BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WESLEY RAINER, Claimant, vs. JOHN DEERE DUBUQUE WORKS, Employer, Self-Insured, and SECOND INJURY FUND OF IOWA, Defendants.	:	File No. 20013850.01 ARBITRATION DECISION Head Notes: 1402.20, 1402.40, 2700, 2907, 3202

STATEMENT OF THE CASE

Wesley Rainer, claimant, filed a petition for arbitration seeking workers' compensation benefits against John Deere Dubuque Works, self-insured employer, and Second Injury Fund of Iowa (SIF). This case came before the undersigned for an arbitration hearing on October 26, 2022. The case proceeded to a live video hearing via Zoom.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted, and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 4, Claimant's Exhibits 1 through 5, Defendant Employer Exhibits A through F, and Defendant Second Injury Fund Exhibits AA and BB. All exhibits were received without objection.

Claimant testified on his own behalf. No other witnesses testified at hearing. The evidentiary record closed at the conclusion of the evidentiary hearing. All parties served their post-hearing briefs on January 6, 2023, at which time this case was deemed fully submitted to the undersigned.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury, which arose out of and in the course of

employment, on October 23, 2019;

2. Whether claimant's left arm injury is barred under Iowa Code section 85.23;

3. The nature and extent of permanent disability;

4. The commencement date for permanent partial disability benefits, if any are awarded;

5. Whether claimant is entitled to alternate medical care pursuant to Iowa Code section 85.27;

6. Whether claimant has established a compensable claim against the Second Injury Fund of Iowa, including whether claimant has established a qualifying first injury to the right hand and left leg;

7. If so, the extent of functional loss to the first qualifying injury(ies);

8. The commencement date of SIF benefits, if any are awarded;

9. The extent of claimant's entitlement, if any, to benefits from the Second Injury Fund of Iowa;

10. The extent of defendant SIF's entitlement to a credit under Iowa Code section 85.64; and

11. Whether costs should be assessed against any party and, if so, in what amount.

FINDINGS OF FACT

The undersigned, having considered all of the evidence and testimony in the record, finds:

On the date of hearing, Wesley Rainer was a 34-year-old individual residing in Dubuque, Iowa. (Hearing Transcript, page 9) Rainer graduated from South Shore High School in Chicago, Illinois in 2006. (Hr. Tr., p. 10) He would go on to study business management, marketing, and criminal justice at Malcolm X Community College from 2006 to 2009, and at Northeast Iowa Community College (NICC) from 2010 to 2011. (Hr. Tr., pp. 10-11) He did not obtain a degree from either institution; however, he did obtain a welding certificate from NICC in 2019. (Hr. Tr., p. 11)

During high school, Rainer worked as a customer service representative for At Your Services. In this role, claimant scanned tickets and escorted people to their seats at Chicago Bulls and Chicago White Sox games. (See Hr. Tr., p.13) After graduating high school, claimant worked as a parking attendant and valet driver for Inner Parking. (See Hr. Tr., pp.13-14)

In approximately 2011, Rainer moved to Dubuque, Iowa and accepted a position with McDonald's. At first, Rainer received customer orders and worked in the kitchen. He eventually became a manager-in-training. (Hr. Tr., p. 14) Rainer alleges he sustained a qualifying injury to his right hand and thumb while working at McDonald's.

Immediately prior to working for the defendant employer, Rainer was employed at Nordstrom. (Hr. Tr., p. 15) Rainer started out loading and unloading freight in the outbound department. He would eventually become an assistant manager. (See Hr. Tr., pp. 15, 69) Rainer alleges he sustained a qualifying injury to his left knee while working at Nordstrom on September 27, 2018. This injury was the subject of a prior arbitration decision, Rainer v. Nordstrom, File No. 5068419 (Arb. December 8, 2021).

Rainer began working as a full-time welder for the defendant employer on July 8, 2019. (See Exhibit BB) Rainer's job duties included lifting, carrying, and tack-welding pieces of metal. He also utilized a hammer and/or mallet to strike the various metal parts. (See Hr. Tr., pp. 16-19) Rainer testified the parts he worked with weighed between 40 and 100 pounds. (Hr. Tr., p. 17)

On October 23, 2019, Rainer was working as a welder, loading an idler guide into a robot. When he attempted to undo a magnet that was attached to a fixture, Rainer experienced a "pop" and immediate swelling in his right wrist. (See Hr. Tr., p. 28; JE1, p. 31) Shortly thereafter, Rainer presented to John Deere's on-site occupational health clinic with his supervisor, Todd Latham. (JE1, p. 32) Rainer reported, "I locked in the magnet to the fixture using a twisting motion, then when I went to lift the fixture with the hoist I felt this sudden pain in my right wrist/forearm extending to the right elbow." (Id.) He described difficulty twisting and rotating his right wrist and forearm. (Id.)

