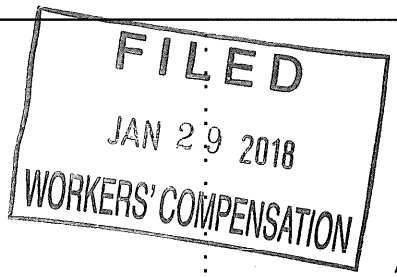
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



ZAJIM BAJRAMOVIC, Claimant, vs. JOHNSTON COMMUNITY SCHOOL DISTRICT, Employer, Self-Insured, Defendants.	:	File No. 5063121 ARBITRATION DECISION Head Note Nos.: 1100; 1803

STATEMENT OF THE CASE

Zajim Bajramovic, claimant, filed a petition in arbitration seeking workers' compensation benefits against Johnston Community School District, a self-insured employer, defendant, for accepted and alleged work injures dated May 14, 2014.

This case was heard on November 3, 2017, in Des Moines, Iowa. The case was considered fully submitted on December 8, 2017, upon the simultaneous filing briefs.

The record consists of Joint Exhibits 1-19, claimant's exhibits 1-12, and defendant's exhibits A-H along with the testimony of the claimant.

ISSUES

1. Whether claimant sustained an injury which arose out of and in the course of employment to his neck, right shoulder, and right elbow;

2. Whether the alleged injury is a cause of permanent partial disability and, if so;

3. The extent of that disability.

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.

The parties agree the claimant sustained a right arm injury arising out of work incident on May 14, 2014. They agree that the commencement date for permanent partial disability benefits, if any are awarded, is November 11, 2015.

At the time of the injury, claimant's gross earnings were $747.00 per week. He was married and entitled to four exemptions. Based on those foregoing numbers, the weekly benefit rate is $504.25.

Prior to the hearing the claimant was paid 52 weeks of compensation at the rate of $504.25 per week for temporary total disability and healing period. Claimant has also received long-term disability benefits and the net monthly amount of $1,903.34 from September 28, 2017 to October 27, 2017. The claimant stipulates that a credit for the net amount shall be applied to any workers' compensation benefits paid after September 28, 2017.

FINDINGS OF FACT

Claimant was a 46-year-old male at the time of the hearing. His secondary education took place in Bosnia. He testified that he completed the eighth grade which was an equivalent to a high school diploma. His work history prior to immigrating to the United States included factory and construction work.

In 1995 he immigrated to the United States. At that time, he did not speak or read English. He has learned English through speaking with others but has no formal training. He testified that he can write some, uses a computer to pay bills, and can communicate with others.

He is right-handed.

Upon arriving in the United States, his first job was at the Olive Garden performing busboy work in the kitchen as well as rolling silverware. Following this, he took a job with a construction company where he did ceiling work, installing insulation around walls, cutting two by fours, and using a nail gun. He moved on to another construction company where he was involved in pouring concrete and making footings for basements. This job required lifting up to 50 pounds. His next position involved building trusses for homes. This job also required heavy lifting.

In 2007, claimant took a position as a custodian for the Waukee school district. He continued to work there until 2012.

In 2012, claimant began working part-time for the defendant employer as a custodian. He underwent a preemployment physical on September 26, 2012 and was cleared to perform all the duties of the custodial position without restrictions or accommodations. (JE 1:2)

He was hired as a full-time worker in February 2013. In his position as night custodian, he would be required, among other things, to clean the floors, move furniture, take out the trash, do some small repairs, clean windows above his head. (JE 6:40)

In the summer of 2013, claimant began working as a part-time stocker for Dahls Foods. He continued as a stocker until May 2014 when he was let go due to the work restrictions imposed by Ms. Good for the right elbow and shoulder pain. The information regarding his dual employment with Dahls was not revealed until June 2017 in the report of Robin Sassman, M.D., an occupational medicine physician hired by the claimant for an independent medical examination. (Ex 4:18) This information was not available to any of claimant's treating physicians nor to any of the experts hired by the defendants until after June 2017.

