BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PAUL BERTSCH,	FILED	
Claimant,	MAY 16 2018	File No. 5063359
vs.	WORKERS COMPENSATION	ARBITRATION
JOHN DEERE DUBUQUE WORKS OF DEERE & COMPANY,		DECISION
Employer, Self-Insured, Defendant.		Head Note Nos.: 1402.30, 1402.40, 1803, 2206, 2500

Claimant Paul Bertsch filed a petition in arbitration on March 10, 2017, alleging he sustained injuries to his left hand, left arm, and left shoulder while working for the defendant, John Deere Dubuque Works of Deere & Company ("John Deere"), on January 29, 2015. John Deere filed an answer admitting Bertsch sustained injuries to his left hand and adhesive capsulitis to his left shoulder, but denied he sustained any other work injuries.

An arbitration hearing was held on March 12, 2018, at Iowa Workforce Development in Waterloo, Iowa. Attorney Nick Avgerinos represented Bertsch. Bertsch appeared and testified. Attorney Dirk Hamel represented John Deere. Joint Exhibits ("JE") 1 through 8, Exhibits 1 through 6, and Exhibits A through F were admitted into the record. The record was held open through April 16, 2018, for the receipt of post-hearing briefs. The briefs were received and the record was closed.

Before the hearing the parties prepared two hearing reports, listing stipulations and issues to be decided. John Deere waived all affirmative defenses.

STIPULATIONS FOR ALL ALLEGED INJURIES

1. An employer-employee relationship existed between John Deere and Bertsch at the time of the alleged work injury.

2. Temporary benefits are no longer in dispute.

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

4. The commencement date for permanent partial disability benefits, if any are awarded, is September 25, 2017.

5. At the time of the alleged injury, Bertsch's gross earnings were $952.07 per week, he was single and entitled to one exemption, and the parties believe the weekly rate to be $565.39.

6. Prior to the hearing Bertsch was paid twenty weeks of compensation at the rate of $565.39 per week and continuing until 125 weeks of permanent partial disability benefits are paid.

LEFT HAND AND ADHESIVE CAPSULITIS

STIPULATIONS

1. Bertsch sustained an injury on January 29, 2015, which arose out of and in the course of his employment with John Deere.

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

3. The alleged injury is a cause of permanent disability.

4. Medical benefits are no longer in dispute.

ISSUE

1. What is the extent of disability?

OTHER LEFT SHOULDER INJURIES

ISSUES

1. Did Bertsch sustain an injury on January 29, 2015, which arose out of and in the course of his employment with John Deere?

2. What is the nature of the injury?

3. Is the alleged injury a cause of temporary disability during a period of recovery?

4. Is the alleged injury a cause of permanent disability?

5. If the injury is found to be the cause of permanent disability, what is the extent of disability?

6. Is Bertsch entitled to payment of medical expenses?

FINDINGS OF FACT

Bertsch lives in Dubuque, Iowa and at the time of the hearing he was sixty. (Transcript, page 8) Bertsch is a high school graduate. (Exhibit 1, p. 1) After high school he received training at work in safety, earning college credits. (Tr., p. 8) Bertsch is left-hand dominant. (Tr., p. 26)

From August 1976 through June 1997, Bertsch worked for Dubuque Packing Company, a meat processing facility, which operated under different names, including FDL Foods and Farmland Foods. (Tr., pp. 9, 13; Ex. 1, p. 2) Bertsch worked as a laborer in the plant and for the last ten years of his employment he was a supervisor. (Tr., p. 10) Bertsch testified the physical demand of the work was medium. (Tr., p. 12) Bertsch earned between $40,000 and $50,000 per year. (Tr., p. 11) Bertsch did not sustain any injuries to his left shoulder or left hand while working for Dubuque Packing Company. (Tr., p. 11)

Before Dubuque Packing Company closed Bertsch accepted a laborer position with Thermo Fisher Scientific. (Ex. 1, p. 2; Tr., pp. 11-12) Bertsch worked for Thermo Fisher Scientific from June 1997 through May 2010, when the plant closed. (Ex. 1, p. 2; Tr., p. 12) Bertsch earned $19.00 per hour and described the physical demand of the work as medium. (Tr., p. 12)

When Thermo Fisher Scientific was closing, Bertsch accepted a position as the site manager for Kaiser Contract Cleaning in Joslin, Illinois, about forty-five minutes from Dubuque. (Tr., pp. 14-15) Kaiser Contract Cleaning was later acquired by PSSI. (Tr. p. 14) Bertsch was the site manager at a meat processing facility, where he supervised 170 employees. (Tr., pp. 14, 75; Ex. 1, p. 2) Bertsch earned approximately $67,000 per year, which is the most he has ever earned. (Tr., p. 15; Ex. 1, p. 2) PSSI was in the process of being sold to another company and Bertsch sought other employment and left PSSI in 2011. (Tr., p. 15) Bertsch did not sustain any injuries to his left shoulder or hand with his previous employers. (Tr., pp. 15-16)

