for determining permanent partial disabilities. Iowa Admin. Code r. 876-2.4 (2016) The extent of loss or percentage of permanent impairment may be determined by use of the Fifth Edition of the Guides and payment of weekly compensation for permanent partial scheduled injuries made accordingly. Id.

There are competing expert opinions in this matter. Dr. Mitchell, claimant's treating surgeon, opined claimant sustained a 15 percent impairment to the left lower extremity. Dr. Jacobson and Dr. Kuhnlein disagreed, assessing the permanent impairment at 2 percent and 3 percent. The findings of Dr. Jacobson and Dr. Kuhnlein were lower because neither of them found laxity in claimant's left lower extremity ligaments. As Dr. Jacobson explained, in order to assign additional impairment as Dr. Mitchell did, there would need to be a collateral ligament injury which is determined by the laxity remaining following an appropriate recovery time or rehabilitation period. Based on Dr. Mitchell's note of January 6, 2021, wherein Dr. Mitchell indicates that claimant has a stable knee to varus and valgus stress testing at zero and 30 degrees, claimant had no laxity. Dr. Kuhnlein also found no laxity in the collateral ligament and assigned 2 percent with an additional 1 percent for sensory deficits according to the instructions on page 550. Dr. Kuhnlein used a 25 percent modifier which comes out to around a 1 percent impairment.

Dr. Kuhnlein's opinion is adopted herein. All the doctors agree that there is no laxity, and no laxity per the Guides means no collateral ligament impairment. Only 2 percent based on the partial medial meniscectomy is appropriate based on the diagnosis-based estimates using Table 17-33 on Page 546 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. However, Dr. Kuhnlein's assessment more accurately reflects the claimant's testing results. Table 2-10 on page 482 does allow for an additional impairment due to sensory loss. Therefore, claimant's permanent impairment arising from the left lower extremity injury is 3 percent.

The next question is whether claimant is entitled to benefits from the Second Injury Fund of Iowa.

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

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

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 355 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1979).

Claimant maintains the scaphoid fracture suffered in March 1977 is a first qualifying injury. The debate here is whether claimant has sustained a permanent disability arising from the March 1977 injury. At the time of the injury, claimant was released with no permanent impairment and no restrictions. He has had no formal restrictions throughout his life pertaining to his right wrist.

Dr. Kuhnlein opined that because of the occasional pain and tenderness in the scaphoid region along with painless popping, claimant is entitled to a 1 percent impairment. He bases this impairment on Chapter 18 of the Guides because there are no tissue injury rating methods in the Guides. It is appropriate to use Chapter 18 to assign impairment for pain even when there is a verifiable medical condition if the pain associated with the condition is in excess of the organ and body system ratings of impairment. AMA Guides, 5th Ed., Chapter 18.3a at 570. It is also appropriate to use the chapter on pain "when there are well-established pain syndromes without significant, identifiable organ dysfunction to explain the pain" or "when there are other associated pain syndromes." Id. at 570–71.

Dr. Chen's interpretation is that if there is no underlying impairment then no pain qualifier can be applied. Dr. Chen noted claimant had normal wrist range of motion and would not qualify for impairment under Figures 16-28 or 16-31 of the Guides. (Ex. BB, p. 5).

There is no substantial evidence that claimant is suffering from an ongoing pain syndrome. While claimant had tenderness along the scaphoid during Dr. Kuhnlein's examination, claimant himself said he had no pain in the wrist at the examination. Claimant's primary symptomatology arising from the May 1977 injury was painless popping or cracking of the distal right index finger distal interphalangeal joint. Further, Dr. Kuhnlein also notes claimant denied having any problems with his right hand or wrist with his home activities. There are no pain symptoms reported by claimant. Indeed, when asked about prior injuries at the March 17, 2020, visit with Chad Rudie, PA-C, claimant reported no prior injuries to the left knee or right hand. In the immediate years following the 1977 injury, claimant played four years of high school football. He went on to do manual labor at a fishery for several years. Since 1998, he has worked heavy manual labor for defendant employer with no accommodations, not even informal ones. The past medical records, the subjective portion of Dr. Kuhnlein's report, and the activity of the claimant do not support a finding that he has a pain syndrome that justifies an impairment rating under chapter 18 of the Guides.