Claimant described his work as a stocker for Dahls as hauling goods to the salad bar and facing of products. He denied being involved in the loading and unloading of trucks. Despite this seemingly light-duty work, claimant testified that he was let go of his position at Dahls after work restrictions were imposed because Dahls determined claimant could not perform the tasks of a part-time stocker under those restrictions.

Claimant provided no plausible excuse for this omission despite being asked outright in answers to interrogatories about his work history. It is because of this long period of silence about his concurrent work history that claimant's testimony is given low weight.

In early 2014, claimant began to notice right hand and arm pain. He sought treatment for that pain beginning on May 16, 2014 with Allison Good, ARNP. (JE 1:4) He reported that he had increasing pain to the right elbow for the past two to three months and that the pain was now traveling up into the shoulder. (JE 2:5) He did not remember doing anything specific that would cause the injury, but believed that it was the continuous tasks of his position that resulted in the pain. (JE 2:5) He rated his pain at a 7/10 on a 10 scale and that it was constant. He did not have numbness or tingling. (JE 2:5)

On examination, he exhibited tenderness with palpation on the lateral aspect of the shoulder. The range of motion was normal but claimant reported moderate pain primarily in the right upper arm. As for the elbow, it showed moderate to severe tenderness with palpation to the epicondyles and mild pain upon rotation. (JE 2:5)

Ms. Good diagnosed claimant as suffering from tendinitis and placed him on modified work duty. (JE 2:5) She recommended he dose himself with ibuprofen three times a day, and a Toradol intramuscular injection was provided to get his acute pain under control. (JE 2:5).

In the meantime, claimant underwent a routine physical to monitor hypertension and hyperlipidemia. (JE 3:17) Claimant reported occasional physical fatigue but no pain in the musculoskeletal region. His family practice doctor also reported no localized joint pain, no sensory disturbances and no muscle aches. (JE 3:18)

He returned to Ms. Good's office on May 30, 2014 with a new complaint of pain in his neck. He reported that his pain was 8 to 10 on a 10 scale and constant. He had been compliant with his medication, icing and wearing the elbow strap, and working within the restrictions given. (JE 2:7)

The neck showed moderate tenderness with palpation to the right side and limited range of motion. The right shoulder had mild to moderate tenderness with palpation, and while the range of motion was normal in all planes, patient reported moderate pain with motion. As for the right elbow, the claimant reported mild pain with range of motion. (JE 2:7) Ms. Good administered another injection, took claimant off of work, and returned him to modified duty on June 2, 2014. (JE 2:7)

Claimant returned on June 23, 2014. His neck pain resolved. (JE 2:9) The elbow pain stemming from the shoulder was intermittent—only a 5 out of 10 on a 10 scale. (JE 2:9) On examination, he showed no pain or limited range of motion in the neck or shoulder and only moderate tenderness with palpation on the dorsal side between the epicondyles and mild pain with range of motion. (JE 2:9)

Ms. Good kept claimant on modified duty and recommended an EMG study for the right elbow. (JE 2:9) An EMG study was completed on July 2, 2014, which showed no nerve entrapment at the median nerve but some mild right ulnar nerve entrapment at the wrist with sensory involvement only. Evidence of right cubital tunnel syndrome, mild axonal loss to the right ADM muscle which may have been related to the cubital tunnel finding but also may have been related to cervical nerve irritation was also seen. (JE 5) Donna Bahls, M.D., who performed the EMG, also noted that claimant had tenderness of the lateral epicondyle consistent with tendinitis. She recommended administering a cortisone shot and monitoring his grip strength to make sure the nerve problem resolved. (JE 5:45)

Because of the diagnosis of cubital tunnel syndrome, Ms. Good recommended claimant seek out a specialist. (JE 2:11) Before claimant could follow up on that instruction, he returned to Ms. Good on August 4, 2014 with complaints that his pain had worsened. It was at 6 to 7 on a 10 scale. He was not sleeping well, and he was having occasional numbness and tingling to the right arm down into the fingertips. (JE 2:13) An MRI conducted on August 20, 2014 of the right shoulder showed no rotator cuff or labral theology. (JE 7:3)

