BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JASON RAMSEY,	FILED	
Claimant,	APR 12 2017	File No. 5056671
vs.	WORKERS COMPENSATION	ARBITRATION
JOHN DEERE DUBUQUE WORKS OF DEERE & COMPANY,		DECISION
Employer, Self-Insured, Defendant.		Head Note Nos.: 1802, 1803.1, 2700, 4100

STATEMENT OF THE CASE

Jason Ramsey, claimant, filed a petition in arbitration seeking workers' compensation benefits against John Deere Dubuque Works of Deere & Company, a self-insured employer, for an accepted work injury dated April 21, 2015.

This case was heard on January 31, 2017, in Des Moines, Iowa. The record was kept open until February 10, 2017, to allow the late submission of rebuttal evidence and was considered fully submitted on March 6, 2017, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-18, Claimant's Exhibits 1-7, 9-25, and Defendant's Exhibits A-N as well as the claimant's testimony and that of Jason Schultz.

ISSUES

Whether claimant sustained a scheduled member disability or an industrial disability;

Whether claimant is entitled to a running healing period award;

Whether claimant is permanently or totally disabled;

Whether claimant is disabled under the odd-lot doctrine;

The commencement date of any permanent partial disability or permanent total disability benefits;

The appropriate rate;

Whether claimant is entitled to a reimbursement of Iowa Code section 85.39 for the examination of Dr. Manshadi;

Whether defendant is entitled to a credit for payments made under the disability income program;

Whether claimant is entitled to alternate care under Iowa Code section 85.27; and

The assessment of costs.

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.

According to the hearing report, the parties agree that the claimant sustained an injury on April 21, 2015, which arose out of and in the course of his employment with the defendant employer. The parties agree that the injury was the cause of some temporary disability during the period of recovery.

They agree claimant was single and entitled to one exemption at the time of the hearing.

FINDINGS OF FACT

Claimant was a 45-year-old male at the time of the hearing. He is a high school graduate. His post-secondary educational history includes Kirkwood Community College courses pertaining to a criminal justice degree in April 1995 to January 1996. This was not completed. He took vocational training for law enforcement as well as a 46 hour reserve officer training course wherein he obtained a certificate for continuing education. (Exhibit 7, page 6) He was bonded to handle money at one point. He trained as a poker dealer in 1995 or 1996, obtaining a certificate from that class. He obtained his CDL in 2008 after finishing a course on truck driving from Kirkwood Community College. He also has a general contractor's card and is a journeyman heavy equipment officer. (Ex. 7, p. 6)

He began working for defendant employer in October 2004. Prior to joining defendant employer, claimant worked at construction companies operating heavy equipment, at factories as an assembler, and a security-guard job with American Investigations and Security.

At the time of his injury, claimant was working in Department 185 as an F2 welder. There was a Safety and Ergonomic Risk Assessment issued of the 2 Crawler on May 29, 2015. (Ex. 17) Pre-assessment, there was an RPN score of 36 and post-assessment a score of 6. In the "Actual Corrective Action" section, it states "fit up has been improved." (Ex. 17)

As a welder/fabricator, they were making utility crawlers. Claimant was told that if a plate did not fit due to fit up issues, they were to use a 10 pound sledgehammer to pound the part into place. Because of his cervical fusion, claimant expressed to his supervisor that pounding on the frames was not a viable option in the long term.

On April 23, 2015, claimant was pounding on the plates when he was injured.

Prior to his work injury of April 23, 2015, claimant testified he did not have any work restrictions nor did he self-limit himself in his employment, however, he did have work restrictions following his 2007 surgery and had concerns that the use of the sledgehammer would exacerbate his pre-existing neck condition.

On August 9, 2007, claimant was seen at the emergency room for pain in his left shoulder due to lifting a hanger above his head. He was examined and released after an IV pain medication was administered. (Jt. Ex. 1, p. 1) An MRI of the cervical spine revealed moderate disc protrusion at C6 – 7 with effacement, moderate canal stenosis and mild changes at other levels. (Jt. Ex. 2, p. 1) He was given work restrictions of no lifting or carrying more than ten pounds, limited bending, stooping and twisting. He was also instructed not to lift above the shoulder on the left, along with no extensive reaching. Sitting work was preferred. (Jt. Ex. 1, p. 5) He was treated with injections and other conservative treatments. (Jt. Ex. 4) Ultimately, on October 1, 2007, claimant underwent an anterior cervical disc infusion at C6-7. (Jt. Ex. 3, p. 1)

Claimant continued to complain of pain and discomfort in his neck and shoulder region.

On March 10, 2008, Dr. Mark Fortson, a neurologist, ordered multiple tests. An MRI of the brain without contrast at Finley Hospital was negative. An EEG for vertigo was normal.

On October 3, 2011, claimant presented to Timothy J. Miller, M.D. with herniated lumbar disc at C6-7. (Jt. Ex. 4, p. 3; Jt. Ex. 5, p. 1) After an epidural, claimant reported a 50 percent improvement. Another injection was performed on October 13, 2011. (Jt. Ex. 4, p. 4)

Claimant was examined by David S. Field, M.D., on July 2, 2012 for his left-sided neck pain and shoulder discomfort. Dr. Field suggested an MRI. (Jt. Ex. 5, p. 1)

An MRI of the cervical spine without contrast was conducted on October 22, 2012. The study identified a small right paracentral disk protrusion at C5-6 level, slightly larger than in 2007, and resulting in mild spinal stenosis and myelopathy. (Jt. Ex. 2, p. 2)