Amanda Addison, NP restricted claimant from lifting more than five pounds. She also instructed Rainer to avoid repetitive lifting. (JE1, p. 29) The defendant employer subsequently assigned Rainer to light duty work for a period of six weeks. (See Hr. Tr., p. 28) Rainer testified that after the six weeks he returned to his normal job and developed elbow pain within one week. (Hr. Tr., p. 28) Around this time, Rainer was "bumped" to a new workstation by another employee with more seniority. (Hr. Tr., pp. 19-20) Due to the issues he was experiencing in his right wrist and elbow, Rainer started using his left arm more than his right. (Hr. Tr., pp. 28-29) Rainer asserts he developed symptoms in his left arm while compensating for the right arm injury. (Hr. Tr., p. 30)

In the matter at hand, claimant is asserting he sustained injuries to the right elbow, right wrist, and left arm on October 23, 2019. The defendant employer stipulates that Rainer sustained a right elbow injury, which arose out of and in the course of employment, on October 23, 2019. (Hearing Report) However, the defendant employer disputes whether any other condition is causally related to the October 23, 2019, date of injury.

Rainer first reported work-related left elbow pain at his December 4, 2019, appointment with occupational health services. (JE1, p. 26) In response to his claim of work-relatedness, Ms. Addison told Rainer that he would need to fill out additional

paperwork to claim a left arm injury. (See JE1, p. 26) Rainer was informed that a nurse would notify him when to come in and fill out the appropriate paperwork. (JE1, p. 26)

By December 11, 2019, Rainer was reporting that his left elbow pain was worse than his right elbow pain. (JE1, p. 24) He also described tightness and pain over his left acromioclavicular joint area. (Id.) Rainer continued to complain of left elbow pain at his follow-up appointments on December 18, 2019, and January 2, 2020. (JE1, pp. 22-24)

When conservative care failed to relieve Rainer's symptoms, Ms. Addison referred him for an orthopedic evaluation with Todd Johnston, M.D. (JE1, p. 23) Notably, it appears defendant only referred claimant to Dr. Johnston for right elbow pain. (See JE3, pp. 39, 51)

Rainer presented for an initial evaluation with Dr. Johnston on January 9, 2020. (JE3, p. 39) During the appointment, Rainer described his job duties and the October 23, 2019, work injury. The medical record provides:

> He is a welder. The weight of the torch is about 2-3 pounds but he gets into awkward positions. The pain started the end of October. Taking a part out and felt a sharp pain at the ulnar aspect of the wrist that shot up to his elbow. Using a magnetic clamp. The wrist was getting better but the elbow was getting worse. The wrist is still not 100% per patient. The pain is achy at the wrist. Numbness and tingling is a small part of this. Patient complains more of the achy pain.
>
> Patient states he is new to clamps and the specific tools at this current job. He is doing repeated forceful work with instruments.

(JE3, p. 41) Rainer relayed that both elbows were bothering him, but he considered the right elbow pain to be worse. (JE3, p. 39) While the focus of the examination was on the right elbow, Rainer also described tingling in his fingers, bilaterally. (Id.) Dr. Johnston assessed Rainer with biceps tendinitis and synovial plica syndrome. (JE3, p. 41) To address the pain, Dr. Johnston administered an intra-articular cortisone injection to the right elbow and assigned temporary lifting restrictions. (JE3, p. 42) Dr. Johnston also noted that Rainer "had some Extensor Carpi Ulnaris tendinitis of the wrist that appears to be resolved at this time." (JE3, p. 41)

On January 16, 2020, Rainer returned to Ms. Addison and reported feeling a "jolt" up in his right elbow while using a hammer. (JE1, pp. 20-21) Ms. Addison subsequently restricted Rainer from using a hammer. (Id.) At hearing, Rainer testified that he started hammering with his left hand following the October 23, 2019, work injury. (See Hr. Tr., p. 30)

Rainer reported only temporary relief from the injection at his February 14, 2020, follow-up appointment with Dr. Johnston. (JE3, p. 44) He continued to complain of lateral and medial elbow pain, numbness in the 1st, 2nd, and 3rd digits of the right hand, and stiffness of the elbow upon waking. (Id.) On examination, Rainer had a positive Tinel's sign, and a positive carpal tunnel compression test on the right. (JE3, p. 45) Dr. Johnston diagnosed claimant with lateral epicondylitis of the right elbow and carpal

tunnel syndrome. Dr. Johnston explained that claimant's symptoms are related to an overuse syndrome of the extensor tendons of the wrist and, over time, the damage to the tendon can become permanent. (JE3, p. 46) Dr. Johnston recommended and administered a wrist injection to help determine whether the inflammation was reversible or if claimant would need surgical intervention in the future. (Id.) Dr. Johnston also administered a repeat injection to the right elbow. (Id.)

At the same appointment, Rainer reported similar symptoms in his left wrist and elbow, "due to trying to modify activity by using left side to minimize aggravating the right sided complaints." (JE3, p. 46) In response, Dr. Johnston recommended he utilize wrist and elbow splints. (JE3, pp. 45-46)

On March 19, 2020, Rainer returned to Dr. Johnston. (JE3, p. 48) After discussing both the right elbow and right wrist in the history of present illness section, Dr. Johnston noted, "This is a work comp injury." (Id.) Again, Rainer demonstrated a positive Tinel's sign and a positive carpal tunnel compression test on the right. (Id.) Dr. Johnston discussed with Rainer how the goal over the past few visits had been to try to relieve his pain without surgical intervention. Dr. Johnston felt that they were making progress with the right elbow; however, the right wrist was not improving with non-surgical treatment. As a result, Dr. Johnston recommended a right carpal tunnel release. (JE3, p. 49)

Despite the fact Rainer's right elbow condition was improving, Dr. Johnston opined that it would be wise to operate on the right elbow and right wrist conditions at the same time, as the right elbow condition would likely need surgery down the road. (JE3, p. 49) Following the discussion, Dr. Johnston ordered an EMG of the right wrist for further evaluation and returned Rainer to full duty work to see how the elbow would respond to increased activity. (Id.)