Claimant was seen by Jason Sullivan, M.D., on August 5, 2014 regarding the carpal tunnel syndrome and shoulder pain. (JE 6:46) On examination, claimant had some limited range of motion, tenderness to palpation over the lateral upper condyle,

pain with resisted wrist extension and finger extension, and positive Tinel's at the medial elbow. (JE 6:47) Dr. Sullivan diagnosed claimant with mild right cubital tunnel syndrome and tennis elbow. (JE 6:47) Dr. Sullivan's initial course of treatment was injection therapy. (JE 6:47) For the cubital tunnel syndrome, Dr. Sullivan recommended night splinting and physical therapy. A lifting restriction of 5 pounds for the next six weeks was imposed. (JE 6:47 – 48)

Claimant returned to Ms. Good on August 18, 2014, with no relief from the injection. He also claimed that he was doing much worse after physical therapy. (JE 2:15) His shoulder exhibited slightly diminished strength. As a result, Ms. Good recommenced claimant undergo an MRI and put a hold on the physical therapy. (JE 2:15)

On August 25, 2014, claimant was seen by John R. Yankey, M.D., for his right shoulder. (JE 9:56) On examination, there was minimal, mostly subjective tenderness upon palpation. Shoulder motion appeared full with mild discomfort at the end range of motion. (JE 9:56) He had good range of motion in the shoulder, elbow, and wrist. He had mild pain with the elbow motion. (JE 9:56) Dr. Yankey felt that the shoulder pain was most likely a mild strain or extension from the elbow. He recommended conservative treatment consistent with that which was directed by Dr. Sullivan. (JE 9:57)

Claimant returned to Dr. Sullivan's office on September 4, 2014. He complained that the physical therapy was aggravating his elbow and that he was experiencing persistent pain when doing activities throughout the workday. (JE 6:49) A subsequent MRI showed no evidence of any injury to the tendon area. (JE 8:55) Given that the injection provided no relief, Dr. Sullivan did not believe a tennis elbow surgery would be effective in alleviating the current symptoms. (JE 6:51)

On September 16, 2014, Dr. Sullivan discharged the claimant recommending only conservative treatment and referral to a pain doctor or physical rehabilitation doctor to evaluate his cervical spine. (JE 6:51) He returned claimant to work with no restrictions beginning September 16, 2014. (JE 6:53)

On September 18, 2014, claimant was seen by Dr. Yankey who noted no objective tenderness around the shoulder, nearly full range of motion at the shoulder, full range of motion at the elbow with pain and mild tenderness upon palpation, no pain with the wrist and hand motion. (JE 9:59)

Dr. Yankey recommended that claimant be evaluated by physical medicine and rehabilitation specialist. He prescribed no medication but encouraged the claimant to use over-the-counter ibuprofen, home therapy exercises, and modified work duties. (JE 9:59) Dr. Yankey was aware that Dr. Sullivan had recommended claimant return to work with no restrictions. (JE 9:59)

Claimant returned to Dr. Yankey on October 1, 2014 complaining of right shoulder and elbow pain. Dr. Yankey did not believe that there was a structural injury

that could be related to claimant's ongoing and persistent pain. He also did not believe that there were other treatment options available. He recommended that claimant undergo a functional capacity evaluation (FCE) and that, in the interim, claimant should continue with home exercises as directed. (JE 9:72) Dr. Yankey continued claimant's modified work duties (JE 9:72)

On October 27, 2014, claimant began seeing Todd Troll, M.D., for pain in the right elbow. (JE10:90) During examination, motion of the C-spine was normal, strength and range of motion was normal and the shoulder, and some guarding and pain behavior noted in the right wrist. (JE10:91) Dr. Troll recommend the claimant return to physical therapy and continued work restrictions of no lifting of greater than 5 pounds on the right along with no repetitive or forceful gripping with the right hand. (JE10:91)

Claimant returned to Dr. Troll on November 10, 2014, ahead of a scheduled appointment due to increased right arm pain. (JE10:93) The increased activity due to the physical therapy and the home exercise were causing claimant greater pain. On examination he exhibited guarding with strength testing of the right elbow and right wrist. However all other function tests of his shoulder and neck were normal. (JE10:93:) A lidocaine patch was applied and amitriptyline HCl was prescribed to help with pain and claimant's poor sleep. (JE 10:93) Dr. Troll recommended the claimant returned to work with restrictions beginning on November 10, 2014. (JE 10:95)