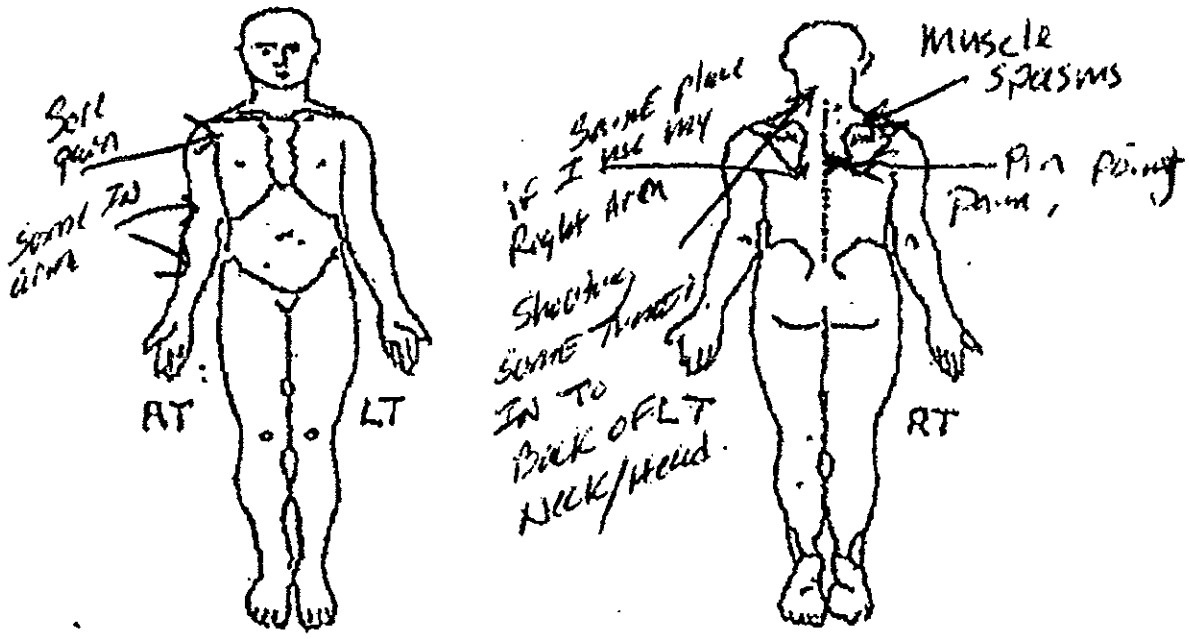
He followed up with Matthew P. Gullone, M.D., for an injection. (Jt. Ex. 11, p. 1) Claimant returned to Dr. Gullone for low back pain following a visit regarding claimant's bladder issues. (Jt. Ex. 11, p. 1) Dr. Gullone recommended oral prednisone, which claimant turned down and injections, which he also declined. (Jt. Ex. 11, p. 2) Dr. Gullone made a referral to Dr. Field for review. (Jt. Ex. 11, p. 2)

Claimant returned to Dr. Fortson on October 25, 2012 for neck and low back pain. (Ex. 7) There was no inciting injury, although in the social history it was noted the claimant had been busy renovating his home. (Jt. Ex. 7, p. 1) He had an antalgic gait. He was diagnosed with cervical disc disease, slightly worse than previously and lumbar paraspinal strain. (Ex. 7, p. 1)

On March 15, 2014, an MRI showed moderate right posterior disc protrusion at C5–6 with underlying mild diffuse annular bulging with mild central canal stenosis and right ventral cord indentation at the C5–6 level. (Jt. Ex. 8)

On March 19, 2014, claimant was seen by Dr. Gullone for complaints of low back pain, neck pain and left shoulder pain. (Jt. Ex. 5, p. 2) Claimant attributed the low pain to a skiing incident. (Jt. Ex. 5, p. 2) He also complained of his work exacerbating his low back pain. On examination, he had a short gait, was stiff and sore, had some limited range of motion in his low back and some tenderness in his scapula, cervical spine and over his trapezius. (Jt. Ex. 5, p. 2) Dr. Gullone diagnosed claimant with musculoskeletal pain and recommended a change in prescriptions. He also recommended physical therapy for the neck and back. (Jt. Ex. 5, p. 3)

Claimant's pain drawing at the time indicated soreness and pain in the right shoulder radiating into the arm on the left shoulder as well as going into the back of his neck and head.



(Jt. Ex. 5, p. 5)

On January 23, 2015, the patient was evaluated by Dr. Dara Parvin, an orthopedist at Finley Hospital. It was noted that the patient was a 44-year-old gentleman with a complex overall history who had been seen in evaluation for multiple

complaints that were atypical. (Jt. Ex. 3, p. 3) At this visit, claimant expressed concern that the surgery to his neck had worsened his condition.

> The patient states that he was doing okay up until surgery and then ever since the surgery has had problems. He believes that his current symptoms are related to the "plate" that he has in his neck. He believes that the plate is causing him to have difficulty with range of motion of his neck. He indicates that prior to surgery he did not have any problems with range of motion of the neck but now does.
>
> He does admittedly state that he had severe radicular symptoms prior to the surgery that resolved with surgery appropriately.
>
> He also indicates that prior to his surgery he was treated conservatively including epidural injections. He believes that perhaps he was injured during the placement of one of the epidural injections stating that following placement of an epidural injection "in the wrong spot" in his neck that he began experiencing twitching of his left eye and headaches. He indicates that following his surgery his vision has also changed. He indicates that he has had some springing sensations in his left wrist that occurred only after the injection.