Following Dr. Johnston's recommendations, Dietmar Grentz, M.D., requested a causation opinion on Rainer's carpal tunnel syndrome. (JE3, p. 51)

Initially, Rainer was scheduled to return to Dr. Johnston's office on April 16, 2020; however, the defendant employer had not concluded its investigation into whether the right carpal tunnel syndrome was causally related to the original work injury prior to the scheduled appointment. As such, the April 16, 2020, appointment was cancelled. (JE3, p. 50; see JE1, p. 13)

Rainer was laid off effective May 4, 2020, due to the Covid-19 pandemic. (See JE1, p. 15)

In a report, dated May 14, 2020, Dr. Johnston responded to Dr. Grentz's letter and opined that Rainer's neurologic complaints were not caused by "his twisting injury" on October 23, 2019. (JE3, p. 52) Notably, Dr. Johnston explained that surgery was necessary to address claimant's right elbow epicondylitis, and any surgery to the elbow, "would significantly exacerbate his carpal tunnel symptoms and thus make it directly related to his treatment for the work injury." (Id.) Given the potential for significant exacerbation, Dr. Johnston strongly recommended that claimant undergo a carpal tunnel release at the time of the right elbow surgery. (Id.)

Based on Dr. Johnston's opinion, the defendant employer denied causation for the right carpal tunnel syndrome and any additional treatment pertaining to the same. (JE3, p. 153)

Dr. Grentz next examined Rainer on May 18, 2020. (See JE1, pp. 12-14) At the appointment, Rainer reported that his right lateral elbow pain had resolved, but the medial elbow pain still occurred with movement. (JE1, p. 12) He also reported intermittent numbness in his 2nd, 3rd, and 4th digits of the right hand. (Id.) Overall, Rainer considered himself 75 to 80 percent better. (Id.) Following the appointment, Dr. Grentz produced a second letter to Dr. Johnston noting claimant's improvement since March 2020 and inquiring as to whether Dr. Johnston still believed that right elbow surgery was necessary. (See JE1, pp. 13-14)

Dr. Johnston re-examined claimant and addressed Dr. Grentz's second letter on May 20, 2020. In the medical record, Dr. Johnston indicated that claimant's medial elbow pain would subside with rest; however, he noted it could take anywhere from six to twelve weeks. (JE3, p. 55) He reiterated that claimant would still be at high risk of having his elbow pain return once he returned to work, and he may eventually require surgery. (JE3, p. 56) Nevertheless, Dr. Johnston opined that surgery was no longer appropriate due to claimant's improvement. (JE3, p. 57)

At the end of the May 20, 2020, medical record, Dr. Johnston provided a summary of his recent opinions. (JE3, p. 56) With respect to claimant's right wrist, Dr. Johnston reiterated that the neurologic complaints were not caused by the acute injury on October 23, 2019. However, Dr. Johnston also opined that the numbness and tingling in claimant's hands may be due to the repetitive motions he performed at work, such as swinging a hammer. (JE3, p. 55) Next, Dr. Johnston opined the medial pain in claimant's elbow seemed to be from repetitive valgus stress, which he felt was related to his work duties. He further opined that the condition was fairly benign and should resolve without much complication. Lastly, Dr. Johnston opined that claimant's lateral elbow pain had resolved and surgery would not be helpful at that point in time. That being said, Dr. Johnston expressed concern that claimant's pain could reappear once he returned to full-duty work. As such, Dr. Johnston recommended claimant for a short trial of work hardening to occur between June 2, 2020, through July 6, 2020. (JE3, p. 56; see Ex. 1, p. 3)

Rainer returned to Dr. Johnston on July 16, 2020, reporting an increase in his symptoms since participating in work hardening. (JE3, p. 59) Despite the increase in symptoms, Dr. Johnston opined that outside of surgery, he did not have any additional treatment to recommend for claimant. He noted that surgery would be helpful but was not necessary at that time. (JE3, p. 60) Lastly, Dr. Johnston opined that if and when claimant returned to work and experienced a flare-up in his symptoms, claimant's case would need to be reopened and surgery would be necessary. (JE3, p. 61)

While claimant never returned to his normal, full-duty position, he nevertheless experienced a flare-up in his symptoms in August of 2020. On August 12, 2020, Rainer returned to occupational health services and discussed his then current condition with Ms. Addison. (JE1, pp. 9-10) Rainer reported tingling in his fingertips, "suggestive of

Possible Carpal tunnel[.]" (JE1, p. 10) Rainer believed the condition was due to his work activities, "from a job that he was switched to after his current injury right wrist and elbow pain started, in which he says he had to do a lot of hammering." (Id.) Ms. Addison's notes provide that Rainer reported his symptoms at various medical appointments, but he did not make an official workers' compensation claim. (Id.)