On December 8, 2014, claimant reported to Dr. Troll improvement on the amitriptyline and lidocaine patch. Claimant also related he was no longer working as the employer could not accommodate the restrictions. Despite the medication, claimant did not feel any improvement in his condition. (JE10:95) His examination was fairly normal, however, because of his subjective complaints of pain, Dr. Troll referred claimant to Dr. Jackson to determine whether a stem cell injection would be helpful. (JE 10:95) In the meantime, Dr. Troll decreased claimant's work restrictions. His lifting restriction was now 10 pounds and he was to restrain from minimal gripping with the right arm. (JE10:96)

On December 18, 2014, claimant sought out Dr. Troll for pain in the neck. (JE 10:97) Dr. Troll indicated that he did not think the neck pain was associated with elbow exercises and that he was not authorized to treat any neck issues. (JE 10:97)

Claimant returned to his family practice doctor, Majed W. Barazanji, M.D., on December 29, 2014 and this time did report history of right cubital tunnel syndrome right elbow chronic tendinitis. (JE 3:22) A review of the symptoms noted no neck pain or neck stiffness. (JE 3:23)

On January 15, 2015, claimant saw Michael D. Jackson, M.D., as recommended by Dr. Troll. (JE 11:100) In the pain drawing, claimant noted pain in the neck down the arm and into the fingers. (JE 11:103) Dr. Jackson's examination revealed decreased sensation to pinprick in the right ulnar distribution; positive Tinel's over Guyon's canal, as well as over the cubital tunnel on the right; tenderness to palpation and pain when

the wrist was extended against resistance, as well as edema over the right lateral epicondylar area; and a positive Mill's test positive on the right. (JE 11:101) Dr. Jackson conducted an ultrasound which revealed a right common extensor partial thickness tear. (JE11:101)

After approval from the defendant insurer, Dr. Jackson performed an SCP injection on February 10, 2015. (11:105) Dr. Jackson also recommended restrictions of no lifting greater than 10 pounds and only limited use of the right arm. (JE11:107)

On February 24, 2015, claimant returned to Dr. Troll after the stem cell injection. He reported no significant relief of pain. (JE 10:98) Dr. Troll's diagnosis at the time was right lateral epicondylitis and cubital tunnel syndrome. (JE 10:98) He advised claimant to continue treatment with Dr. Jackson.

Claimant returned to Dr. Jackson's office on March 2, 2015. Dr. Jackson recorded that the pain had resolved and claimant was back to his baseline. (JE11:109) Claimant maintained pain with wrist extension against resistance, and that when he wore his tennis elbow strap it would radiate pain up toward the shoulder; however, he was progressing and felt happy about it. (JE11:109) Dr. Jackson advised him to continue to use the elbow strap and continue with the occupational therapy along with observing the same restrictions. (JE11:109)

On March 26, 2015, claimant returned to Dr. Jackson reporting continued pain and dysfunction and that he was not better than what he was prior to the injection. (JE11:111) He felt that therapy was not helpful and Dr. Jackson recommended moving to a different therapist. (JE11:111)

On that same day he was seen by a Michael Gainer, M.D., an orthopedic surgeon regarding surgical options for claimant's right cubital tunnel. Upon review of the records and an examination, Dr. Gainer recommended right cubital release. (JE 12:129)

On March 27, 2015, claimant was seen again by his family practice doctor who noted no neck pain or neck stiffness. (JE 3:29)

On April 13, 2015 claimant underwent a pre-operative physical with Dr. Barazanji and during that physical, there were no deficits in the neurological or musculoskeletal system. (JE 3:32) He returned to his family practice doctor on June 26, 2015 for medication review of his hyperlipidemia and hypertension. (JE 3:34). There is no notation of any musculoskeletal or neurological problems. (JE 3:5)

