BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

EMILY CAMMACK, Claimant, vs. POST HOLDINGS, INC. D/B/A MICHAEL FOODS, INC., Employer, and LIBERTY MUTUAL INSURANCE CO. Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 5065424 ARBITRATION DECISION Head Note Nos.: 1803, 1803.1,3202

STATEMENT OF THE CASE

Emily Cammack, claimant, filed a petition in arbitration seeking workers' compensation benefits from Post Holdings, Inc., d/b/a Michael Foods, Inc. (Post) and its insurer, Liberty Mutual Insurance Company (Liberty) and the Second Injury Fund of Iowa (Fund), as a result of an injury she allegedly sustained on May 18, 2016 that allegedly arose out of and in the course of his employment. Claimant alleges a first qualifying injury for Fund liability of November 7, 2014. This case was heard in Des Moines, Iowa on July 22, 2019 and fully submitted on September 23, 2019. The evidence in this case consists of the testimony of claimant, Claimant's Exhibits 1 through 4, Employer/Insurance Carrier Exhibits A through K, Joint Exhibits 1 through 8 and the Fund's Exhibit AA. All of the parties submitted briefs.

ISSUES

1. Whether the alleged injury is a cause of permanent disability and, if so;
2. The extent of claimant's disability.
3. Post and Liberty dispute claimant's May 18, 2016 injury is an industrial disability.

4. The Fund disputes the injury of May 18, 2016 is a scheduled member injury.

5. Whether claimant can establish Fund liability for both the May 18, 2016 and November 7, 2014 alleged injuries.

6. Assessment of costs.

STIPULATIONS

The parties filed hearing reports at the commencement of the arbitration hearing. On the hearing reports, 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.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Emily Cammack, claimant, was 34 years old at the time of the hearing. Claimant graduated from high school and obtained an Associate's Degree in informational technology in 2013. Claimant has not worked in this field. (Transcript page 14)

Prior to her work for Post claimant worked for a staffing agency performing a range of duties from forklift to assembly. (Tr. p. 15)

Claimant testified she started to experience right knee pain when she played basketball in high school. Claimant testified that she had four surgeries on her right knee. Her first surgery on her right knee was in 1999 and was to correct the placement of her kneecap. (Tr. p. 18) Claimant's second right knee surgery took place in 2000, which involved removing a screw that had been placed in the 1999 surgery. (Tr. p. 18) Claimant said that her third right knee surgery was a small surgery to clean up her knee. (Tr. pp. 18, 19) Claimant had her fourth right knee surgery in 2003. Claimant described this as a major knee surgery that involved permanently implanting metal hardware in her knee. (Tr. p. 19)

Claimant testified that she was receiving pain medication steroid shots and did home physical therapy for her right knee. Claimant would often wear a right knee brace. (Tr. p. 20) Claimant testified that for a time in 2015 she was planning to apply for disability due to her right knee, but she underwent physical therapy which helped and she was able to continue to work. (Tr. p. 53)

Claimant started working for Post in March 2015. Claimant was working in an egg processing facility in Iowa. Claimant was a vat operator. Claimant's job description noted that an employee had to stand in one position for long periods of time. (Exhibit AA, p. 1) Claimant said the job was physically demanding and she would lift over 40

pounds and perform a lot of standing, squatting and climbing. (Tr. p. 23) Post was not providing any job accommodations to claimant due to her right knee.

On May 18, 2016 claimant caught her foot in a grate at work and fell. The parties have stipulated that this incident arose out of and was in the course of claimant's work.

Claimant reported her injury and was not able to finish her shift. (Tr. p. 24) Claimant went to CHI Health in Lenox, Iowa the day after her fall. Claimant had an MRI of her left knee that showed a torn left ACL. (Tr. p. 26) Claimant was referred to Iowa Orthopedics and saw Timothy Vinyard, M.D. on June 6, 2016. (Tr. p. 27)

Dr. Vinyard performed left knee surgery on October 2016. (Tr. p. 29) After surgery claimant used crutches for a period of time and did physical therapy. Claimant said that while her left knee was recovering she was having symptoms in her right knee such as it would pop and grind as well as giving out on stairs. (Tr. p. 31)