Bertsch applied for a position with John Deere in April 2011. (Ex. 1, p. 1) John Deere hired Bertsch as an assembler. (Tr., p. 16) Bertsch initially worked in the resource pool as a utility worker where he worked in different departments for two years. (Tr., p. 17) Bertsch has worked between twenty and thirty different jobs during his employment with John Deere. (Tr., p. 18)

In January 2015, Bertsch was working as a laser operator for John Deere, a position he had worked in for approximately one year. (Tr., pp. 18-19) Bertsch worked with a machine that cuts parts out of sheet metal that are twelve feet by five feet in dimension, weighing approximately 600 pounds. (Tr., p. 19) Bertsch operated a large magnet that picked up sheet metal and he pushed the sheet metal and magnet approximately fifteen feet to a conveyor for sandblasting. (Tr., pp. 19-20) Bertsch also carried metal to a bin or basket elevated three and a half feet from the floor, and pushed

the bin, which might weigh between seventy-five and 100 pounds when it was full to the main conveyor. (Tr., pp. 20-21) Bertsch also operated a fork truck to move pallets of steel weighing up to 8,000 pounds. (Tr., p. 23)

On January 29, 2015, Bertsch was running Lasers 5 and 6, and relayed:

> [s]o you run two different beds. There's two different machines. And you load them up with steel, and they cut the steel. Some beds – one bed might take 20 minutes to cut; the next one might take 45 minutes to cut. So in between each one, you go over to the other one and work on it.
>
> On Laser 6, I was getting ready to load steel on it. When I picked up steel with a hoist, this one had suction cups, six of them. I went over to pick up the steel, and it picked up approximately four pieces of steel at one time where they're made to pick up one piece of steel at a time.
>
> I set that steel – let it sit right above the pallet of steel I was working with. And my bed came out on the other machine. And I had a long run on No. 6, so I knew I had time to go over to No. 5, clear it off, take care of it and put another sheet, because that was a short run. So I cleared 5 off and got another sheet on there, set the machine to automatically go in.
>
> I came over to No. 6. The steel had dropped off – the four pieces had dropped off, all but – all of them dropped off. So I went back to pick up that piece of steel. When I picked it up, I didn't recognize that one of the steel slid back about a foot behind the other steel. I picked it up. I put – moved it back approximately one foot, 18 inches to the north to write my numbers on the sheet. And when I went to write my numbers on the sheet, this piece of steel came from nowhere and smashed my hand on top of the pallet of the other steel.
>
> At that time it pulled me down. My natural reaction was to yank my hand out as fast as I could, because it was like putting your hand on a gas stove with a flame coming out of it. So it was a quick response.
>
> I grabbed my hand. I ran around in circles for six, eight minutes wondering what the heck just happened to my hand. I had these heavy leather gloves on, and I just – I ran – maybe in shock, I ran around.
>
> My co-worker that was on the other side of the conveyor asked me what I was doing, and I said, "I just hurt myself." He asked me if I was going to be okay. And I said, "Yeah, I'm going to be okay. I'll be all right. Just let me walk this off. Just let me walk this off."
>
> Three minutes later, I still have the gloves on. I haven't looked at my hand to see what happened. It was filling up with blood inside the left

> glove. I told him "You need to get the supervisor. I need to go to the medical department."

(Tr., pp. 24-26) Bertsch estimated the piece of steel that fell on his hand weighed 600 pounds. (Tr., p. 27)

Bertsch's hand was examined by Kimberly Deppe, a nurse practitioner, and Jill Hunt, M.D., the plant physician. (Ex. E, p. 40; Tr., p. 31) Bertsch was transported to Finley Hospital, where he received x-rays and stitches. (Tr., pp. 29-30) Bertsch was sent back to work, with no use of his left hand. (Tr., p. 30; Ex. E)

The next day Bertsch returned to work, his hand was splinted, and he was placed on light duty work. (Ex. E, p. 39) Bertsch continued to receive treatment from John Deere Occupational Health through February 24, 2015, under the direction of Dr. Hunt. (Ex. E, pp. 34-38) Dr. Hunt has followed all of the care he has received in this case. (Ex. E)

Bertsch told his primary care provider about his work injury and his primary care provider asked Bertsch if he had received magnetic resonance imaging and a referral to a hand specialist. (Tr., p. 32) Bertsch replied his x-ray revealed he had four fractures and he had not received magnetic resonance imaging. (Tr., p. 32)

On February 26, 2015, Bertsch received magnetic resonance imaging of his left hand. (Ex. 3, p. 5) The reviewing radiologist listed an impression of:

> 1. A 7 mm ovoid hypointense foreign body is identified in the soft tissues volar to the 3rd DIP joint.
>
> 2. Degenerative changes at multiple PIP and DIP joints and the 1st carpometacarpal joint.
>
> 3. Subcutaneous edema along the dorsum of the hand.
>
> 4. Tenosynovitis of the 5th flexor tendon.
>
> 5. The flexor and extensor tendons of the hand demonstrate no tear of rupture.