On April 23, 2015, claimant was back in with Dr. Jackson noting improvement in his symptoms. The tightness in the forearm had decreased and he had better range of motion. (JE 11:113) He continued to have pain around the lateral epicondylar area. (JE 11:113) Dr. Jackson prescribed a topical ointment to relieve pain and discomfort and advised claimant to continue with his restrictions and physical therapy. (JE 11:115)

Surgery for the right cubital tunnel release occurred on April 24, 2015. (JE 13:137)

On June 24, 2015, claimant returned to Dr. Jackson's office reporting improvement. The pain had lessened, he had more range of motion, but he still experienced numbness over the cubital tunnel release surgical site. (JE 11:117) His primary concern was shoulder pain. (JE 11:117) He exhibited mild pain upon rotation of his shoulder along with palpation. (JE 11:117) Dr. Jackson continued claimant on physical therapy, maintained his current work restrictions, and requested an MRI of the shoulder. (JE 11:118)

Physical therapy appeared to have plateaued and Dr. Jackson discontinued it. No MRI was taken because it had not been authorized. (JE 11:120)

On June 11, 2015, Dr. Gainer released claimant to work without restrictions as it related to the cubital tunnel issues. (JE12:133)

On August 26, 2015, claimant was seen again by Dr. Jackson reporting pain, numbness, and tingling from the elbow down to his hand. (JE 11:122) Dr. Jackson had few options left to recommend to claimant and recommended an orthopaedic consult for claimant's shoulder. (JE 11:122)

On August 31, 2015, Dr. Gainer issued a zero percent impairment as it related to claimant cubital tunnel issue. (JE12:136)

On October 14, 2015, claimant was seen by Kyle Galles, M.D., for his right shoulder pain. (JE14:138) After the examination and review of the pertinent medical records, Dr. Galles concluded the claimant was suffering a neuropathic pain problem and that there was nothing structurally wrong with the shoulder. (JE14:139) He refused to impose any work restrictions as a result of the shoulder and suggested the claimant seek follow-up with a pain doctor.

On October 28, 2015, claimant underwent a psychological evaluation with Philip L. Ascheman, PhD. (JE15) Dr. Ascheman concluded that the claimant did not show any evidence of a mental disorder. Claimant had normal health concerns regarding what employment might be available to him but his symptoms did not rise to the level of an actual disorder. Dr. Ascheman recommended claimant undergo vocational retraining or assistance in placement if he could not return to work as a custodian. (JE15:142)

Christian Ledet, M.D., took over claimant's care on November 10, 2015. (JE16:143) Dr. Ledet's examination did not reveal any signs of malingering. Instead, claimant showed restricted range of motion in the cervical spine along with moderate tenderness as well as weakness in the right upper extremity and reduced handgrip. (JE11:145) Dr. Ledet recommended cervical plain x-rays and an MRI of the C-spine. (JE16:146) The diagnostic studies showed no clear evidence of an anatomic impingement of the cervical nerve root and no instability, but rather early degenerative

disc changes with minimal disc bulge at C4-C5 through C6-C7. (JE 17:179) Dr. Ledet concluded claimant was suffering from neuropathic pain, recommended a trial of medications, and directed claimant to Dr. Yankey for an assessment of maximum medical improvement (MMI) and/or any change to restrictions. (JE 16:151)

On December 4, 2015, claimant underwent a complete physical. (JE 3:37) He reported no muscle aches or localized joint pain and there was no mention of any issues with his right elbow, cubital tunnel syndrome, neck pain, or shoulder.

On December 15, 2015, Dr. Jackson issued an opinion that claimant's right shoulder and elbow pain likely arose from claimant's work as a custodian. (JE 11:127)

Claimant sought treatment with Dr. Ledet on February 29, 2016, for ongoing pain in the upper right extremity. (JE 16:158) After an increase in Lyrica, claimant saw no improvement. (JE 16:158) Dr. Ledet discontinued the Lyrica, since Gabepentin was also not effective, Zonegran was prescribed. (JE 16:160)