Rainer underwent physical therapy from August 18, 2020, through November 4, 2020, for his right elbow. (See Ex. 1, p. 4) Unfortunately, physical therapy increased claimant's pain. (See JE3, p. 63)

When Rainer returned to Dr. Johnston on October 12, 2020, he reported 8 out of 10 pain in his right elbow. (JE3, p. 62) He further reported that he could not handle any extended arm gripping due to the same. (Id.) Dr. Johnston informed Rainer that his only option left was surgery. (Id.)

Dr. Johnston performed a right tennis elbow release on November 10, 2020. (JE3, p. 65; Ex. 2, p. 13) Between November 10, 2020, and May 20, 2021, Rainer presented to several follow-up appointments with Dr. Johnston. On January 25, 2021, Rainer reported pain on resisted wrist extension. For the first time since surgery, Dr. Johnston assessed carpal tunnel syndrome of the right wrist. (JE3, p. 69) On March 29, 2021, Rainer described intermittent tingling in all fingers except his thumb. (JE3, p. 73) His right grip strength was 80 percent when compared to the left, and Dr. Johnston noted substantial weakness. (See JE3, pp. 74-75)

After a period of recovery, Dr. Johnston placed claimant at maximum medical improvement as of May 20, 2021, and recommended permanent restrictions of no lifting or pulling with an overhand or back-handed grip, and no use of power tools that weighed over 20 pounds. (JE3, p. 78) Based on a loss of grip strength, Dr. Johnston assigned seven percent right upper extremity impairment, or four percent whole person impairment. (JE3, p. 79)

For the first time since being laid off in May of 2020, Rainer returned to work with permanent restrictions on May 21, 2021. (See JE1, p. 8) Unfortunately, the permanent restrictions prevented Rainer from returning to his welding position. Rainer testified that he was supposed to return to work as a forklift operator; however, the defendant assigned him to work in the supermarket area as a "picker" instead. (See Ex. B, p. 4; JE1, p. 6; Hr. Tr., p. 22) As a picker, claimant stacked small nuts and bolts into totes and then placed said totes on a designated shelf. (Ex. B, p. 4; Hr. Tr., p. 23) Rainer testified he used his left hand to pick up an average of 40 to 80 totes per day. (See JE1, p. 6; Ex. B, p. 4) Claimant asserts these job duties caused him to experience pain in his hands and wrists.

Notably, as long as he was not using an overhand grip, Rainer did not have any restrictions in place that would have prevented him from lifting the totes with his right hand. (See JE3, p. 78) Dr. Johnston also told Rainer it was "safe" for him to use his right arm moving forward. (JE3, p. 77) According to Rainer, a representative from UAW or the "Shop Committee" told him not to use his right hand. (See JE1, p. 6; Ex. B, p. 4)

In any event, Rainer presented to occupational health services on June 28, 2021, complaining of left wrist pain that had been present since June 10, 2021. (JE1, p. 1; Ex. B, p. 4) He described the pain as "constant achiness, some popping and a 'pinching' pain at its worst." (JE1, p. 6) He explained that due to his right wrist restrictions, he had only been using his left hand to pick up totes. Claimant also reported that he woke up on June 21, 2021, and was unable to make a fist. (Id.; see Ex. B, p. 4) Given his symptoms, Rainer elected to take the week of June 21, 2021, off from work. (JE1, p. 6) Edwin Chelli, M.D. assessed left wrist pain and ordered Active Release Technique. (Id.)

On June 29, 2021, Rainer presented to Josh Nagle, D.C., with complaints of continuous aching, numbing, tightness, and tingling in the left wrist. (JE2, p. 35) He described using his left hand more than usual at work as he had a restriction on using his right wrist. (Id.) Dr. Nagle assessed myositis of the left hand and performed ART. (JE2, p. 36)

After reviewing claimant's medical records and an incident investigation report conducted by safety analyst Dan Johnson, Dr. Chelli concluded that claimant's work was not a substantial contributing factor to his left hand and wrist complaints. (See Ex. B, p. 2; JE1, p. 3) According to the defendant employer, Dr. Chelli reached his conclusion for the following reasons:

1. Mr. Rainer has only worked nine days on the allegedly offending job between June 1, 2021 and June 28, 2021.

2. Mr. Rainer has been doing break-in training during all of June so the pace of his work was slow.

3. Mr. Rainer had a helper on some of the days in June.

4. Mr. Rainer has a hot dog stand where he works from 3:30 p.m. to 8:00 p.m. on Tuesday through Saturday.

5. Mr. Rainer mentioned that when he woke up on June 21, 2021 his left hand and wrist problems were more severe, but he had not worked since Thursday, June 17, 2021.

(Ex. B, p. 2) As such, the defendant employer formally denied liability for the alleged left upper extremity injury on July 8, 2021. (Ex. B, pp. 2-3)

In response to the opinions of Dr. Johnston and Dr. Chelli, Rainer sought and obtained an independent medical examination with Robin Sassman, M.D. (See Ex. 2) The examination occurred on August 1, 2022. (Ex. 2, p. 9) As part of the IME, Dr. Sassman also performed a records review. She issued her report on September 28, 2022. (Id.)

