BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FERNANDO MARTINEZ-RIVERA, Claimant, vs. SIGNET BUILDERS, INC., Employer, and ACCIDENT FUND GENERAL INSURANCE COMPANY, Insurance Carrier, SECOND INJURY FUND OF IOWA, Defendants.	File No. 5064517.01 ARBITRATION DECISION Head Note Nos.: 1100, 1108, 1402, 1402.30, 1402.60, 1802, 2501, 2701, 3200

STATEMENT OF THE CASE

Claimant Fernando Martinez-Rivera filed a petition in arbitration seeking worker's compensation benefits against Signet Builders, employer, and Accident Fund General Insurance Company, insurer, for an alleged work injury date of July 20, 2016. Claimant also brought a claim against the Second Injury Fund of Iowa (SIF), alleging a first qualifying loss took place on August 30, 2005. The case came before the undersigned for an arbitration hearing on September 21, 2020. This case was scheduled to be an in-person hearing occurring in Des Moines. However, due to the outbreak of a pandemic in Iowa, the Iowa Workers' Compensation Commissioner ordered all hearings to occur via video means, using CourtCall. Accordingly, this case proceeded to a live video hearing via Court Call with all parties and the court reporter appearing remotely. The hearing proceeded without significant difficulties.

The parties filed a hearing report prior to 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 7, Claimant's Exhibits 1 through 14, Defendants' Exhibits A through E, and Second Injury Fund's Exhibits AA and BB.

Claimant testified on his own behalf. The evidentiary record initially closed at the conclusion of the evidentiary hearing, and the parties submitted post-hearing briefs on November 13, 2020. On November 16, 2020, claimant filed a motion to amend his

exhibit list, to include a medical record that was inadvertently overlooked previously. After a brief telephone hearing and consideration of the parties' arguments, the undersigned granted the motion to amend the exhibit list, and accepted claimant's exhibit 14 into evidence. Defendants were then allowed 30 additional days to submit a supplemental brief, which they did on December 17, 2020. The case was considered fully submitted on that date.

ISSUES

1. Whether claimant sustained an injury to his left shoulder on July 20, 2016;
2. Whether claimant is entitled to temporary disability benefits from December 11, 2019, to present;
3. The extent of permanent disability to claimant's left upper extremity related to the accepted wrist injury;
4. Whether claimant sustained industrial disability;
5. The commencement date for permanent partial disability benefits, if any;
6. Payment of certain medical expenses;
7. Payment of claimant's IME under Iowa Code section 85.39;
8. Alternate medical care pursuant to Iowa Code section 85.27;
9. Whether claimant is entitled to benefits from the Second Injury Fund of Iowa;
10. If so, the commencement date for Second Injury Fund Benefits; and
11. Taxation of costs.

FINDINGS OF FACT

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

Claimant's testimony was consistent as compared to the evidentiary record, and his demeanor at the time of hearing gave the undersigned no reason to doubt his veracity. Claimant is found credible.

At the time of hearing, claimant was 49-years old. (Hearing Transcript, p. 12) Claimant was born in Montemorelos, Nuevo Leon, Mexico, and is a native Spanish-speaker. (Tr., p. 12-13) Claimant does not speak, read, or write English. (Tr., p. 13) Claimant attended school in Mexico until high school, but did not graduate. He does not have any other formal education or certificates, and has no computer skills. (Tr., pp. 13-14)

Since leaving school, claimant has spent most of his life working in Mexico. (Tr., p. 15) He has worked as a laborer, mainly in construction jobs, including roofing work and brick work. He has also done concrete work, including mixing mortar, carrying cinder blocks, and making sidewalk curbs. (Tr., p. 15) He has also done farming work in Mexico, which included working in fields and cleaning the farms. (Tr., p. 16) Claimant described all of his past work as involving physical labor. (Tr., pp. 15-16)