On April 15, 2016, claimant returned to Dr. Ledet complaining of burning, heaviness, numbness and paresthesia in the left arm in addition to the right arm pain. (JE 16:162) Claimant rated the Zonegran's effectiveness as fair and this time did report improvement with Lyrica. (JE 16:162) Dr. Ledet prescribed an injection to coincide with a return to physical therapy. (JE 16:164)

On May 26, 2016, claimant reported to Dr. Ledet that the Zonegran affected him mentally and therefore claimant discontinued use. (JE 16:166) Dr. Ledet's physical examination included a notation that "there is a very clear asymmetry with increased myofascial tone of the scalene muscles on the right neck with normal finding on the left." (JE 16:168) The claimant's neck issues impeded improvement in the right arm. Thus, Dr. Ledet wrote to Michael Sharp, the case manager for the third-party administrator in this case, and stated that the claimant needed a steroid injection in the C-spine due to pain caused by the work injury. Dr. Ledet stated, "However, the recommendation for cervical epidural steroid for brachial neuritis is causally related to the work injury as there is no more plausible explanation for the cause of his current symptoms." (JE 16:165)

Authorization for the injection was given and claimant returned on July 5, 2016, reporting 80 percent relief. (JE 16:170) Dr. Ledet recommended claimant return to physical therapy and occupational medicine to lift work restrictions. (JE 16:172)

In September 27, 2016, claimant underwent a functional capacity evaluation which was deemed invalid due to inconsistent performance and acceptable effort. (JE18:180) Despite the conclusion, the therapist noted that the claimant was functionally employable but that he could not lift greater than 40 pounds occasionally. (JE18:180)

On October 4, 2016, claimant returned to Dr. Yankey reporting pain in the right side of the neck, right upper shoulder area radiating into his right arm and hand. (JE 9:77) The pain was intermittent and at the time of the medical visit, claimant rated the pain as 2/10 on a 10 scale. (JE 9:77)

On examination, he showed minimal subjective discomfort over the right lower cervical paraspinal muscles and the right upper trapezius muscle. There was no objective tenderness over the cervical spine or the left cervical paraspinal muscles. (JE 9:77) Neck motion was full with mild tenderness reported when turning his head to the right and with extension. As for the right shoulder, there was no objective tenderness noted around the shoulder itself although claimant reported mild discomfort on palpation of the right trapezius. The shoulder motion was full and symmetrical to the left. (JE 9:77) The right elbow motion was full with no pain although he did complain of minimal subjective discomfort over the lateral epicondyle. There is no pain upon rotation of the wrist and hand. (JE 9:77)

Dr. Yankey was aware of the invalid functional capacity evaluation but based upon a review of the recorded capabilities of the claimant, claimant's current status, in the course of his clinical evaluation and treatment, Dr. Yankey recommended permanent activity restrictions as follows:

1. Limit lifting floor to waist to 30 pounds.
2. Limit lifting waist to shoulder to 20 pounds.
3. Limit overhead lifting to 5 pounds.
4. Limit pushing and pulling to 35 pounds.

(JE 9:78)

At the request of the defendant insurer, Dr. Yankey issued a report regarding claimant's injuries to his neck, right shoulder, and wrist. (JE 9:84) Based on the orthopedic evaluation conducted by Dr. Galles which found no evidence of structural or other problems with the claimant's right shoulder, Dr. Yankey concluded claimant's right shoulder pain was not related to his work injury. (JE 9:84)

Dr. Yankey relied on the medical records and findings of Dr. Ledet to conclude claimant's neck pain was also not related to claimant's work, but to degenerative changes in the cervical spine. (JE 9:84)

Dr. Yankey did not change or revise his 2016 permanent restriction recommendations, but also did not find that claimant had sustained any permanent impairment. (JE 9:84) He later stated that the restrictions were imposed as a result of the claimant's subjective reports of pain and that it was likely claimant could tolerate greater activity in job duties than the restrictions issued. (JE 9:88)