(Jt. Ex. 3, p. 3)

His current complaint was that he had severe headaches and pain directly behind his eyes that he attributed to his neck and plate. He was not able to sleep at night because of this pain. He denied any radicular symptoms or myelopathy. (Jt. Ex. 3, p. 3) He exhibited limited range of motion in the neck and positive subacromial impingement findings in the left shoulder. Due to his disappointment over the previous surgery, Dr. Parvin recommended only conservative care. (Jt. Ex. 3, p. 5)

On March 12, 2015, Winthrop S. Risk, II, M.D., saw claimant for headache, deceased range of motion and neck, and sleep disturbance. (Jt. Ex. 9) Dr. Risk modified claimant's medication and recommended follow up in a month. (Jt. Ex. 9)

On April 29, 2015, claimant's pain prompted new medical attention. He sought treatment with Dan Johnson, D.C., the following afternoon due to pain and discomfort in the right shoulder blade and spine, right biceps and forearm. (Jt. Ex. 10, p. 1)

When the pain persisted, claimant contacted the plant infirmary and was seen by Jill Hunt, M.D. Claimant described back pain and right neck and shoulder pain. (Jt. Ex. 12, p. 82) Claimant asserted that the pain began as soreness "releaved [*sic*] by ibuprofen and ice" that became more severe with repetitive use of the sledgehammer. (Jt. Ex. 12, p. 82) Per Dr. Hunt's notes, claimant exhibited no pain with compression or distraction of his cervical spine but did have tenderness over the right trapezius and deltoid. Heat was applied and he was given ibuprofen. (Jt. Ex. 12, p. 82) He was referred to physical therapy, which claimant found painful rather than helpful. The following day he requested the right to go to the ER for injection therapy rather than

ART therapy. (Jt. Ex. 12, p. 81) That request was not granted but claimant did inform the staff that he would go to the ER over the weekend if the pain became too unbearable.

He returned to work on Monday and was given a referral to outside physical therapy. (Jt. Ex. 12, p. 78) Two trigger point injections were administered on May 7, 2015. (Jt. Ex. 12, p. 76) On May 21, 2015, claimant reported left upper back pain, neck pain and pain in the right eye. (Jt. Ex. 12, p. 72) He reported that treatment with the physical therapist was not going well and accused her of calling him a liar. (Jt. Ex. 12, p. 73) Claimant continued to receive treatment from the internal health department, but the pain would not abate.

On June 1, 2015, claimant was seen by Dr. Field for an evaluation of neck pain on the right extending into the right shoulder parascapular area. (Jt. Ex. 5, p. 7) On examination, the neck was stiff with limited extension, lateral bend and rotation. He also exhibited trigger point tenderness along the superior medial border of his right scapula. (Jt. Ex. 5, p. 7) Dr. Field concluded that etiology of claimant's pain was atypical and perhaps from two different sources. He recommended an MRI. (Jt. Ex. 5, p. 7)

An MRI conducted on June 11, 2015, showed multilevel degenerative change of the cervical spine, most severe at the C5–C6 level where moderate thecal sac effacement and mild cord deformity was noted. (Jt. Ex. 14, p. 2) The June 2015 MRI was compared against the 2012 MRI but not the March 5, 2014, MRI. (Jt. Ex. 14, p. 1) The 2014 MRI showed moderate right posterior disc protrusion at C5-6 with underlying mild diffuse annular bulging, mild central canal stenosis and right ventral cord indentation. (Jt. Ex. 8) The readings of the two MRIs, particularly at the C5-6 level, were quite similar with the bulging and the cord deformity.

Claimant emphasizes in his brief that the June 11, 2015 MRI shows a herniated disc according to Dr. Milas. (Claimant's Brief, p. 25) It is not clear that Dr. Milas was aware that the 2014 showed a "well-defined defect at the C5-C6 level" although the Regional Medical Center is part of the medical record package Milas reviewed. (See generally, Claimant's Ex. 2)

Nonetheless, following the MRI, Dr. Field recommended physical therapy. (Jt. Ex. 12, pp. 69-70)

On July 1, 2015, claimant was seen by Dr. Miller for his mid-thoracic pain. (Jt. Ex. 4, p. 5) He had full shoulder range of motion and cervical range of motion but was tender to touch in the midline. Given that the MRI showed only very mild disc bulge at C5–C6, Dr. Miller was unable to pinpoint any specific origin of injury, but definitively ruled out the neck. (Jt. Ex. 4, p. 6) "As I discussed with him, sometimes people just seem to intrinsically have difficulty with physical labor." (Jt. Ex. 4, p. 6) Claimant's brief goes further and states, "Dr. Miller felt that Jason's job was intrinsically difficult for him to do because of the plate in his neck." (Claimant's Brief, p. 8) That connection is not drawn by Dr. Miller in his medical records.

Dr. Miller recommended the employer obtain a functional capacity evaluation (FCE). (Jt. Ex. 4, p. 6)

On September 18, 2015, claimant sought out care with Dr. Johnson again. (Jt. Ex. 10, p. 4) Claimant presented his condition as an injury as a result of a repetitive motion disorder. (Jt. Ex. 10, p. 4) He claimed no improvement since his last treatment. (Jt. Ex. 10, p. 6)

During treatment with the plant infirmary, claimant was given conservative care. On September 28, 2015, Dr. Hunt wrote claimant had two injuries: 1) his chronic neck pain unrelated to work and 2) a "work-related . . . muscle strain in his upper back." (Jt. Ex. 12, p. 49)

Claimant was moved into a forklift position due to his work restrictions but felt that was not a tenable solution.

> The employee has many complaints and stated if he continues to have to work on the fork truck he will have to use his intermittent FMLA days once a week. He stated that his left shoulder is bothering him as well as his upper back bilaterally. He states his right arm goes numb but when told that would be due to nerves in his neck hesitates it starts in the medial aspect of his right elbow and radiates up into his neck and that at times the elbow will swell up. He states Dr. Johnson has noted it but when shown that Dr. Johnson states in his note that he does not note much swelling when the employee complains of marked swelling, the employee states that the note is not right.