On August 30, 2005, while working at a poultry farm in Mexico, claimant was atop a silo that was being loaded with animal feed. (Tr., pp. 36-37) The silo was about 4 or 5 meters, and he was filling it with feed. When a tube was moved, causing the silo to

shift, he lost his balance and fell. (Tr., p. 37) The way he landed caused him to injure his feet. (Joint Exhibit 1, p. 2) He treated at the Mexican Institute of Social Security, where he was initially noted to have pain in both heels. (Jt. Ex. 1, p. 4) He received conservative treatment, and was eventually released to return to work with no restrictions. (Jt. Ex. 1, pp. 6-7) He then returned to work at the same poultry farm, performing the same job duties. (Tr., pp. 57-58) He did not seek treatment for either of his feet following his release from care. (Tr., p. 59)

Claimant went to work for Signet Builders, defendant employer, on May 1, 2016. (Claimant's Exhibit 4, p. 7) Claimant was hired as a temporary worker in order to help with construction of livestock buildings. The work contract states that the job would include working on farms unloading materials, laying out lumber, tin sheets, trusses, and other components for building the structures; building and erecting walls and trusses; lifting tin sheets to roof and sheet walls; installing doors; caulking structures; and cleaning up job sites. Workers were required to lift and carry 50-pounds for a distance of 75-yards. The contract indicates claimant was paid $13.80 per hour. The contract end date was January 15, 2017. (Cl. Ex. 4, p. 7)

Claimant testified that his work at Signet consisted of making scaffolding. (Tr., p. 18) His job was to assist a builder by carrying all of the tools and materials he would be using each day. (Tr., pp. 18-19) He testified that he often carried heavier items on his left shoulder. (Tr., p. 19)

Claimant was injured while working at Signet on July 20, 2016. Claimant was standing on a wooden bench or stool when he fell, landing on his left side. (Tr., pp. 19-20) He testified that when he fell, he knew his wrist was broken just by looking at it. (Tr., p. 20) He also felt that his shoulder cracked, but he "didn't pay it much mind because I felt that the injury to the wrist was more serious." (Tr., pp. 19-20) He was eventually taken to the hospital, where it was determined that he needed surgery on the wrist right away. (Tr., pp. 20-21)

Upon arrival at Spencer Hospital, claimant had a coworker with him who was able to translate. (Jt. Ex. 2, p. 12; Tr., pp. 41-42) However, that person left, and claimant was left with no interpreter. (Tr., p. 41) X-rays were taken of the left wrist, which showed a comminuted and mildly angulated distal left radial fracture. (Jt. Ex. 2, p. 15) An orthopedic consult was ordered, and claimant was then treated by Rick Wilkerson, D.O. (Jt. Ex. 2, p. 10) Dr. Wilkerson's notes indicate that no interpreter was present at the hospital, but he was able to speak with a translator on the phone that was of "some benefit." After examination, Dr. Wilkerson recommended surgery. (Jt. Ex. 2, p. 10) Claimant testified that he did not understand anything that was going on at this time, due to the language barrier, but he was taken to surgery around 9:30 that evening. (Tr., p. 41) Dr. Wilkerson performed a closed reduction procedure with external fixator placement for "left wrist Colles fracture." (Jt. Ex. 2, p. 17) Claimant was discharged from the hospital the following day, and a coworker picked him up and took him to the hotel where he was staying. (Tr., p. 41)

Claimant followed up with Dr. Wilkerson on August 4, 2016. (Jt. Ex. 3, p. 31) His record indicates claimant did have a translator present at that visit. Claimant testified that Lisa Gutierrez is the person who attended to translate. (Tr., p. 22) Ms. Gutierrez is

not a paid or licensed translator, but someone who works "for the man who is the boss there (Signet)." (Tr., p. 22) Dr. Wilkerson noted that X-rays taken that day showed claimant's fracture had re-displaced, and he recommended additional surgery to attempt to reposition the fixator. If that was not successful, claimant would need an open reduction and internal fixation (ORIF) with plate and screws. Claimant agreed, and surgery was scheduled for the following week. (Jt. Ex. 3, p. 31)