(Ex. 3, p. 5)

Bertsch made an appointment with a hand specialist at the University of Wisconsin Orthopedics and Rehabilitation. (Tr., p. 35) Bertsch attended an appointment with James Brown, PA-C, with University of Wisconsin Orthopedics and Rehabilitation, on March 2, 2015, for an evaluation of his left hand injury. (JE 1, p. 1) Brown examined Bertsch and noted he had "a moderate amount of edema over the first CMC joint. Tenderness with a mild positive grind. . . [and] drooping of the third, fourth and fifth digits at the DIP joint. Passively, I can get this to 0 degrees. He cannot extend

it on his own." (JE 1, p. 1) Brown diagnosed Bertsch with a left hand crush injury and "[b]ony mallet fingers long, ring and small finger, left hand" and recommended continuous splinting for four weeks. (JE 1, p. 1)

On April 1, 2015, Bertsch returned to Dr. Zachary's office, complaining of pain and stiffness in his fingers. (JE 1, p. 4) Dr. Zachary noted Bertsch "is very stiff at the DIP, PIP, as well as the MP joints. His range of motion is quite limited." (JE 1, p. 4) Brown taped Bertsch's fingers and ordered therapy to work on range of motion and edema control. (JE 1, p. 5)

Bertsch returned to University of Wisconsin Orthopedics and Rehabilitation on May 12, 2015, and Neil Salyapongse, M.D., a hand surgeon, examined him. (JE 1, p. 7) Dr. Salyapongse listed an impression of "[l]igament shortening and joint contractures at the IP joint levels of the index, middle, ring and small fingers of the left hand following a crush injury and prolonged immobilization," prescribed a Medrol Dosepak and oxycodone for pain management, and ordered "very aggressive therapy." (JE 1, pp. 8, 10, 12)

On June 2, 2015, Bertsch returned to Dr. Salyapongse after receiving aggressive occupational therapy. (JE 1, p. 14) Dr. Salyapongse recommended joint releases at the "PIP level for the middle, ring and small fingers," with additional occupational therapy. (JE 1, p. 14) Dr. Salyapongse performed releases of extension contractors for the left middle finger, "ring finger PIP joint," and "small finger PIP joint." (JE 1, pp. 16, 18) Dr. Salyapongse prescribed aggressive occupational therapy, oxycodone, and a Medrol Dosepak. (JE 1, pp. 18, 20)

Bertsch testified he started experiencing pain in his left shoulder in early September 2015. (Tr., p. 41) Bertsch told his physical therapist his left shoulder was really sore and he was experiencing pain going up his arm into his shoulder. (Tr., p. 40) Bertsch relayed the pain continued to get worse. (Tr., p. 41)

Bertsch continued to receive occupational therapy and returned to the University of Wisconsin Orthopedics and Rehabilitation for follow-up treatment. (JE 1, pp. 20-25) During his appointment on November 12, 2015, Dr. Salyapongse listed an impression of "[c]ontractures of the interphalangeal joints of the left hand without improvement after releases and aggressive hand therapy," and documented, "I feel like we have hit a wall, and there is not likely much more I can accomplish" for Bertsch and recommended a referral to the Mayo Clinic. (JE 1, pp. 26-27)

In October 2015, John Deere sent Bertsch to Spine and Sport, where he was treated by chiropractors for his shoulder pain. (Ex. 5, p. 1; Tr., pp. 42-43) Bertsch reported he received a little improvement with treatment, and Spine and Sport informed him he had plateaued and he might try physical therapy. (Tr., p. 43)

Bertsch attended an appointment with D.G. Dennison, M.D., with the Mayo Clinic on January 5, 2016. (JE 3, pp. 31-33) Dr. Dennison examined Bertsch, diagnosed him

with a left hand crush injury, fitted him with knuckle benders and LMB extension splints, and ordered a session of hand therapy that day. (JE 3, pp. 31-36) During a follow-up appointment Bertsch received a CMC injection, and Dr. Dennison asked Bertsch to consider additional surgery after his frozen shoulder improved. (JE 3, pp. 37-38)

John Deere sent Bertsch to Christopher Palmer, M.D., with Westside Orthopaedic, to treat his left shoulder. (JE 4; Tr., pp. 45-46) On February 25, 2016, Dr. Palmer documented Bertsch reported during physical therapy he experienced pain and stiffness in his shoulder and his therapist told him he had a frozen shoulder, and he experienced no improvement after receiving eight to ten therapy sessions. (JE 4, p. 59) Dr. Palmer examined Bertsch and listed an impression of left shoulder adhesive capsulitis, administered an injection into his shoulder, and ordered aggressive range of motion exercises. (JE 4, p. 60)