The claimant suggests that Huffey v. Second Injury Fund of Iowa, No. 18- 2055, 2020 Iowa App. LEXIS 316 at *11–12 (Iowa Ct. App. 2020) would mandate a different finding. In Huffey, the case was remanded back to the agency after the commissioner found no first qualifying loss based on lack of medical records to document the alleged first qualifying injury and the failure to show an industrial loss following the injury. Id. at *4.

In this case, those components are just a couple of factors in arriving at the conclusion that there is no first qualifying injury. The most important factor here is that claimant does not have substantial evidence of a pain syndrome arising from the May 1977 injury. The course of his activities since the injury contribute to that finding, but that is in addition to claimant's own admission of no pain in the right upper extremity. If the testimony of the claimant can be relied on to prove the existence of a first qualifying injury, his own statements can be used to show that there was no first qualifying injury as well.

Dr. Chen's opinion is adopted and thus there is no impairment to the right wrist. Having no permanent disability means that claimant's 1977 injury is not a first qualifying injury and therefore claimant is not entitled to benefits from the Fund.

Finally, claimant seeks reimbursement of the IME. Defendant employer and insurer argue that the fee itself is unreasonable. Defendants argue that because Medix Occupational Health Services, the clinic where Dr. Kuhnlein is associated, charges a $500.00 flat fee to perform an impairment rating, that is the reasonable fee and any fee over that is not reasonable. (DE F:27)

The fee schedule of Dr. Kuhnlein, however, includes a $1,400.00 base fee for an examination with a $500.00 fee for an impairment rating and restrictions exam. (DE F:27) There are other fees such as rush fees, file reviews, phone conferences, and

letter fees. Defendants' interpretation that the $500.00 impairment rating/restriction exam for one body part is the standard of reasonableness ignores the rest of the fee schedule.

Claimant has an accepted work injury with a permanent impairment. He received a rating from Dr. Mitchell of 15 percent and another from a physician retained by the defendants to proffer a rating. Claimant deemed that rating to be too low and was entitled to reimbursement for another examination by an expert of his own choosing. Iowa Code section 85.39. The fee presented appears to be reasonable and in line with other medical fees accepted by the agency in the past. Therefore, claimant is entitled to reimbursement of the examination by Dr. Kuhnlein for the left lower extremity in the amount of $1,594.00 pursuant to Iowa Code section 85.39. The report of $2,081.50 is awarded as a cost. Iowa Code § 86.40 The report is 12 pages with a detailed medical summary, examination, and conclusions. It is found to be reasonable. Defendants also argue that the report fee should be capped at $150.00. This argument has been rejected by the appellate court.

Notably, while the witness fees and deposition testimony are expressly limited to the amounts provided under Iowa Code sections 622.69 and 622.72, doctor and practitioner reports are only limited to "reasonable costs." This is an unambiguous distinction, and the employer cites no persuasive or controlling authority to support overturning our prior decision. The IME report was a taxable cost, and we affirm. Cent. Iowa Fencing, Ltd. v. Hays, 986 N.W.2d 880 (Iowa Ct. App. 2022)

The cost of the report is assessed against defendants employer and insurer. The remainder of the costs shall be borne by the claimant.

ORDER

THEREFORE, it is ordered:

That defendants employer and insurer are to pay unto claimant 7.5 (250 multiplied by 3 percent) weeks of permanent partial disability benefits at the rate of six hundred forty-nine and 72/100 dollars ($649.72) per week from March 21, 2019.

That defendants are to pay the 85.39 examination.

That defendants employer and insurer shall pay the costs of Dr. Kuhnlein's report in the amount of two thousand eighty-one and 50/100 dollars ($2,081.50) pursuant to rule 876 IAC 4.33. The remainder of the costs shall be borne by the claimant.

That defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

That defendants are to be given credit for benefits previously paid.

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

Signed and filed this 7th day of September, 2023.

JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Dillon Besser (via WCES)

Michael Roling (via WCES)

Jonathan Bergman (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, 10A) 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.