Claimant said she was released from care by Dr. Vinyard in April 2017. Claimant said that at the time Dr. Vinyard released her from care her left knee still felt a little weak and she had a little popping. (Tr. p. 31) Claimant was released to return to work without restrictions. (Tr. p. 32) Claimant testified that rather than return to work at Post she resigned, as she did not feel she could handle the laborious pace at Post. (Tr. p. 32)

Claimant testified that after she quit Post she continued to experience pain in her right knee and some in her left knee. (Tr. p. 33) Claimant submitted a resignation letter effective May 5, 2017. Claimant wrote,

> Since I have been working with a Physical Therapist on my right knee issues, I have realized I need a job that is easier on both of my knees. Therefore I have decided to leave Michael Foods Inc. Thank you for helping me out these past few years and I have enjoyed working there but I must do what is better for me.

(Ex. A, p. 1) Claimant was unemployed until November of 2017. In November 2017 she worked for Oatey's in Omaha, Nebraska from November 30, 2017 to April 2018. In this job she made glue/cement for PVC piping. (Tr. p. 38) Claimant worked for CSG in Omaha, Nebraska from June 2017 to November 2017. In this job she sorted and processed mail. Claimant worked for Amazon from October 2018 to December 2018. (Ex. D, p. 3; Tr. p. 34) Claimant worked as a picker for Amazon for the Christmas season. Claimant testified that while at CSG she would be on her feet about six hours in a twelve-hour shift, and at Oatey's she would be on her feet five to six hours for an eight-hour shift. (Tr. pp. 50, 51)

Claimant testified that at the time of the hearing her left knee has pain, grinding, popping and it gives out. She described her right knee as worse and that she wears a brace on her right leg but cannot always wear it due to irritation and a rash. (Tr. p. 42)

At the time of the hearing claimant was unemployed. Claimant said she was looking for work that did not require her to be on her feet all day. (Tr. p. 41)

Claimant returned to Dr. Vinyard on February 26, 2018 due to increasing pain in her left knee. Claimant said that her over-the-counter medication was no longer working for her left knee pain. (Tr. p. 35) Claimant testified that Dr. Vinyard examined her knee and recommended an MRI. The MRI was not approved, as Dr. Vinyard said that her knee condition in February 2018 was not related to her May 2016 left knee injury. (Tr. p. 37)

On May 19, 2016 Linda Robinson, D.O. examined claimant's left knee. Dr. Robinson's assessment was left knee strain. (JE 1, p. 1) On May 24, 2016 an MRI was recommended for her left knee. (JE 1, p. 5) On May 31, 2016 claimant was diagnosed with left anterior cruciate ligament (ACL) rupture and an orthopedic referral was made. (JE 1, p. 7)

On June 10, 2016 Dr. Vinyard examined claimant's left knee. Dr. Vinyard's assessment was a rupture of the left ACL and he recommended surgery. (JE 4, p. 20) On October 26, 2016 Dr. Vinyard performed left knee surgery. His postoperative diagnosis was "Left knee anterior cruciate ligament tear." (JE 6, p. 85) On April 25, 2017 Dr. Vinyard examined the claimant. Claimant reported mild pain in the left knee. (JE 4, p. 45) Claimant reported doing very well for her left knee, however reported that she was on restrictions due to her right knee. (JE 4, p. 45) Dr. Vinyard released claimant to return to work with no restrictions and found claimant was at maximum medical improvement (MMI) as of April 25, 2017. (JE 4, p. 46) On April 28, 2017, with an amendment on May 4, 2017, Dr. Vinyard stated claimant had no ratable impairment under the AMA Guides. (JE 4, p. 50)

Claimant was referred to physical therapy after her surgery. Claimant had 26 visits between October 26, 2016 and March 17, 2017. The notes show claimant had 5/5 flexion on extension and hip abduction and gait was good on total knee extension (TKE), but was limited by antalgic gait on the right due to knee pain. (JE 3, p. 14) Claimant was advised to continue her home exercise program of physical therapy. (JE 3, p. 18)