Bertsch returned to Dr. Palmer on March 29, 2016. (JE 4, p. 61) Dr. Palmer documented Bertsch relayed his pain and range of motion had improved between forty and fifty percent. (JE 4, p. 61) Dr. Palmer recommended additional therapy, and agreed Bertsch should continue with his left hand lifting restriction of five pounds. (JE 4, p. 61)

During an appointment on April 6, 2016, Dr. Hunt documented Bertsch relayed he believed "throwing the ball against the trampoline at OT has damaged his shoulder stating he had had to throw it 50 times each OT session." (Ex. 4, p. 7)

Bertsch underwent magnetic resonance imaging on April 25, 2016. (Ex. 3, pp. 3-4) The reviewing radiologist listed an impression of:

> 1. SLAP tear.
>
> 2. Thickening of the inferior glenohumeral ligament as well as mild thickening of the coracohumeral ligament. Findings can be seen with adhesive capsulitis in the correct clinical setting.
>
> 3. Suspected small partial articular surface tear along the distal infraspinatus tendon at its attachment along the humerus. Tendinosis of the supraspinatus, infraspinatus and subscapularis tendons.
>
> 4. Moderate arthrosis of the acromioclavicular joint.
>
> 5. Findings suggestive of chronic rotator cuff impingement.

(Ex. 3, p. 4)

During an appointment on April 26, 2016, Dr. Palmer provided Bertsch with a left shoulder injection and documented,

> I had a lengthy discussion with [Bertsch] concerning the findings of his MRI. This seems to be improving from the standpoint of his adhesive capsulitis, and certainly his work-related injury would not have been the cause of his acromioclavicular arthrosis, any fraying of his rotator cuff or his biceps anchor. These things may have been somewhat predisposing factors to his adhesive capsulitis as well. He states that his hand surgeon told him basically he was going to defer any additional treatment for his upper extremity until his "shoulder is fixed." I have told the patient that in my opinion he needs continued ongoing treatment to maximize his hand function completely independent of any treatment for his shoulder, as that seems to be his limiting factor at this point regarding his overall function of his extremity. I have asked him to get clarification of his hand surgeon to make sure the specialist did not say he had maximized his treatments.

(JE 4, pp. 62-63)

On May 31, 2016, Bertsch attended an appointment with Dr. Palmer. (JE 4, p. 64) Dr. Palmer listed an impression of "[l]eft shoulder adhesive capsulitis, improving with ongoing impingement of the acromioclavicular osteoarthritis, possible degenerative labral tear." (JE 4, p. 64) Dr. Palmer recommended ongoing restrictions of avoiding overhead activities, heavy lifting, or repetitive motion with his left upper extremity. (JE 4, p. 65) During an appointment on July 12, 2016, Dr. Palmer administered another injection, recommended a home rehabilitation program, and stated he would begin removing Bertsch's shoulder restrictions as recommended by the hand specialist. (JE 4, p. 66)

Bertsch attended a follow-up appointment with Dr. Palmer on August 18, 2016. (JE 4, p. 67) Dr. Palmer listed an impression of improved left shoulder impingement/ capsulitis, opined he did not see the need for aggressive treatment for his shoulder, and placed Bertsch on restrictions of avoiding overhead activities. (JE 4, p. 67) Bertsch continued to complain of shoulder pain affecting his sleep. (JE 4, p. 68) Dr. Palmer administered a shoulder injection on October 20, 2016, and recommended consideration of arthroscopic evaluation and decompression if Bertsch's symptoms failed to improve. (JE 4, p. 68)

Bertsch underwent a functional capacity evaluation on December 14, 2016. (JE 6) The physical therapist noted:

> [t]he overall classification of effort is Mixed Result due to the client, Paul Bertsch, demonstrating conflicting consistency reports during a repeated measures protocol.
>
> Maximum weight achieved to waist height = B 56.6 lbs.; Lt 23.2 lbs.
> Maximum weight achieved above shoulder height = Lt 5 lbs.
>
> The client meets the material handling demands for a Heavy demand vocation, per the Dictionary of Occupational Titles.

Job Demand Met – the client is able to safely perform the following activities on the job.

Prolonged standing
Prolonged sitting
Use of RUE

Job Demand Not Met – The client is not able to safely perform the following activities on the job.

Lifting above chest level
Repetitive gripping/grasping with LUE.

(JE 6, pp. 75-76)

Bertsch attended an appointment with Timothy Miller, M.D., on February 21, 2017. (JE 7) Dr. Miller examined Bertsch's left shoulder and hand. (JE 7, p. 91) Dr. Miller noted his shoulder range of motion and strength were normal, and noted "I am aware that there are some changes in the MRI, but I am uncertain how this would relate to Workmen's [*sic*] Compensation nor did I see any pathology at this point that would need to be addressed." (JE 7, p. 91) Bertsch did not return to Dr. Miller.