(Jt. Ex. 12, p. 47)

On October 30, 2015, claimant saw George B. Isaac, M.D. for multiple joint pain. (Jt. Ex. 16, p. 1) The history of this self-referred appointment is described as follows:

> 1. Since 2005, having pain all over. Especially in lower back (R) side, both knees, upper neck and feet. Pain is achy. 3/10 when idle and 7 or 8/10 with activity. Both knees pop every day. Cannot raise (L) arm above shoulders without getting it stuck. Cannot extend arm. Having numbness and tingling in (R) arm. Has a hard time turning head due to neck pains. Hurt his (R) shoulder and arm on 4/23/15. Was caused by excessive hammering. Doing light duty at work. On FMLA. Had 2 injections in between spine and shoulder blade. Has tried PT. Some stiffness with joints. Most activities aggravate the pain. Has been doing the Flector patch. To have EMG with Dr. Forston 11/3

(Jt. Ex. 16, p. 1) Dr. Isaac diagnosed claimant as suffering from fibromyalgia, osteoarthritis in the right knee and factitious disorder. (Jt. Ex. 16, p. 2)

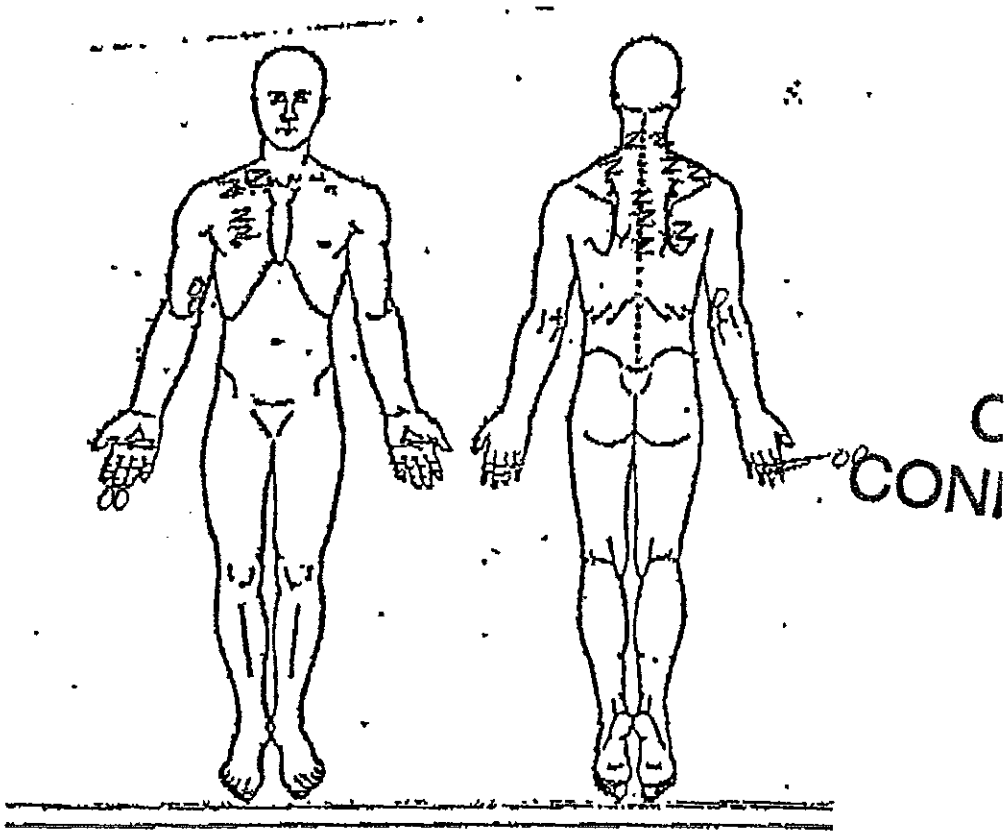
> The patient doesn't seem to have any significant problems, but everything is painful. The only objective physical findings that we have

> today include the mild Dupuytren's contractures in his right hand and the osteoarthritis of the knees. The patient to me seems to enjoy having pain and enjoy not being able to take medication because every time I mentioned a medication he states he has some problem whether either it doesn't work or it causes issues with his stomach. Between Dr. Miller and his pharmacy, he was told to refrain from taking ibuprofen due to use of Flector patch, which I find it unrealistic, and ibuprofen doesn't work anyways. Naprosyn bothers his stomach, and he doesn't take the Flexeril even though he has a prescription for that. He seems to be malingering and I'm not sure if there is any secondary gain issue here.

(Jt. Ex. 16, p. 2)

An MRI was conducted on February 12, 2016 on the mid-thoracic spine. The findings showed mild disc bulging at T5-T7 and at C7-T1. (Jt. Ex. 14, p. 3)

On March 9, 2016, claimant underwent a functional capacity evaluation (FCE). (Jt. Ex. 17) The FCE was deemed invalid due to inconsistent performance. (Jt. Ex. 17, p. 1) However based on the measurements, claimant was placed in the light demand category. (Jt. Ex. 17, p. 2) The reason for the invalid reading was the absence of correlation between lifts of unmarked steel bars and the corresponding lifts of the XRTS Lever Arm buttressed by the answers on the pain questionnaire and extreme overt pain behaviors. (Jt. Ex. 17, p. 2) During the evaluation, claimant indicated that he thinks that he could do a parts counter job. (Jt. Ex. 17, p. 6) His pain drawing was as follows:



(Ex. 13, p. 4) This pain drawing was not substantially different than the one in March 2014 other than including mid-thoracic pain.

During this period, claimant continued to receive treatment from the plant infirmary and used FMLA leave time to deal with his pain.

Claimant took himself to Farid Manshadi, M.D., for treatment and diagnosis of "chronic neck and bilateral upper back and shoulder pain." (Jt. Ex. 15, p. 1) He stated a slightly different version of his post-2007 surgical results:

> He did this for several months and he eventually could not do the work. At any rate, he reports he has a history of neck surgery in 2007 with Dr. Abernathey, for which at that time he had a left-sided neck radiculopathy, but by his report, the surgery did help and he had no issues with it. He did have a MRI of his neck.