As part of her IME, Dr. Sassman was asked to address causation with respect to all alleged injuries. Based on the mechanism of injury, a lack of prior symptoms, and a lack of injury history, Dr. Sassman opined that the October 23, 2019, work injury was a direct and causal factor in the right wrist and elbow symptoms. (Ex. 2, p. 17)

Dr. Sassman's causation opinion is consistent with claimant's credible testimony and the initial medical records. Rainer credibly testified he did not have any issues with his right wrist prior to October 23, 2019. (Hr. Tr., p. 26) However, since the date of injury, Rainer has consistently described the presence of pain and/or numbness in his right wrist. When describing his injury to the medical staff at occupational health services, Rainer specifically described a "pop" and immediate pain in his right wrist. (See JE1, pp. 12-32) Following the work injury, claimant reported pain that originated in his wrist and shot up to his elbow. (See JE3, p. 39) At his initial orthopedic evaluation with Dr. Johnston, claimant reported numbness in his wrist as well as tingling in his fingers. (JE3, pp. 39, 41) Dr. Johnston diagnosed claimant with carpal tunnel syndrome of the right wrist on February 14, 2020. (JE3, p. 45)

Defendant relies on the opinions of Dr. Johnston to dispute causation between the October 23, 2019, work injury and the diagnosis of right carpal tunnel syndrome.

When comparing the competing medical opinions, I note that Dr. Johnston's causation opinion is not accompanied by any meaningful explanation. This is troubling when considering Dr. Johnston's opinions have been inconsistent.

At the February 14, 2020, appointment, Dr. Johnston diagnosed claimant with right carpal tunnel syndrome and administered an injection to treat the same. He explained that the condition was related to an overuse syndrome of the extensor tendons and, over time, the damage to the tendon can become permanent. (JE3, p. 46) On March 19, 2020, after discussing the condition of both the right elbow and right wrist injuries in the history of present illness section, Dr. Johnston noted, "This is a work comp injury." (JE3, p. 48) Following his examination, Dr. Johnston concluded that Rainer's right elbow condition was improving with conservative treatment and, as a result, did not require surgical intervention. Conversely, Dr. Johnston noted that claimant's right wrist condition was not improving and recommended surgical intervention for the same. (JE3, p. 51) Dr. Johnston then hypothesized that claimant's elbow would likely flare up once he returned to full-duty work and require surgical intervention. Given the likelihood that claimant's elbow would someday require surgical intervention, Dr. Johnston told claimant it would be a good idea to operate on both conditions at the same time.

Then, in his May 14, 2020, letter, Dr. Johnston reached the opposite conclusion, noting, "My chief concern in assessing his carpal tunnel is that I believe he has now reached the point where conservative measures for his lateral epicondylitis have failed and I am going to recommend surgery." (JE3, p. 52) He further provided, "My strong opinion, at this point, is that when he undergoes surgery for his elbow he should have carpal tunnel release, regardless of causation, given the potential for significant exacerbation in the post-surgical period." (Id.)

Without reexamining claimant between March 19, 2020, and May 14, 2020, Dr. Johnston changed his opinion regarding which condition required surgical intervention at that time. Dr. Johnston would go on to change his opinion once more following an updated letter from Dr. Grentz, dated May 18, 2020, and a follow-up examination on May 20, 2020. (See JE3, p. 57)

Additionally, while Dr. Johnston opined that the neurologic complaints were not caused by the acute, "twisting injury" on October 23, 2019, he also opined that the numbness and tingling in claimant's hands may be due to the repetitive motions he performed at work, such as swinging a hammer. (JE3, p. 55)

In comparison, Dr. Sassman clearly expressed her opinion that the October 23, 2019, incident was a direct and causal factor in bringing about claimant's right wrist and elbow symptoms. Dr. Sassman's opinion is consistent with the medical records in evidence demonstrating claimant developed right wrist symptoms immediately following the October 23, 2019, work injury. I find that the greater weight of the evidence indicates Rainer sustained an injury to his right wrist on October 23, 2019.

Like Dr. Johnston, Dr. Sassman assigned permanent impairment to the right upper extremity based on a loss of grip strength. (Id.) Dr. Sassman estimated claimant's loss of grip strength at 19 percent. (Ex. 2, pp. 17-18) Utilizing Table 16-34 on page 509 of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, this loss of grip strength equates to 10 percent upper extremity impairment. Dr. Sassman assigned an additional 1 percent impairment for loss of flexion, and 1 percent impairment for sensory deficit related to the surgical scar in the distribution of the ulnar nerve. (Id.)

Dr. Sassman briefly addressed the differences between the impairment ratings in this case. (Id.) According to Dr. Sassman, Dr. Johnston only assigned impairment for loss of grip strength and not for loss of range of motion in the right wrist or right elbow, or numbness over the surgical scar. Because of these differences, Dr. Sassman argued that her impairment rating was more consistent with the AMA Guides and reflective of Rainer's status as of August 1, 2022. (Id.) I agree and accept Dr. Sassman's impairment rating as the most accurate and convincing in the evidentiary record.