On February 23, 2017, Bertsch attended an appointment with Russell Gelfman, M.D., a physiatrist with the Mayo Clinic, for an impairment rating. (JE 3, pp. 42-46) Dr. Gelfman diagnosed Bertsch with a left hand crush injury, hand stiffness with resultant arthrofibrosis, and status post tenolysis. (JE 3, p. 43) Dr. Gelfman found Bertsch was at maximum medical improvement, and using the Guides to the Evaluation of Permanent Impairment (AMA Press, 5th Ed. 2001) ("AMA Guides"), opined:

> [i]mpairment ratings for loss of motion of the finger joints are derived from figure 16-12 for the thumb IP joint, figure 16-15 for the thumb MP joint, table 16-8a for radial abduction, table 16-8b for thumb adduction, and table 16-9 for thumb opposition. Figure 16-21 was used for DIP motions, figure 16-23 was used for finger PIP motions, and figure 16-25 was used for finger MP joint motions. All of this information was entered on the table listed under 16-1a leading to total joint impairments for the thumb of 13%, the index finger 32%, the middle finger 61%, the ring finger 64%, and the little finger 69% when converted to hand impairment and added this is a 36% impairment of the hand. The caveats of functional capacity evaluation are reviewed; however, the lifting capacity, itself, appears to be relatively consistent and is likely a good estimation of his current functional capacities, given the loss of full use of the dominant left hand.

(JE 3, pp. 42-43) Under Table 16-2, at page 439 of the AMA Guides, a thirty-six percent impairment of the hand converts to a thirty-two percent impairment of the upper extremity.

On June 13, 2017, Bertsch attended an appointment with Holly Duck, M.D., an orthopedic surgeon with the Mayo Clinic. (JE 3, p. 47) Dr. Duck reviewed Bertsch's x-rays and magnetic resonance imaging and diagnosed Bertsch with acromioclavicular joint arthritis, resolving left shoulder adhesive capsulitis, and a partial tear of the infraspinatus. (JE 3, pp. 48-49) Dr. Duck recommended an acromioclavicular joint injection, and a subacromial injection. (JE 3, p. 49) Dr. Duck performed a left glenohumeral joint injection on July 7, 2017, and diagnosed Bertsch with acromioclavicular joint pain and strain and partial tear of the infraspinatus tendon. (JE 3, pp. 50-53)

Dr. Duck referred Bertsch to Dr. Gelfman with a chief complaint of left shoulder stiffness and loss of function. (JE 3, p. 54) Dr. Gelfman examined Bertsch, diagnosed him with left shoulder adhesive capsulitis, partial tear of left infraspinatus, left side acromioclavicular joint arthritis, left hand crush injury, hand stiffness with resultant arthrofibrosis, and status post tenolysis, finger flexors of left hand. (JE 3, p. 55) Bertsch inquired whether he could benefit from additional physical therapy, and Dr. Gelfman opined:

> I am a bit doubtful that he would get any additional benefit given the length of time of onset of his symptoms and the fact that most times, adhesive capsulitis has plateaued after a year or so. The left shoulder symptoms are more likely than not related to his left upper extremity work injury. It is either a consequence of the underlying shoulder condition with the partial rotator cuff tear or as a consequence of relative immobilization during treatment for his hand condition. He does not have other risk factors for the condition such as diabetes. The only additional medical care would be whether or not he wants to consider any surgical alternatives for the left shoulder; however, it is not felt that this would be in his best interest. . . .

(JE 3, p. 55) Dr. Gelfman recommended a functional capacity evaluation to determine work restrictions. (JE 3, p. 55)

Bertsch underwent a second functional capacity evaluation on November 29, 2017. (JE 8) The physical therapist noted the results were valid, and found:

Position	Right Mean	Left Mean
Position 2 Grip	86.0 lbs.	41.0 lbs.
2-Point Pinch	9.3 lbs.	8.0 lbs.
3-Point Pinch	15.0 lbs.	11.3 lbs.
Lateral Pinch	14.0 lbs.	12.0 lbs.

(JE 8, p. 96)

Pursuant to a request from John Deere, Dr. Gelfman issued an impairment rating on January 11, 2018. (JE 3, p. 58) Using the AMA Guides, Dr. Gelfman opined:

> [f]or loss of shoulder range of motion would be from the measurements in my evaluation of August 30, 2017, to which one would apply Figure 16-40 for flexion impairment of 1% and extension impairment of 1%, Figure 16-43 for adduction impairment of 1%, and from Figure 16-46 for internal rotation impairment of 2%. This would result in a 5% permanent partial impairment of the left upper extremity due to the shoulder. He has previously had an impairment rating related to the left hand performed on February 23, 2017.
>
> The functional capacity evaluation was reviewed. The work restrictions would be the component of activity that exceeds the functional capacity evaluation limitations noted on the functional capacity evaluation of December 14, 2016. This includes restrictions of bi-manual lifting as indicated in that report as well as use of the left arm above shoulder level. He should not be required to perform repetitive work above shoulder level with the left arm. These are permanent restrictions.