(Jt. Ex. 15, p. 1) This note is also illustrative of claimant's inconsistent recollection of his past medical problems. In Exhibit 25, claimant detailed a number of statements in Dr. Kennedy's March 2016 report. (Cl. Ex. 25) In point 2, he took issue with "He also had no evidence of radiculopathy by electrodiagnostic studies." (Cl. Ex. 25, p. 4) Claimant stated in response that the "only radiculopathy I had was not the upper back or neck—only on right arm by Dr. Mark Fortoson [*sic*]" (Cl. Ex. 25, p. 8) Dr. Kennedy was correct in that the EEG showed no evidence of radiculopathy, but claimant's own history to Dr. Manshadi included left-sided neck radiculopathy as did his pain drawings in 2014 and multiple medical notes.

There are other problems with claimant's "corrections" to Dr. Kennedy's report that mostly have to do with claimant misinterpreting the report. For instance, claimant highlights the notations regarding his physical abilities:

"He notes that he has difficulty with pretty much all activities of daily living that involve his upper extremities, such as washing his hair, reaching, pushing and pulling such as a broom or a vacuum, climbing, lifting and carrying." (Cl. Ex. 25, p. 4) His response was "more lies by Dr. Hunt [*sic*] – again never once have I told her I can not take care of myself at home (ig) washing hair ect. [*sic*]" (Cl. Ex. 25, p. 9) His daily activities worksheet filled out for the FCE noted that he could look after himself normally but that it causes him extra pain. (Jt. Ex. 18, p. 2) In his trial testimony, he complained of difficulty dressing and doing personal care that requires overhead posturing. In the Kennedy report, she wrote, "Of note, the patient had been evaluated by Dr. Parvin, an orthopedist in January 2015, who noted widespread pain complaints not fully explained by a single level of the cervical spine and surgical intervention was not recommended." (Cl. Ex. 25, p. 6) Claimant responded "The only thing I went to Dr. Parvin about was my spinal headaches, eye pain." (Cl. Ex. 25, p. 9) Dr. Parvin's notes are discussed above in some detail and reference being seen "in evaluation of a multitude of complaints that are somewhat atypical" including his headaches and eye pain but also addressing neck pain and left shoulder pain. (Jt. Ex. 3, p. 3)

Returning to claimant's care with Dr. Manshadi. During the August 11, 2016, examination, claimant showed limited range of motion to the right and left in the neck with painful resisted abduction. (Jt. Ex. 15, p. 2) There was also a click in external and internal rotation of the right shoulder and positive Neer and Hawkins' tests bilaterally. (Jt. Ex. 15, p. 2) There were also signs of fibromyalgia in the upper trapezius, lateral elbows, bilateral hips, medial fat pads of the knees and sacroiliac joints. (Jt. Ex. 15, p. 2) MRIs were ordered which showed only mild arthritis. (Jt. Ex. 15, p. 3) Initially, Dr. Manshadi recommended doxepin 10 mg at bedtime to help claimant sleep. (Jt. Ex. 15, p. 3)

In a follow-up visit on December 20, 2016, claimant continued to report pain and discomfort in the right upper back and neck and shoulder areas. (Jt. Ex. 15, p. 5) Dr. Manshadi recommended a referral to an orthopedic surgeon and said that there was really nothing else that he could offer to claimant. (Jt. Ex. 15, p. 5)

On December 16, 2016, claimant was seen by Dr. Hunt for complaints of right shoulder, back, upper arm and elbow pain. (Jt. Ex. 12, p. 1) An orthopedic referral was made for February 3, 2017.

Claimant was sent to Erin Kennedy, M.D., for a "case closure." (Ex. 11, p. 2) She reviewed medical records from March 10, 2008, to December 7, 2015. (Ex. D, p. 1) Claimant described that he had been having trouble for the last three months performing his job duties at the time of injury due to improperly cut parts. He was forced to use a sledgehammer, which employees called the Persauder, to hammer the parts into place. The sledgehammer weighed about ten pounds. He estimated that he had to strike them four times and that this occurred four to five times per day.

Dr. Kennedy goes on to write:

> Over time, Mr. Ramsey began to experience right shoulder, neck, and upper extremity complaints, as described in the medical record. He reported that he experienced baseline neck complaints as a result of his personal condition, but that this felt different to him. He indicated the area of the trapezius, which was not similar to his neck pain. All complaints were reported on the right side initially. He stated that they would go down into the arm and into the fingers. Over the months that followed, they also radiated into the left trapezius and into the left arm. The current symptom drawing reveals widespread clicking of the cervical spine and a sense of grinding in the cervical spine. He also reported muscle spasm, clicking, and weakness over the right and left trapezius. He experiences sharp, stabbing pains around the shoulder blades. He gets aching in the thoracic spine. He experiences numbness down the length of the right arm affecting digits 2, 3, and 4. In general, pain is rated between 5 and 10 out of 10. It is made worse with use of the upper extremities in any way. He experiences spasms which are a quick, gripping, spastic occurrence in the muscles. This is alleviated with some muscle relaxers and pain relievers. He experienced these symptoms all day long daily. Generally, these are focused in the trapezius and scapular areas with less frequent

> symptoms in the right upper extremity. He reports being very concerned that the symptoms are worsening, though he acknowledges that he is not working in a physical capacity with John Deere currently.

(Ex. E, p. 2)

On a daily basis, claimant described problems with any activity of daily living involving his upper extremities such as washing his hair, reaching, pushing and pulling a broom or vacuum, climbing, lifting and carrying. He does not believe he has difficulty driving or walking. He does believe that he can lift around 20 pounds but cannot move either arm over the shoulder level due to unrelated injuries. (Ex. E, p. 2)

On examination, claimant was able to move easily around the room. He appeared to have a lower left pelvis and diffuse muscle spasm noted throughout the upper back and trapezius areas. Palpation revealed diffuse discomfort to palpation throughout the trapezius bilaterally, the paracervical, parathoracic, and parascapular areas. Range of motion was somewhat diminished in the cervical spine. (Ex. E, p. 3)

She concluded that claimant had a pre-existing condition that was worsened with the use of the sledgehammer at work. (Ex. 3, p. 3) Ordinarily this injury should resolve within three months if claimant was treated appropriately and was no longer exposed to those physical stressors at work.