Rainer is asserting he sustained the left arm injury as sequela of the stipulated October 23, 2019, work injury. In this respect, claimant asserts the left arm symptoms worsened over time while compensating for the right arm injury. (Hr. Tr., p. 30)

With respect to the alleged left arm injury, Dr. Sassman opined:

> Regarding the left elbow, he has symptoms of ulnar neuropathy on the left. He indicated that these symptoms began after the right upper extremity injury when he was using the right arm more, especially with lifting 40-80 totes per day. Therefore, I would consider the left upper extremity symptoms to be a sequela of the original injury.

(Ex. 2, p. 17) Again, Dr. Sassman's opinion is consistent with claimant's credible testimony and the contemporaneous medical records.

Immediately following the work injury, occupational health services restricted claimant from lifting anything weighing more than five pounds with his right hand. They further instructed claimant to avoid repetitive lifting. (JE1, p. 29) Then, shortly after the stipulated work injury, defendant employer reassigned claimant from working on "center

body and Idler guides" to the next station over, called "marriage bar." (Hr. Tr., pp. 19-20) In the marriage bar position, claimant welded center bodies and idler guides together. (Hr. Tr., p. 20) Claimant testified that he compensated for his right arm injury by using his left arm more frequently during this time period. (Hr. Tr., pp. 28-29)

The medical records in evidence reveal Rainer first reported left elbow pain at his December 4, 2019, appointment with occupational health. (JE1, p. 26) By December 11, 2019, Rainer was reporting that his left elbow pain was worse than his right. (JE1, p. 24) He would go on to report left elbow pain at his follow-up appointments in January, February, March, April, and May of 2020. (JE1, pp. 9-23) He also described his left arm symptoms when presenting to Dr. Johnston. (See JE3, p. 46)

Rainer was laid off, or off work during a period of recovery, between May 2020 and May 2021. (See Hr. Tr., p. 22) When he returned to work on May 21, 2021, he did so with permanent restrictions for the right arm. These restrictions prevented him from working as a welder. As such, defendant assigned claimant work that involved sorting parts and stacking shelves. (Hr. Tr., p. 22) After one month of working in this position, claimant presented to occupational health services and reported left arm symptoms that were similar to the symptoms he described prior to the May 4, 2020, layoff.

Of the two expert reports to address causation for the left arm injury, I do not find Dr. Chelli's opinion to be convincing. I reach this conclusion for several reasons. First, the evidentiary record does not actually contain the causation opinion discussed in the defendant employer's July 8, 2021, letter. Second, the alleged opinion only addresses whether claimant's work between June 1, 2021, and June 28, 2021, was a substantial contributing factor in bringing about his left arm complaints. It does not address the October 23, 2019, injury, or the potential impact of the work claimant performed between October 23, 2019, and May 4, 2020.

For the sake of argument, if the undersigned accepts that the left arm injury had to occur between June 1, 2021, and June 28, 2021, Dr. Chelli's opinion would still not be convincing as it fails to address the most basic question of whether the act of lifting and carrying 20-pound totes, 40-80 times per shift, with the left arm only could cause or contribute to claimant's left arm condition.

Although Dr. Sassman did not provide a great deal of analysis to support her causation opinion, her opinion is nevertheless based on claimant's credible reporting and her review of the medical records in evidence. Importantly, Dr. Sassman's opinion is not limited to the work claimant performed between May 21, 2021, and June 28, 2021. Having found claimant to be a credible witness, I accept Dr. Sassman's causation opinion as the most accurate and convincing in the evidentiary record. I further find that the greater weight of the evidence indicates Rainer sustained a sequela injury to the left arm because of his inability and/or reluctance to use his right arm following the October 23, 2019, work injury.

Dr. Sassman opined that Rainer has not reached MMI for the right wrist and left upper extremity conditions. After expressing concern for a TFCC or SL ligament tear, Dr. Sassman recommended an MRI of the right wrist to determine if any ligament injury

has occurred. (Ex. 2, p. 20) She also recommended an EMG of the left upper extremity to further evaluate the potential left ulnar neuropathy at the elbow. (Id.)

The evidentiary record supports a finding that claimant is not at maximum medical improvement as it relates to the right wrist and left arm conditions. I find Dr. Sassman's report, including her conclusion that claimant is not at MMI, to be the most convincing of the medical reports. Because Rainer is not at MMI, the issue of permanency is not ripe for adjudication.

On the hearing report, the defendant employer asserted that, pursuant to Iowa Code section 85.23, claimant is barred from recovery for the left upper extremity injury. However, the defendant employer makes no argument regarding the same in its post-hearing brief. As such, I find the defendant employer failed to carry its burden of proving claimant failed to give notice regarding the left upper extremity injury.

Rainer requests ongoing medical treatment for his right wrist and left elbow conditions. Having found claimant carried his burden of proving both injuries are causally related to the October 23, 2019, work injury, I further find that claimant is entitled to ongoing medical treatment for the same.