(JE 3, p. 58)

John Deere documented Bertsch had permanent restrictions of no repetitive gripping with the left hand, no lifting above chest level with the left arm, no pushing over sixteen pounds, no pulling over twenty-four pounds, lifting floor to waist up to fifty pounds occasionally, twenty-eight pounds frequently, and eleven pounds with no limit. (Ex. D, p. 10)

At the time of the hearing Bertsch was working as a miscellaneous processor driving a forklift for John Deere, within his restrictions. (Tr., pp. 59-60) Bertsch receives an accommodation from John Deere with changing a propane tank on one of the two forklifts he drives. (Tr., p. 60) Bertsch was unable to return to his former position as a laser operator, due to his restrictions. Bertsch testified the laser operator position pays $.90 per hour more than the miscellaneous processor position. (Tr., p. 62)

Bertsch testified he is unable to close his left hand completely, and he cannot bend, close, or straighten three fingers on his left hand. (Tr., p. 71) Prior to his work injury Bertsch enjoyed bicycle riding and snow skiing, which are activities he is no longer able to engage in. (Tr., pp. 69-70) Bertsch struggles to reach into a can of peanuts, and he cannot twist off bottle caps with his left hand. (Tr., pp. 71-72)

Bertsch testified he continues to experience pain in his left upper extremity, that comes and goes. (Tr., p. 72) Bertsch continues to use a brace on his left hand, a TENS unit four to five times per week, and he takes muscle relaxers. (Tr., pp. 66-68) Bertsch is requesting treatment for his left shoulder. (Tr., p. 72)

CONCLUSIONS OF LAW

I. Nature of the Injury

Bertsch contends he sustained injuries to his left hand, left shoulder adhesive capsulitis, and other left shoulder injuries. John Deere admits Bertsch sustained injuries to his left hand and left shoulder adhesive capsulitis, but denies Bertsch sustained other left shoulder injuries.

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

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

Farmers Elevator Co. v. Manning, 286 N.W.2d 174, 177 (Iowa 1979) (quoting Bushing v. Iowa Ry. & Light Co., 208 Iowa 1010, 1018, 226 N.W.719, 723 (1929)).

The claimant bears the burden of proving the claimant's work-related injury is a proximate cause of the claimant's disability and need for medical care. Ayers v. D & N Fence Co., Inc., 731 N.W.2d 11, 17 (Iowa 2007); George A. Hormel & Co. v. Jordan, 569 N.W.2d 148, 153 (Iowa 1997). "In order for a cause to be proximate, it must be a 'substantial factor.'" Ayers, 731 N.W.2d at 17. A probability of causation must exist, a mere possibility of causation is insufficient. Frye v. Smith-Doyle Contractors, 569 N.W.2d 154, 156 (Iowa Ct. App. 1997). The cause does not need to be the only cause, [i]t only needs to be one cause." Armstrong Tire & Rubber Co. v. Kubli, 312 N.W.2d 60, 64 (Iowa 1981).

The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The deputy commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert

testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985).

It is well-established in workers' compensation that "if a claimant has a preexisting condition or disability, aggravated, accelerated, worsened, or 'lighted up' by an injury which arose out of and in the course of employment resulting in a disability found to exist," the claimant is entitled to compensation. Iowa Dep't of Transp. v. Van Cannon, 459 N.W.2d 900, 904 (Iowa 1990). The Iowa Supreme Court has held,

> [a] disease which under any rational work is likely to progress so as to finally disable an employee does not become a "personal injury" under our Workmen's Compensation Act merely because it reaches a point of disablement while work for an employer is being pursued. It is only when there is a direct causal connection between exertion of the employment and the injury that a compensation award can be made. The question is whether the diseased condition was the cause, or whether the employment was a proximate contributing cause.

Musselman v. Cent. Tel. Co., 261 Iowa 352, 359-60, 154 N.W.2d 128, 132 (1967).

Three physicians have given opinions concerning Bertsch's left shoulder, Dr. Miller, a treating physician who examined Bertsch on one occasion, Dr. Palmer, a treating orthopedic surgeon, and Dr. Gelfman, a physiatrist with the Mayo Clinic who is part of Bertsch's treatment team. I find the opinion of Dr. Gelfman to be the most persuasive. The Mayo Clinic and its physicians have a great reputation for excellence and expertise in the Midwest. Physicians often refer patients to the Mayo Clinic for second opinions, which occurred in this case when Dr. Salyapongse with the University of Wisconsin referred Bertsch to the Mayo Clinic for additional treatment of his hand after Dr. Salyapongse exhausted all treatment options. (JE 1, pp. 26-27)