Unfortunately claimant's pain condition continued. Dr. Kennedy attributed that to claimant's personal condition rather than any work related strain. She based this on prior medical complaints, a physical presentation not consistent with shoulder derangement, no left shoulder complaints until well into claimant's course of treatment for the work-related injuries, and his out of the workplace activities. (Ex. E, p. 5)

She set the maximum medical improvement date as August 1, 2015, based on the treatment records of Dr. Miller. She did not recommend any permanent work restrictions as result of the work injury, however based on the claimant's personal subjective complaints and his proven failure to tolerate work activities, she recommended the following work restrictions:

> May lift up to 20 pounds on an occasional basis.
>
> No over-shoulder posturing of either arm.
>
> No repetitive shoulder motion of either shoulder.
>
> No use of sledgehammer.

(Ex. E, p. 5)

Dr. Kennedy's work restrictions were conveyed to defendant employer on September 16, 2016. (Ex. 13)

Claimant underwent an independent medical examination (IME) with Robert W. Milas, M.D., on December 20, 2016. The examination revealed markedly reduced range of motion in the cervical spine, marked weakness of the right biceps muscle and right hand grasp. The right biceps jerk was absent. The claimant's gait was normal. Dr. Milas's impression was "cervical radiculopathy secondary to herniated cervical disc at the C5-C6 level." (Cl. Ex. 2, p. 2) Dr. Milas determined claimant had a 28 percent impairment due to the incomplete recovery of the cervical disc herniation in 2006/2007. (Cl. Ex. 2, p. 2) After a letter from the claimant, Dr. Milas revised his opinion to state as follows:

> This letter is my attempt to clarify my position on Mr. Jason Ramsey.
>
> The patient had a known cervical disc herniation at the C6-C7 level in 2006-2007 and demonstrated residual radiculopathy. In January of 2015, he began a job at his place of employment, manually forcing plates on a tractor utilizing a sledge hammer. On April 21, 2015, he developed severe pain in his right shoulder. He was ultimately found to have a herniated cervical disc at the C5-C6 level.
>
> It is my opinion that the event on April 21, 2015, is the direct cause of his second disc herniation at the C5-C6 level, however, individuals who have plating and fusion for treatment of a herniated cervical disc have an increased incidence of adjacent segment disease. Hence, the initial disc herniation in 2006-2007 pre-disposes this individual to further disc herniations at adjacent segment levels.

(Cl. Ex. 4) Dr. Milas recommended claimant be referred to an established spine clinic. (Cl. Ex. 2, p. 2)

Farid Manshadi, M.D., conducted an IME on January 3, 2016. (Cl. Ex. 6) Claimant reported "constant neck stiffness, right-sided shoulder pain, headaches and medial arm pain. He reports he has not worked for about eight months now. For ADLs he slips his shoes on. He is unable to bend forward due to pain in his neck, but otherwise he is able to perform his ADLs. He does chores in moderation." (Cl. Ex. 6, p. 4) The examination revealed reduced range of motion in the neck:

> Neck rotation to the left was 30 degrees.
>
> Neck rotation to the right was 41 degrees.
>
> Lateral bending to the right was 20 degrees.
>
> Lateral bending to the left was 25 degrees.
>
> Neck flexion was 20 degrees.
>
> Neck extension was 32 degrees.

(Cl. Ex. 6, p. 4) Claimant also had reduced sensation to light touch and pinprick involving the C5 and C6 on the right compared to the left and tenderness and spasm over the right upper trapezius. (Cl. Ex. 6, p. 4) He had some right hand weakness but no loss of range of motion. (Cl. Ex. 6, p. 4) Dr. Manshadi concluded that while the right shoulder MRI did not show significant pathology, the "work injury of April 2015 at John Deere probably aggravated some pre-existing neck issues at C5-C6. Further, clinically I also believe Mr. Ramsey shows reduced sensation along the C5-C6 dermatomes as well as myotomal weakness in the right upper extremity." He agreed claimant would benefit from treatment at a spine clinic.

Dr. Manshadi also argued that claimant was not at MMI, but, if pressed, would assign a 15 percent impairment of the whole person and recommended restrictions of "sedentary work of no lifting of more than 20 pounds. He is also to avoid reaching activities with either upper extremity. He is also to avoid lifting shoulder height or overhead activities. Further, he is to avoid any activity which requires holding his neck in one position for a prolonged time." (Cl. Ex. 6, p. 5)

Claimant then underwent an employability assessment with Barbara Laughlin, MA. (Ex. 7) She deemed him to be unemployable at this time:

> It is my opinion Mr. Ramsey has suffered severe limitations affecting his ability to secure employment. Although Dr. Kennedy declined to give permanent restrictions, she instead states he needs accommodations. She limits him from over shoulder posturing of either arm and no repetitive motion of either shoulder. With such a limitation in his reaching abilities, he would be severely limited in his obtaining and maintaining employment. Mr. Ramsey is unable to return to any of his past work. The reaching for a fork lift operator, a heavy equipment operator, and an assembler of construction equipment are all constant; a material handler and a conveyor feeder offbearer performs frequent reaching. Mr. Ramsey is unlikely to locate or find employment possessing any quality, quantity or dependability. In using the restrictions of Dr. Manshadi, not even one occupation is remaining to him, an indication of the severity of his restrictions.

(Ex. 7, p. 12) She recommended he engage in job retraining.

Following claimant's work injury, he was placed on light-duty work. Claimant felt that the light-duty work exacerbated his condition and that he was mistreated by one of the supervisors. Claimant complained of lifting hoses, lifting batteries and looking down at slips of paper. The lifting of the batteries weighed in excess of his weight limits. (Ex. 9, pp. 4, 5) Janelle Haines investigated claimant's complaints but maintained that claimant should not have been in peril due to the tasks assigned. She acknowledged that at least one task involving the batteries exceeded the claimant's weight restrictions.