For Second Injury Fund purposes, Rainer has alleged an initial qualifying injury to the right hand occurred on June 24, 2011, while working for McDonald's. Rainer testified he sustained a laceration to the base of his right thumb when he reached into a dish rack and encountered an upward facing knife. (Hr. Tr., pp. 26-27; see Ex. 3, p. 28) Claimant presented to the emergency department at Mercy Medical Center with complaints of sensory decrease on the ulnar thumb and weakness in flexion. The laceration was irrigated, closed with sutures, bandaged, and splinted. (See Hr. Tr., p. 27)

Brian Adams, M.D., performed a nerve exploration and repair on June 30, 2011. (See Hr. Tr., p. 66; Ex. 3, p. 29; Ex. 4, p. 40) Dr. Adams repaired the radial digital nerve and the flexor pollicis longus tendon. (See Ex. 3, p. 29; Ex. 4, p. 40) He was eventually released without any restrictions. (See Hr. Tr., p. 66) Rainer did not seek any additional treatment for his right thumb after August 2011.

At hearing, Rainer testified to ongoing issues with his right thumb. He asserts that he has had to change the way he lifts and/or holds certain items due to a loss of range of motion. (See Hr. Tr., p. 46)

Rainer sought an independent medical examination from Mark Taylor, M.D. (Hr. Tr., p. 66) Based on range of motion deficits, Dr. Taylor assigned three percent (3%) impairment to the right upper extremity as a result of the June 30, 2011, injury.

Rainer has also alleged a qualifying injury to the left knee that occurred on September 27, 2018, while working for Nordstrom. (See Hr. Tr., pp. 27, 66) On the date of injury, Rainer was attempting to pick up some boxes that had fallen to the floor. When he stood up from a squatting position, he felt a "pop" and immediate pain in his left knee. Diagnostic imaging revealed tearing of the posterior horn and body of the medial meniscus. (See Hr. Tr., p. 27; Ex. 3, p. 28) Rainer's left knee required a partial

meniscectomy. He reached maximum medical improvement and was released without restrictions on February 8, 2019. (See Ex. 4, p. 40) Claimant's surgeon, Scott Schemmel, M.D., assigned two percent left lower extremity impairment as a result of the September 27, 2018, left knee injury. (See Ex. 4, p. 40) Dr. Taylor agreed with the impairment rating assigned by Dr. Schemmel. (Ex. 4, p. 42)

Claimant filed a workers' compensation claim following the September 27, 2018, injury, seeking benefits from Nordstrom and the Second Injury Fund of Iowa. (Ex. 3) He alleged the June 24, 2011, right hand and thumb injury as a first qualifying injury. The case came on for hearing before the undersigned on April 23, 2021. In the arbitration decision, dated December 8, 2021, the undersigned accepted Dr. Taylor's three percent impairment rating to the right hand and Dr. Schemmel's seven percent impairment rating to the left knee. The findings were affirmed on appeal to the commissioner.

At hearing, Rainer testified his left knee continues to "pop" and lock up. (Hr. Tr., p. 47) To address the ongoing complaints, Rainer uses ice packs and over-the-counter pain medication. (Hr. Tr., p. 71)

I find claimant has carried his burden of proving a first qualifying injury for Second Injury Fund purposes. Having found claimant sustained permanent impairment as a result of the right elbow injury occurring on October 23, 2019, I similarly find claimant carried his burden of proving a second qualifying injury for Second Injury Fund purposes. However, the Fund correctly asserts Rainer has not yet reached MMI for the October 23, 2019, work injury and, as such, he is not entitled to any payments from the Fund at this time. It is currently unknown whether the injuries to the right wrist and the sequela injury to the left upper extremity will result in permanent impairment. As such, the issues of permanency, the extent of credit to which the Second Injury Fund of Iowa is entitled, and the extent of industrial disability, if any, is not ripe for adjudication.

Costs will be assessed in the Conclusions of Law section.

CONCLUSIONS OF LAW

The first issue for determination is whether claimant sustained injuries, which arose out of and in the course of his employment, to his right wrist and left arm.

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

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of refer to the cause or source of the injury. The words "in the course of refer to the time, place, and circumstances of the injury. 2800 Corp., v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler 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.

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.

An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012). The Iowa Supreme Court held long ago that "where an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident." Oldham v. Scofield & Welch, 222 Iowa 764, 266 N.W. 480, 482 (1936).

A sequela can be an after effect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154, (Arb. September 11, 1989). A sequela can take the form of a secondary effect on the claimant's body stemming from the original injury. For example, where a leg injury causing shortening of the leg in turn alters the claimant's gait, causing mechanical back pain, the back condition can be found to be a sequela of the leg injury. Fridlington v. 3M, File No. 788758, (Arb. November 15, 1991).

Following review of the entirety of the evidentiary record, and after giving significant consideration to the medical opinions in evidence, I determined claimant carried his burden of proving the right wrist and left arm conditions are causally related to, or sequela of, the October 23, 2019, work injury.

Claimant is seeking alternate medical care consisting of ongoing treatment of his right wrist and left arm conditions. More specifically, claimant is requesting a referral to an orthopedic specialist for his right and left arm complaints, an MRI of the right wrist, and an EMG of the left wrist. Defendant employer denied liability for these two conditions and is offering no treatment for the conditions at this time.

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. Iowa Code section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Having found claimant carried his burden of proving the right wrist and left arm conditions are causally related to, or sequela of, the October 23, 2019, work injury, I further find claimant is entitled to ongoing medical care to address the same. Iowa Code section 85.27.