Claimant's second surgery took place on August 10, 2016. (Jt. Ex. 2, p. 23) Dr. Wilkerson's post-operative diagnosis was severely comminuted, displaced, closed left Colles fracture with failed external fixator. He performed an open reduction, internal fixation surgery with volar plating. (Jt. Ex. 2, p. 23) Claimant testified that after surgery, Ms. Gutierrez took him to a hotel in Spencer, and then he was taken to "the boss's ranch" where he stayed for a period of time. (Tr., pp. 22-23)

Claimant's first follow up visit following surgery was on August 17, 2016, at which time his sutures were removed and he was placed in a thumb spica cast. (Jt. Ex. 3, p. 32) He noted that his fingers were sore and swollen, but he had not been having much pain in his wrist. (Jt. Ex. 3, p. 32)

Claimant's next follow up was on September 21, 2016. (Jt. Ex. 3, p. 33) Dr. Wilkerson noted that claimant had stiffness in his fingers, "as he apparently has not been doing anything while in the cast." Dr. Wilkerson attributed that at least partly to a "translation difficulty." Dr. Wilkerson further notes that neither claimant's "workers' compensation nurse" nor company translator accompanied him to the appointment. As such, he "gave her a call," and explained that claimant would be in a soft wrist splint, with restrictions of no using his left hand for 3 weeks. It is unclear who Dr. Wilkerson called, but based on claimant's testimony discussed below, it was most likely Ms. Gutierrez. He also ordered occupational therapy to take place 3 times per week, as well as "working very hard at home to get these fingers moving." He wanted to see claimant back in 3 weeks for recheck and new X-rays. (Jt. Ex. 3, p. 33)

Dr. Wilkerson added an addendum to the September 21, 2016 record, noting that he checked to see why claimant's appointment was this far out as "normally we would have started range of motion much sooner than 6 weeks." (Jt. Ex. 3, p. 33) He was advised that claimant had an appointment scheduled 2 weeks earlier, but it was cancelled by his employer due to no interpreter being available for that visit. Dr. Wilkerson noted:

> Of interest, they did not send an interpreter with him at this visit either, and I am afraid that the delay in onset of his therapy has certainly influenced the motion of his fingers and hand. At this time hopefully with the request of therapy we will get that corrected.

(Jt. Ex. 3, p. 33)

Unfortunately, claimant was not able to complete occupational therapy or return for another appointment with Dr. Wilkerson. Claimant testified that shortly after his appointment, Ms. Gutierrez came to his room. (Tr., pp. 24-25) At this time he was staying at the boss's ranch. Claimant testified that he was taken to meet with the boss

and his daughter, who told him they understood he was planning to sue them, and he said that was not true. (Tr., pp. 24-25) Ms. Gutierrez was interpreting for the boss, and according to claimant, the boss said:

> If you want to fight – and he reached into his pockets, and he had some coins. He said, All you're going to get are these coins. And he told me, because what happened to you, that was nothing, and I paid that out of my pocket, and the insurance company was not involved.

(Tr., pp. 24-25)

Next, claimant testified that the boss asked him if he was going to work. (Tr., p. 25) Claimant told him he could not work yet because he had not been released to work by the doctor. Ms. Gutierrez told claimant that the doctor had told her he could get back to one-handed work, but she had forgotten to tell him. (Tr., p. 25) Apparently then the boss asked claimant to work on the ranch with one hand, and claimant said yes, but he wanted to eat lunch first. (Tr., p. 26) Claimant went to eat lunch, and as he was eating, Ms. Gutierrez came in. Claimant testified that Ms. Gutierrez said:

> Hey, the boss is asking, do you want to work or not? I said, Yes. And then a few minutes later she came back in and she said, You know what? No, you're not working here anymore. So go ahead and prepare yourself, get ready, because you're going back to Mexico.