Dr. Miller noted on exam Bertsch's shoulder range of motion and strength were normal, and opined, "I am aware that there are some changes in the MRI, but I am uncertain how this would relate to Workman's [*sic*] Compensation nor did I see any pathology at this point that would need to be addressed." (JE 7, p. 91) Dr. Miller's findings regarding Bertsch's left shoulder range of motion and strength are inconsistent with the findings of Dr. Gelfman. (JE 3, pp. 54, 58) Dr. Miller's report does not provide any objective evidence of range of motion comparing the right to left shoulders supporting his conclusions, unlike Dr. Gelfman. (JE 7, p. 91) Dr. Gelfman documented his findings on examination as, "[s]houlder range of motion (right/left) – Abduction 185 degrees/178 degrees, adduction 30 degrees/15 degrees, forward flexion 170 degrees/160 degrees, extension 46 degrees/35 degrees, external rotation 110

degrees/85 degrees, and internal rotation 80 degrees/51 degrees," which he used to assign an impairment rating. (JE 3, pp. 54, 58)

Dr. Palmer listed an impression of left shoulder adhesive capsulitis/ acromioclavicular osteoarthritis, possible SLAP tear, and "possible impingement syndrome with partial rotator cuff repair." (JE 4, p. 62) Dr. Palmer opined, "certainly his work-related injury would not have been the cause of his acromioclavicular arthrosis, any fraying of his rotator cuff or his biceps anchor. These things may have been somewhat predisposing factors to his adhesive capsulitis as well." (JE 4, p. 62) Dr. Palmer acknowledges Bertsch's underlying pathology could have predisposed him to developing adhesive capsulitis.

Dr. Gelfman diagnosed Bertsch with left shoulder adhesive capsulitis, partial tear of left infraspinatus, left side acromioclavicular joint arthritis, a left hand crush injury, hand stiffness with resultant arthrofibrosis, and status post tenolysis, finger flexors of left hand. (JE 3, p. 55) Dr. Gelfman opined,

> [t]he left shoulder symptoms are more likely than not related to his left upper extremity work injury. It is either a consequence of the underlying shoulder condition with the partial rotator cuff tear or as a consequence of relative immobilization during treatment for his hand condition. He does not have other risk factors for the condition such as diabetes. The only additional medical care would be whether or not he wants to consider any surgical alternatives for the left shoulder; however, it is not felt that this would be in his best interest. . . .

(JE 3, p. 55)

Bertsch's medical records and history support Dr. Gelfman's opinion. There is no evidence Bertsch complained of left shoulder problems or pain before the work injury, or that he received treatment for his left shoulder prior to the work injury. Bertsch has established his work injury aggravated, accelerated, worsened, or lighted up his underlying left shoulder pathology.

II. Extent of Disability

The parties have stipulated Bertsch sustained an industrial disability. John Deere has voluntarily agreed to pay Bertsch 125 weeks of permanent partial disability benefits for a twenty-five percent industrial disability. "Industrial disability is determined by an evaluation of the employee's earning capacity." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 852 (Iowa 2011). In considering the employee's earning capacity, the deputy commissioner evaluates several factors, including "consideration of not only the claimant's functional disability, but also [his] age, education, qualifications, experience, and ability to engage in similar employment." Swiss Colony, Inc. v. Deutmeyer, 789 N.W.2d 129, 137-38 (Iowa 2010). The inquiry focuses on the injured employee's "ability to be gainfully employed." Id. at 138.

The determination of the extent of disability is a mixed issue of law and fact. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 525 (Iowa 2012). Compensation for permanent partial disability shall begin at the termination of the healing period. Iowa Code § 85.34(2). Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Id. § 85.34(2)(u).

Bertsch sustained injuries to his left hand and left shoulder. Under the AMA Guides, at page 438, when an individual has sustained multiple regional impairments, such as those to the hand, wrist, elbow, and shoulder, the impairments are first expressed individually as upper extremity impairments and then combined to determine the total upper extremity impairment. The sum of both upper extremity impairments is then converted to a whole person impairment under Table 16-3, at page 439 of the AMA Guides.

Dr. Gelfman opined Bertsch sustained a thirty-six percent impairment to his left hand. (JE 3, p. 43) Under Table 16-2 of the AMA Guides, at page 439, thirty-six percent impairment to the hand equals a thirty-two percent upper extremity impairment. Dr. Gelfman also assigned a five percent impairment to the left upper extremity for Bertsch's shoulder injuries. (JE 3, p. 58) The combination of both impairments is thirty-seven percent to the left upper extremity. Under Table 16-3, of the AMA Guides at page 439, a thirty-seven percent impairment to the left upper extremity results in a 22 percent whole person impairment. John Deere documented Bertsch had permanent restrictions of no repetitive gripping with the left hand, no lifting above chest level with the left arm, no pushing over sixteen pounds, no pulling over twenty-four pounds, lifting floor to waist up to fifty pounds occasionally, twenty-eight pounds frequently, and eleven pounds with no limit. (Ex. D, p. 10) Dr. Gelfman also recommended restrictions of bi-manual lifting and no repetitive work above shoulder level with respect to the left arm. (JE 3, p. 58) Bertsch is left-hand dominant.