> Even though the batteries are above Mr. Ramsey's 35 lb lifting limit, ergonomically we would not expect an injury due to the method by which he described moving them. Keeping a load close to the body and at the

> midpoint of the body reduces the strain from the load. Mr. Ramsey also did not have to bend and pick up the batteries to move them which would be the step in lifting the lifting process that would put stress on the lower back.

(Ex. C, p. 6) The lifting requirements imposed did not vary according to lifting at different levels (i.e., from floor to waist or waist to chest), but was an overall limitation that the defendant employer was not observing.

Jason Schultz is a union committeeman and is responsible for representing the bargaining unit for employees, as well as advocating on behalf of employees through the grievance process. He is familiar with the collective bargaining agreement between defendant employer and the union. An employee's base wage is supplemented by two things. First there is Continuous Improvement Pay Plans which provides an incentive-based bonus whenever there is productivity above 115 percent. CIPP is paid every 13 weeks. The payout of CIPP is very regular. Mr. Schultz testified that in the 12 years that he has been there, there has always been a positive payout.

Defendant's Exhibit G1 calculates claimant's earnings without any CIPP.

Mr. Schultz testified that in order to calculate the reserve amount you do as follows:

> A. Well, looking between the date of April 25th of '14 and April 21 of '15, what we'd have to do is calculate the reserve amount during that time period. And, of course, that's over a course of 52 weeks, so we would add our sum of money above 115 and at that point in time divide that by this 52 weeks.

(Testimony of Jason Schultz, p. 26) Defendant presented evidence that the claimant argued in his dissolution that incentive pay under CIPP was not guaranteed nor was overtime. (Ex. L, p. 60)

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 Rule of Appellate Procedure 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 Elec. v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

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 parties agree claimant has sustained a work injury on April 21, 2015, but disagree as to the nature and extent of such injury. Defendant has maintained that claimant's neck-related issues are unrelated to the work injury because claimant has had serious pre-existing neck conditions. Defendant did concede that the claimant suffered a temporary injury to his right shoulder, upper back, and right arm, however, that claimant returned to baseline.

Claimant asserts that he injured his neck and that because of his injury to his neck, he has suffered symptoms in his right shoulder, upper back and right arm. As a result of the neck and right arm issues, he is permanently and totally disabled, either under the traditional theory or an odd-lot theory.

In support of his claim, claimant points to experts Milas and Manshadi, who recommend claimant be restricted to sedentary work as a result of his neck related injuries.

Dr. Kennedy, the expert hired by the defendant, would limit claimant to lifting 20 pounds along with no use of the sledgehammer, no over-shoulder posturing of either arm, and no repetitive shoulder motion of either shoulder. She points to claimant's pre-existing condition for the basis of these restrictions.

Claimant did have ongoing neck complaints that necessitated surgery and extensive post-surgical treatment such as injections, medications, and physical therapy. Further, the 2015 MRI that Milas relies upon shows the cord deformities and disc bulging that existed in 2014 before claimant moved to the position that required his regular and repetitive use of the sledgehammer.

However, claimant's condition did appear to worsen to the extent that Dr. Kennedy felt it appropriate to restrict claimant from the use of sledgehammers and weight restrictions in lifting of no more than 20 pounds. Those restrictions are different than the ones he had before and specifically address the use of the sledgehammer, which is at the core of claimant's injury complaint.

Therefore it is determined that claimant suffered a work-related aggravation of a pre-existing condition to his neck and that the injury resulted in pain in claimant's neck, shoulder and right arm. This is an injury to the body as a whole.

Claimant asserts that he is entitled to a running healing period award.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, Iowa App. 312 N.W.2d 60 (1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant has not and cannot return to substantially similar employment and therefore the question is whether he has achieved maximum medical improvement. Claimant points to the opinions of Dr. Milas and Dr. Manshadi in support of the position that claimant has not had appropriate spine treatment.

Dr. Manshadi referred claimant to an orthopedic surgeon and noted that as of December 20, 2016, there was no further care he could provide. Dr. Isaac felt claimant was malingering and that he should have care from his regular family physician to manage his medication. Just prior to claimant's injury, Dr. Parvin recommended only conservative care due to claimant's disappointment with previous surgery.

The care claimant has received has been primarily palliative since his injury.

Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period. While further spinal treatment could improve claimant's condition, there's no substantive proof of that either—only mere recommendations. Based on the evidence in the record, claimant sought out treatment with Dr. Johnson on September 18, 2015, and reported no improvement since his last treatment. He was no longer doing any hammering work nor was he doing any heavy labor activities per Dr. Johnson, claimant's chosen chiropractor. Based on that visit and in conjunction with the records of Dr. Miller and the plant infirmary, claimant's maximum medical improvement date is set at September 18, 2015.

Since 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.

Claimant's condition is not as debilitating as the claimant maintains. One of the more persuasive medical examinations was with Dr. Isaac and the initial interactions with Dr. Manshadi. Dr. Isaac was a doctor that claimant selected personally. Claimant also related a different history to Dr. Isaac than claimant presented to any other doctor. He told Dr. Isaac that he had pain all over since 2005, especially in his lower back, both knees, upper neck and feet. He could not raise his left arm above his shoulder without getting stuck and had pain and numbness and tingling in his right arm.

Dr. Isaac felt that claimant was malingering and noted that claimant exhibited pain behaviors such as crying out "every time we move any joint including his elbows, hands and wrists" as well as "when we move his hips on external rotation and abduction." (Jt. Ex. 16, p. 2)

Claimant's FCE was deemed invalid. His post-surgical complaints varied from the surgery bring successful as he told Dr. Manshadi ("by his report, the surgery did help and he had no issues with it") to his condition worsening after surgery as he told Dr. Parvin.[1]

Further, his pain complaints in 2016 following treatment are similar to the pain complaints he had prior to his injury. They vary only in intensity. Beyond the claimant's invalid FCE and possible malingering issues are the other health issues that imperil claimant's ability to work that are unrelated to the work injury.