The next issue in this case is whether claimant has reached MMI for his right wrist and left arm conditions. The Iowa Supreme Court has described MMI as "stabilization of the condition or at least a finding that the condition is 'not likely to remit in the future despite medical treatment.'" Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 200 (Iowa 2010) (citation omitted).

In the matter at hand, no physician has placed claimant at MMI with respect to the right wrist or left arm conditions. As a result, I found claimant has not reached MMI for either condition. I therefore conclude claimant's claim for permanent disability is not yet ripe for determination. I find that recommendations for treatment exist and that such treatment should be undertaken before a determination of claimant's permanent disability occurs.

The question then becomes whether claimant is entitled to temporary disability benefits at this time.

The Iowa Supreme Court has specifically noted that a claimant's healing period terminates whenever the first of three factors in Iowa Code section 85.34(1) is met. Evenson v. Winnebago Industries. Inc., 881 N.W.2d 360 (Iowa 2016). The factors are whether (1) "the employee has returned to work," (2) "it is medically indicated that significant improvement from the injury is not anticipated" (MMI), or (3) "the employee is medically capable of returning to employment substantially similar to the employment in which the employee was engaged at the time of injury." Iowa Code § 85.34(1).

It is well settled in Iowa that a healing period may be intermittent. Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012); Teel v. McCord, 394 N.W.2d 405 (Iowa 1986). Healing period may terminate and then begin again. Willis v. Lehigh Portland Cement Co., I-2 Iowa Ind. Comm'r Decisons 485 (Review Reopening 1984); Clemens v. Iowa Veterans Home, I-1 Iowa Industrial Comm'r Decisions 35 (Review Reopening 1984); Riesselman v. Carroll Health Center, III Iowa Ind. Comm'r Report 209 (App. 1982); Junge v. Century Engineering Corp., II Iowa Industrial Comm'r Report 219 (App. 1981). In multiple healing period scenarios, permanent partial disability is due and payable after the end of the first healing period and this is the time interest on unpaid benefits begins. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Claimant returned to work for the defendant employer in May 2021. Claimant's full-time status as of the date of the evidentiary hearing does not qualify for temporary total, temporary partial, or healing period benefits. He is in a unique position where he is not at MMI, but he is also not entitled to a running award of temporary benefits at this time.

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

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

In this case, Rainer alleges he sustained first qualifying injuries to his right hand on June 24, 2011, and to his left knee on September 27, 2018. Rainer relies upon the expert medical opinions of Dr. Taylor to support his contentions and to establish permanent functional impairment of the right hand and left knee. It has previously been established that claimant suffered a three percent functional loss of use of his right hand and a two percent functional loss of use of his left knee. Rainer v. Nordstrom & Second Injury Fund of Iowa, File No. 5068419 (Arb. December 8, 2021). As such, I found claimant carried his burden of proving he sustained first qualifying injuries.

Having found claimant also carried his burden of proving permanent disability to the right elbow as a result of the October 23, 2019, work injury, I concluded claimant carried his burden of proving a second qualifying injury for purposes of his claim against the Second Injury Fund of Iowa. Iowa Code section 85.64.

However, the Fund correctly points out that the extent of claimant's entitlement to permanent disability benefits related to the October 23, 2019 injury, cannot be determined at this time as claimant has not reached MMI for all conditions stemming from the October 23, 2019, work injury. Assessing claimant's industrial disability for some but not all of his work-related conditions could result in piecemeal litigation with confusing and potentially conflicting results. As such, I find Rainer's claim against the Fund is not yet ripe for determination.

Finally, claimant seeks an award of costs. Claimant seeks the cost of his filing fee, totaling $103.00. (Ex. 5) Costs are awarded at the discretion of the agency. Iowa Code section 86.40.

The Second Injury Fund Act does not provide for costs to be paid by the Fund. Iowa Code section 85.64. Additionally, subsection 2 of Iowa Code section 85.66, which

codifies the creation of the Fund, specifically states, in pertinent part "[M]oneys collected in the second injury fund shall be disbursed only for the purposes stated in this subchapter, and shall not at any time be appropriated or diverted to any other use or purpose." The plain language of Iowa Code section 85.66 does not allow for the assessment of costs against the Fund. Houseman v. Second Injury Fund, File No. 5052139 (Arb. Aug. 8, 2016): see Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, at 845 (Iowa 2015) (declaring an agency's authority to tax costs cannot go beyond the scope of the powers delegated in the governing statute).

Claimant brought a successful petition in arbitration. I conclude it is appropriate to assess costs in some amount. Exercising my discretion, I conclude that it is appropriate to assess claimant's filing fee of $103.00 to the defendant employer. No costs will be assessed against the Second Injury Fund of Iowa.

ORDER

THEREFORE, IT IS ORDERED:

Defendant employer shall provide claimant ongoing medical care for his right arm, right wrist, and left arm conditions.

Defendant employer shall pay the future medical expenses of claimant necessitated by the work injury.

Defendant employer shall reimburse claimant's costs in the amount of one hundred three and 00/100 dollars ($103.00).

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

Signed and filed this __31st__ day of March, 2023.

MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Zeke McCartney (via WCES)

Dirk Hamel (via WCES)

Meredith Cooney (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.