Bertsch is a high school graduate. He is articulate and able to grasp new concepts. I believe he is capable of retraining. Bertsch continues to work for John Deere as a forklift driver. Bertsch is no longer able to work as a laser operator, due to his permanent restrictions. John Deere accommodates Bertsch's permanent restrictions by providing him with assistance in changing the tank for one of the forklifts he operates. Bertsch testified he currently earns $.90 less per hour than he would if he were working as a laser operator. Bertsch's testimony is uncontroverted. Bertsch has worked as a supervisor for two employers. In the position he held prior to his employment with John Deere Bertsch supervised 170 employees. Bertsch has managerial skills he could use to secure other employment.

Bertsch sustained a significant work injury that has left him with permanent restrictions that impact him on a daily basis to his dominant hand and shoulder. He continues to wear a brace on his left upper extremity, he uses a TENS unit for pain, and he takes prescription medication as a result of his work injury. Considering all of the factors of industrial disability, I find Bertsch has sustained a fifty percent industrial disability.

III. Medical Bills and Alternate Care

Bertsch seeks to recover $1,810.95 paid to Mayo Clinic for two injections he received for his left shoulder injuries other than adhesive capsulitis. John Deere has refused to pay for the treatment.

An employer is required to furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, hospital services and supplies, and transportation expenses for all conditions compensable under the workers' compensation law. Iowa Code § 85.27(1). The employer has the right to choose the provider of care, except when the employer has denied liability for the injury. Id. "The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee." Id. § 85.27(4). If the employee is dissatisfied with the care, the employee should communicate the basis for the dissatisfaction to the employer. Id. If the employer and employee cannot agree on alternate care, the commissioner "may, upon application and reasonable proofs of necessity therefore, allow and order other care." Id. The statute requires the employer to furnish reasonable medical care. Id. § 85.27(4); Long v. Roberts Dairy Co., 528 N.W.2d 122, 124 (Iowa 1995) (noting "[t]he employer's obligation under the statute turns on the question of reasonable necessity, not desirability").

The Iowa Supreme Court has held the employer has the right to choose the provider of care, except when the employer has denied liability for the injury, or has abandoned care. Iowa Code § 85.27(4); Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 204 (Iowa 2010). The Iowa Supreme Court has held an employer may be responsible for unauthorized care "upon proof by a preponderance of the evidence that such care was reasonable and beneficial," meaning "it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Gwinn, 779 N.W.2d at 206.

Before the arbitration hearing Bertsch filed an application for alternate medical care. During the March 2017 alternate care proceeding, the deputy workers' compensation commissioner noted John Deere had accepted liability for Bertsch's adhesive capsulitis, but not for any other condition with respect to his left shoulder. (Ex. F, p. 44) The deputy commissioner found that based on the denial of liability for the condition sought to be treated through the alternate care proceeding, other than adhesive capsulitis, Bertsch could seek reasonable medical care from any provider and seek reimbursement during the arbitration proceeding. (Ex. F, p. 44) As found above, Bertsch has established his work injury aggravated, accelerated, worsened, or lighted up his underlying shoulder pathology. John Deere is responsible for all medical treatment causally connected to the work injury. No additional care was recommended by Dr. Gelfman at hearing. Should Bertsch require additional medical treatment related to his left shoulder injuries, he is entitled to alternate medical care at the Mayo Clinic.

ORDER

IT IS THEREFORE ORDERED, THAT:

Defendant shall pay the claimant two hundred fifty (250) weeks of permanent partial disability benefits, at the rate of five hundred sixty-five and 39/100 dollars ($565.39) per week, commencing on September 25, 2017.

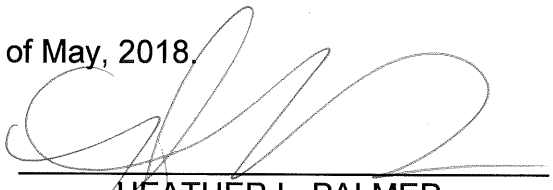
Defendant shall receive a credit for all weekly benefits paid to date.

Defendant shall pay accrued benefits in a lump sum with interest on all weekly benefits provided by law.

Defendant is responsible for the cost of the July 7, 2017 Mayo Clinic visit, totaling one thousand eight hundred ten and 95/100 dollar ($1,810.95).

Defendant shall file subsequent reports of injury as required by this agency pursuant to rules 876 IAC 3.1(2) and 876 IAC 11.7.

Signed and filed this 16th day of May, 2018.



HEATHER L. PALMER
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Nick J. Avgerinos
Attorney at Law
55 W. Monroe St., Ste. 900
Chicago, IL 60603-2503
nja@capronlaw.com

Dirk J. Hamel
Attorney at Law
770 Main St.
Dubuque, IA 52001-6820
dhamel@dbqlaw.com

HLP/srs

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.