Dr. Manshadi, another doctor that claimant self-selected, found that one of claimant's primary issues was with his headaches. "[W]hen he gets those headaches, he is unable to do much. He reports at least 15 days [of] headaches per month." (Jt. Ex. 15, p. 3)

Some of claimant's complaints of pain—that he is unable to look down at pieces of paper from a sitting position without pain—do not come off credible. But others—such as lifting weights in excess of his work restrictions—are believable.

Claimant is likely capable of doing work beyond sedentary. Dr. Kennedy's restrictions are more in line with the medical records and claimant's test results.

---

[1] Defendant argues in its brief that claimant's purported covering up of his wife's nonreported earnings is an example of his lack of credibility, but I decline to accept this argument. There is scant evidence in the record surrounding that issue.

Because I am adopting Dr. Kennedy's restrictions rather than Dr. Manshadi or Dr. Milas's, the conclusions of Ms. Laughlin are largely unhelpful.

Claimant has some post-secondary education. He is capable of driving and doing light duty work. He worked as a security guard in the past and has some training and education in the criminal justice field.

While claimant cannot work for the defendant employer due to a factory wide lifting requirement of 30 pounds, he is still employable. He does not show significant interest in returning to work. There is little evidence that he has looked for new employment since his departure from defendant employer.

Based on the foregoing, claimant is determined to have suffered a 75 percent industrial loss.

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd-lot employee when an injury makes the worker incapable of obtaining employment in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

Claimant has not made a prima-facie showing that he is not employable in the competitive labor market and therefore no odd-lot finding is made.

Claimant seeks additional care for his spine, specifically treatment recommended by Dr. Manshadi (an orthopedic consult) and Dr. Milas (multi-modality spine treatment).

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Both recommendations appear reasonable. Claimant's request for additional care is granted.

The next issue is that of rate.

Under section 85.36(7), the gross weekly earnings of an employee who has worked for the employer for less than the full 13 calendar weeks immediately preceding the injury are determined by looking at the earnings of other similarly situated employees employed over that full period, but if earnings of similar employees cannot be determined, by averaging the employee's weekly earnings computed for the number of weeks that the employee has been in the employ of the employer.

Defendant does not wish to include CIPP. CIPP has been paid out in every year that Jason Schultz has worked. There has not been a time claimant did not receive CIPP while working for defendant. While CIPP may not have been included in

defendant's divorce proceedings, it does not appear that the issue was adjudicated. Rather, the divorce decree was based on a stipulation and therefore is not binding here.

For the purposes of workers' compensation, CIPP is considered part of claimant's average weekly wages.

In various final arbitration decisions, this agency has held previously that both the CIPP and the profit-sharing are both to be included in gross wages. Spaete v. John Deere Davenport Works, File No. 5031216 (Arb. May 24, 2011); Davis v. John Deere Davenport Works, File No. 5039241 (Arb. January 3, 2013); and Montgomery v. John Deere Davenport Works, File No. 5035802 (Arb. November 7, 2012). In the recent case, Breeden v. John Deere Davenport Works, File No. 5047097 (Arb. April 27, 2015), the agency included the CIPP pay, but ruled that the claimant had failed to carry her burden of proof that the profit sharing should be included in the calculations.

That is not the case here. The claimant presented testimony about the regular and consistent nature of the CIPP earnings. Therefore, the claimant's calculations are accepted. The appropriate rate for claimant is $750.47.

Claimant also seeks reimbursement for Dr. Manshadi's examination as well as an assessment of costs. Under Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 846-847 (2015), only the examination is reimbursable under section 85.39. Pursuant to the attachment to the hearing report, Dr. Manshadi's examination fee was $300.00. Therefore, claimant is entitled to a reimbursement of $300.00.

Claimant also seeks assessment of costs under rule 876 IAC 4.33.

Rule 876 IAC 4.33 indicates, in relevant part:

> Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes.

Claimant seeks assessment of a bill of $962.00 from Laughlin Management for the vocational consultation. Expert witness reports are allowed to be reimbursed so long as they are in lieu of testimony. See Des Moines Area Regional Transit Authority v. Young, 867 N.W.24 at 847. The report took 4.4 hours at $60.00 per hour. Therefore, claimant is entitled to an award of $264.00

ORDER

THEREFORE, it is ordered:

That defendants are to pay unto claimant three hundred seventy-five (375) weeks of permanent partial disability benefits at the rate of seven hundred fifty and 47/100 dollars ($750.47) per week from September 18, 2015.

That claimant is entitled to ongoing care for his neck and right shoulder, right arm issues including an orthopaedic consultation and treatment from a multi-modality spine treatment center.

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

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

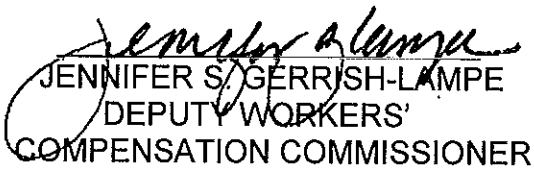
That defendant is to be given credit for benefits previously paid including those paid pursuant to a sick leave or short-term disability plan.

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

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33 in the amount of two hundred sixty-four and 00/100 dollars ($264.00).

That defendant shall pay the examination fee of Dr. Manshadi in the amount of three hundred and 00/100 dollars ($300.00).

Signed and filed this 12th day of March, 2017.



JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Paul J. McAndrew, Jr.
Attorney at Law
2771 Oakdale Blvd., Ste. 6
Coralville, IA 52241-2781
paulm@paulmcandrew.com

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

JGL/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.