Claimant returned to Dr. Vinyard on February 26, 2018 due to severe symptoms. Claimant reported that since she last saw him in April 2017 her symptoms had gotten progressively worse. (JE. 4, p. 51) Dr. Vinyard recommended an MRI and restriction of ten-minutes rest every hour of work. (JE 4, p. 52) On April 4, 2018 Dr. Vinyard responded to a letter from defendants. Dr. Vinyard said that he did not have a great explanation for claimant's symptoms on February 2018. Dr. Vinyard noted that claimant worked for long periods of time doing a new job, making PVC cement products which required her to stand for long periods of time. Dr. Vinyard opined,

> Given that I placed the patient at MMI and her new symptoms have developed in line with her new employment, I do not see any way that her

> current symptoms are connected to her previous employment with Michael Foods. The patient was doing very well at the time that I saw her in April 2017. It is possible that the constant standing at her new place of employment has contributed to her symptoms. Honestly, it is difficult to make that assessment at this point.

(JE 4, p. 54)

On December 12, 2014 claimant was seen at Red Oak Internal Medicine for right knee pain. Claimant was unable to use her knee brace at that time due to a rash. (JE 5, p. 58) On November 15, 2015 claimant was having "really bad pain" even when she wore her right knee brace. (JE 5, p. 66) Claimant stated her pain medication was not helping and she wanted to be seen by an orthopedic physician and to be placed on short-term disability. (JE 5, p. 66) On November 19, 2015, Susan Gossett, FNP noted claimant was starting short-term disability and that claimant's pain made ambulation difficult. FNP Gossett suggested claimant find work that was more sedentary. (JE 5, p. 67) On March 1, 2017 FNP Gossett saw the claimant for filling out FMLA papers for her right knee. Claimant commented the lengthy wait for her left knee surgery caused her right knee to worsen. (JE 5, p. 74) In the FMLA paperwork concerning claimant's medical condition FNP Gossett wrote, "Right knee worsening due to overdependence after work injury to left knee." (JE 5, p. 78) On August 25, 2017 Casey Beran, M.D. saw claimant for her chronic right knee pain. Dr. Beran discussed injection as well as a hinged patella sleeve. (JE 7, p. 89)

Sunil Bansal, M.D. performed an independent medical examination (IME) on December 14, 2018. Dr. Bansal's assessment of claimant's left knee was,

> LEFT KNEE:
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> Left knee anterior cruciate ligament rupture.
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> Status post anterior cruciate ligament reconstruction with semi-tendinosus autograft.
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> Aggravation of degenerative joint disease.
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> RIGHT KNEE:
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> Right knee chondromalacia and instability.

(Ex. 1, p. 14) Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Bansal provided a 7 percent lower extremity rating for her left knee and a 10 percent lower extremity rating for the right knee. (Ex.1, p. 14) Dr. Bansal wrote that claimant received medical care for her right knee on November 7, 2014 for a recent fall. (Ex. 1, p. 4) I find this to be the date of the claimant's right knee injury.

Dr. Bansal recommended restrictions of no frequent kneeling or squatting. Avoid multiple stairs or climbing. No prolonged standing or walking greater than 30 minutes at a time. (Ex. 1, p. 15) I find these are claimant's restrictions.

Claimant was seen on January 7, 2019 by Brent Holmquist, M.D. for her leg pain. Dr. Holmquist's assessment of claimant's knees was,

1. Chronic pain of right knee	XR Knee 3 Views Right
2. Chondromalacia of patella, right	XR Knee 3 Views Right
3. Chronic pain of left knee	XR Knee 3 Views Left
4. History of repair of anterior cruciate ligament of left knee	XR Knee 3 Views Left

(JE 8, p. 92)

Claimant has significant injury to her knees. Claimant is limited in the amount of time she may stand or walk. Claimant's vocational history that was presented at the hearing was generally of a factory production or warehouse worker. Claimant has shown some ability to understand computer systems and obtain an AA degree, but she has not used her degree. I find that claimant has a 35 percent loss of earning capacity due to her knee injuries.

The claimant's gross earnings at the time of the May 18, 2016 incident were $655.72 per week. Claimant was single and entitled to one exemption. Claimant's weekly workers' compensation rate is $405.78.

Claimant has requested the cost of the filing fee to file the original notice and petition with this agency in the amount of $100.00. (Ex. 4, p. 1)

CONCLUSIONS OF LAW

The parties stipulated claimant had a temporary injury on her left knee due to the injury at work on May 18, 2016. The first issue to determine is whether claimant has proven she has a permanent injury to her left knee that arose out of and in the course of her employment with Post.