On February 13, 2017, claimant commissioned a second FCE with Short Physical Therapy PLLC. (Ex. 1) This therapist found that claimant gave a consistent effort on all test environments and that the heart rate changes and body mechanics adjustments were reflective of his effort. (Ex 1:1) Therapist Short determined that claimant's abilities were in the mid-medium category which would allow him to lift up to 35 pounds on an occasional basis. (Ex. 1:3) Mr. Short advised claimant to limit grasping and twisting with his right hand on an occasional basis, as well as limiting his activities involving elevated work at shoulder height or above. (Ex. 1:3)

After claimant returned to work following his cubital tunnel surgery, claimant was placed into the Bus Associate position rather than his custodial position. The Bus Associate position required him to oversee activities on the school bus, ensure no fighting on the bus, and sometimes help with special needs children, assisting passengers in and out of the bus. Claimant felt that the vibration of the bus caused pain in the back and the neck. (JE 18:183) He also felt that there were many janitorial activities including carrying the vacuum or sustained vacuuming over long periods of time, shoveling snow, moving tables and cleaning carpets would be difficult for him to perform. (JE 18:183)

On May 22, 2017, John Kruzich, an occupational physical therapist performed an on site job analysis of the Bus Associate position at the request of the defendants. (Ex. 3:15) Using Dr. Yankey's October 4, 2016, work restrictions, Mr. Kruzich determined that claimant would not be able to perform essential elements of his position such as assisting with the use of lift equipment in the transfer students in wheelchairs and assisting with ambulatory students moving in and out of the bus. (Exhibit 3:16) Following this, the defendant employer informed claimant that his contract would not be renewed after June 2, 2017.

On May 30, 2017, claimant underwent an independent medical examination with Robin Sassman, M.D. (Ex. 4:17) Dr. Sassman's examination of the claimant resulted in findings of reduced range of motion in the cervical spine and reduced flexion of the right elbow. All other range of motion tests including the wrist and shoulder were normal as was claimant's strength in those areas. (Ex. 4:31) Claimant had decreased sensation in the right upper extremity in the anterior C6 and C7 dermatomes. (Ex. 4:31)

Dr. Sassman concluded that claimant's work exacerbated his pre-existing degenerative condition. Dr. Sassman also attributed the shoulder pain to aggravation of claimant's neck condition. (Ex. 4:31) Claimant did not believe that he was in need of another ESI in the C-spine in May of 2017, deciding to delay the ESI until his condition worsened. (Ex. 4:32)

Dr. Sassman assessed a 15 percent whole person impairment due to signs of radiculopathy attributed to the cervical spine issues and 1 percent of the whole person (or 2 percent loss of the upper right extremity) for the right elbow deficits. (Ex. 4:32) Dr. Sassman recommended the following restrictions:

> Mr. Bajramovic should limit lifting, pushing, pulling and carrying to 30 pounds first floor to waist, 20 pounds from waist to shoulder, and 5 pounds above shoulder height. He should not use vibratory power tools. He should not grip or grasp above shoulder height.

(Ex. 4:33)

In response to a letter from defendant's counsel, Dr. Ledet issued an opinion on August 24, 2017. Dr. Ledet reviewed additional medical records, as well as the independent medical evaluation from Dr. Sassman. (JE16:176) Dr. Ledet retracted his previous causation assessment.

> In retrospect, this working diagnosis of interscalene contracture as a primary etiology of cervical radicular symptoms is less compelling and therefore less clinically relevant then the diagnosis of cervical radiculopathy associated with cervical degenerative spine disease. This change of the working diagnosis is consistent with the injured worker's response to a trial of epidural steroid injection.

(JE 16:176)

Dr. Ledet went on to state that the reasonable explanation for the patient's symptoms was not his work duties, but rather a normal process of time and aging. He based this change in his opinion on the historical record reported to Dr. Sassman that claimant experience a slow increase in symptoms since the injection.

> First, the history is most consistent with cervical degenerative spine disease of reversible nature and treated her cervical epidural steroid. The injured worker's response to the cervical epidural steroid is favorable. In fact, the response of the cervical epidural steroid was very favorable and relief of symptoms persisted beyond the presence of the medication within the spinal canal or the patient's body. This extended duration of improvement in symptoms is consistent with the clinical picture presented by patients with cervical degenerative spine associated cervical radiculopathy without nerve impingement. In other words, this clinical presentation is consistent with the patient experiencing symptoms from a normal process of aging and not a person experiencing symptoms from an injury.