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).

In this case, Dr. Vinyard wrote that as of April 27, 2017 claimant was at MMI and had no ratable impairment under the AMA Guides for her left knee injury. Claimant returned to Dr. Vinyard in February 2018 with left knee pain. Dr. Vinyard treated this visit as related to claimant' work injury. In response to the March 23, 2018 letter from the defendants, Dr. Vinyard stated the claimant's current left knee symptoms were not related to her May 2016 injury, but was a new injury possibly due to her need to stand at her current employment.

Dr. Bansal found that claimant had a permanent impairment from her ruptured ACL and surgery. I find Dr. Bansal's opinions more convincing than Dr. Vinyard's. Dr. Bansal's IME is a more thorough examination of the medical records of the claimant than appears in the evaluation done by Dr. Vinyard. Claimant was unable to return to work at Post when released by Dr. Vinyard. This was primarily due to her right knee; however, claimant credibly testified her left knee was still presenting pain and other symptoms. While claimant had to stand in the jobs she held after leaving Post, there is no evidence that she had any type of acute injury at work or home after she left Post. Claimant has proven a permanent injury to her left knee due to her May 18, 2016 work injury.

I also find that claimant has proven an injury to her right knee. Dr. Bansal opined claimant had a permanent impairment to her right knee due to the November 7, 2014 incident. There is no other contrary medical opinion.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) (2017) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a

scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Based upon the ratings Dr. Bansal provided, I find claimant has a 7 percent impairment of the left lower extremity and a 10 percent impairment rating to her right lower extremity.

Defendants Post and Liberty Mutual shall pay claimant 15.4 weeks of permanent partial disability for her left leg injury (220 x 7% = 15.4).

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 (2019-2020).

I find that claimant has shown entitlement to payment from the Fund. I found that claimant has proven a November 7, 2014 first qualifying injury to her right knee and a second qualifying injury on May 18, 2016 to her left knee. The Fund is entitled to a credit of 37.4 weeks for the 10 percent impairment to the right leg and 7 percent impairment for the left leg injuries.

As I found that claimant has proven a qualifying first and second injury, Fund liability exists in this case. For Fund liability, claimant's injury is analyzed as an industrial disability. For Fund purposes, claimant has an impairment to the body as a whole; an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v.

Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

In assessing an unscheduled, whole-body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

Claimant's relevant work experience has been primarily factory and warehouse work. Claimant has an AA degree in computer networks, although claimant has not worked in the field and her knowledge is likely out of date. Claimant continued to work in production and warehouse after she left Post. Claimant has experienced increasing knee symptoms while engaging in work that requires extended standing. Claimant is relatively young, is intelligent and has the ability to work in fields that do not require her to stand extensively. Considering all the factors of industrial disability, I find that claimant has a 35 percent industrial disability. The Fund shall pay claimant 137.6 weeks of permanent partial disability benefits (175 – 37.4 = 137.6).

Interest accrues on unpaid Second Injury Fund benefits from the date of the final agency decision. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990).

Claimant paid a filing fee of $100.00. Using my discretion, I find defendants Post and Liberty Mutual Insurance Company should pay this cost pursuant to 876 IAC 4.33.

ORDER

Defendants Post and Liberty shall pay claimant fifteen point four (15.4) weeks of permanent partial disability benefits at the weekly rate of four hundred five and 78/100 dollars ($405.78) commencing April 26, 2017.

Defendants Post and Liberty shall pay claimant's cost of one hundred dollars ($100.00).

The Fund shall pay claimant one hundred thirty-seven point six (137.6) weeks of permanent partial disability benefits at the weekly rate of four hundred five and 78/100 dollars ($405.78) commencing after defendants Post and Liberty have paid their permanent partial benefits.

Defendants Post and Liberty shall pay accrued weekly benefits, if any, in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an

annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent, See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

The Fund shall pay interest from the date of this decision at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of this decision, plus two (2) percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Signed and filed this 22nd day of November, 2019.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nathan McConkey (via WCES)
Jacob Peters (via WCES)
Tonya Oetken (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 in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.