(JE 16:177)

Dr. Ledet also addressed claimant's new information regarding his work as a stocker at the grocery store. "Reasonable causation assessment would be unable to differentiate between these two concurrent employments without a specific and temporal work injury." (JE16:177)

Dr. Ledet determined that if claimant was found to have a workplace injury involving the cervical spine, impairment rating would be 5 percent. (JE 16:177)

Claimant is not working but has looked for jobs, but cannot find positions that pay similar to what he was earning in the past. If the position is not similar in pay, claimant will not apply for that job.

Currently, his right arm is very sensitive and he experiences tingling, burning and swelling in his right arm. Pushing, pulling and looking up aggravate his neck pain. He treats his pain with an ice pack, heat and ibuprofen.

CONCLUSIONS OF LAW

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. 6.14(6).

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" referred 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 Electric 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).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

The complicating factor in claimant's case is his long-term silence on the concurrent employment with Dahls. While claimant downplayed his work at Dahls, indicating that he lifted only light-weight items, his job tasks were such that he could not perform them with the restrictions imposed by his physicians. A stocking position has similar movements of reaching, bending and lifting as a custodial job.

The expert testimony is contradictory. Dr. Sassman, claimant's independent medical examiner, proclaims that the custodial position aggravated claimant's underlying degenerative condition. Dr. Sassman did not directly address claimant's concurrent employment and what impact, if any, that could have on the claimant's condition. Dr. Ledet initially connected the neck pain to claimant's work injury, however, upon review of the medical records including the history given by claimant to Dr. Sassman, that Dr. Ledet changed his opinions to be more aligned with those of Dr. Yankey, Dr. Galles, and Dr. Harbach who also did not find any neck injury associated with claimant's work.

Claimant's initial complaints to Ms. Good, the nurse practitioner, were that he had elbow pain that traveled up to the shoulder. He later added the neck pain. A month later, his neck pain had resolved but his upper arm and shoulder pain continued which Ms. Good attributed to the right elbow issues. He had no pain or limited range of motion in the neck or shoulder in June 2014. The neck issue did not reappear until December 2014, months later. In fact, claimant had initially thought that the renewed neck pain was associated with his elbow exercises.

In claimant's visits to his family practice doctor, Dr. Barazanji, claimant's neck exhibited no reduced range of motion or pain. This was true even after a pre-operative physical in April 13, 2015.

Based on a review of the medical records, along with the expert opinions of Dr. Ledet, Dr. Yankey, and Dr. Galles, it is determined that claimant sustained a right elbow injury only. This elbow injury caused pain to travel up to the shoulder and into the neck; however, the neck pain resolved within a month of his initial treatment. Subsequent complaints of pain were more likely than not attributable to claimant's underlying degenerative condition which was gradually worsening over time.

The impairment ratings for the right elbow are modest. Dr. Sassman deemed the loss of function of the right elbow to be 2 percent. Claimant's other doctors assigned a zero percent impairment rating. On examination with Dr. Sassman, claimant had some decreased range of motion, pain and loss of sensation. Claimant testified to a burning, tingling sensation. Based on the foregoing, it is determined claimant has sustained a 5 percent upper right extremity loss.

ORDER

THEREFORE IT IS ORDERED

That defendants are to pay unto claimant twelve point five (12.5) weeks of permanent partial disability benefits at the rate of five hundred four and 25/100 dollars ($504.25) per week from November 11, 2015.

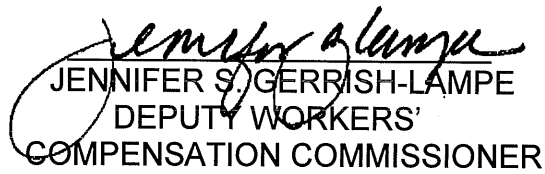
That defendants shall pay accrued weekly benefits in a lump sum.

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, including a credit for the net amount of long-term disability that has been paid.

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this 29th day of January, 2018.



JENNIFER S. GERRISH-LAMPE
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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.