(Tr., p. 26)

After that conversation, claimant testified that he went to speak to the boss, who said he didn't have "any use" for claimant any longer, and he was going back to Mexico. (Tr., p. 26) Claimant testified that Ms. Gutierrez returned with a van, and "they put my luggage in the van. And then they took me and they dropped me off in McAllen, Texas, and they only gave me money for the bus ticket. And they put my luggage on the bus, and they waited there until the bus left, and then they left." (Tr., pp. 26-27) Claimant testified that he felt as though he had no legitimate choice but to return to Mexico at that time. (Tr., p. 27) He was not offered any additional treatment or told how to obtain additional treatment in Mexico. (Tr., p. 27)

According to defendants' answers to interrogatories, claimant's last day of employment was October 2, 2016, and he was terminated for "refusing light duty work, which was offered. Employee expressed a concern that doing so would prohibit his recover (sic) of insurance money." (Second Injury Fund's Exhibit BB, p. 8)

Claimant stayed in Mexico for about 8 days. (Tr., p. 28) He then went to Dalton, Georgia, where he has family. He was still having wrist and shoulder pain, but his wrist pain was worse. (Tr., p. 28) On October 22, 2016, claimant presented to the emergency room at Hamilton Medical Center in Dalton, Georgia. (Jt. Ex. 4, pp. 34-36) He reported pain in his left wrist and hand, and being unable to move his fingers due to the pain. (Jt. Ex. 4, p. 40) X-rays showed extensive degenerative and chronic changes to the carpal bones, in addition to the hardware from his prior surgery. (Jt. Ex. 4, pp. 36; 41) Claimant

was provided with medication, a velcro wrist splint, and advised to follow up with an orthopedic physician. (Jt. Ex. 4, pp. 38; 41; 43)

Claimant did not get an appointment with an orthopedic doctor until January of 2017. According to claimant's brief, this delay was because defendant employer had not reported claimant's injury to its insurance carrier until this time. (Cl. Brief, p. 6) Nevertheless, claimant saw Justin M. Arnold, M.D., at Chattanooga Orthopaedic Group in Chattanooga, Tennessee, on January 20, 2017. (Jt. Ex. 5, p. 45) It is noted that Dr. Arnold's record of this date is the first medical record in evidence that shows Accident Fund as the insurance carrier. (Jt. Ex. 5, p. 45)

Claimant testified that between October 2016 and his first appointment with Dr. Arnold, he did not do much activity with his arm. (Tr., p. 29-30) Claimant had a relative with him at the appointment with Dr. Arnold in order to translate. (Tr., p. 47) Dr. Arnold noted the history of claimant's injury, and his current complaints of pain and stiffness, as well as numbness and tingling in his index and middle finger. (Jt. Ex. 5, p. 46) He reported pain at level 8 of 10, intermittent, worse with pressure. He was wearing a wrist brace "pretty much all the time." After physical examination, Dr. Arnold noted that "the change of venues postsurgical certainly did not help given his lack of access to therapy. I think that has contributed quite a bit to his stiffness as has his continued pain which he has been required to wear the brace for." (Jt. Ex. 5, p. 46) Dr. Arnold suspected median nerve compression and/or residual damage, and recommended a nerve study. He indicated surgery would likely be recommended thereafter for carpal tunnel release, median nerve neurolysis, and likely removal of hardware. He assigned restrictions of no use of the left arm. (Jt. Ex. 5, pp. 46-47)

Claimant saw James P. Little, M.D., for and EMG and NCS on February 7, 2017. (Jt. Ex. 6, p. 87) Dr. Little noted claimant's complaints of difficulty in using the left upper extremity, "particularly distally." (Jt. Ex. 6, p. 88) He further complained of pain and weakness in his forearm and hand, numbness and tingling of the hand, and clumsiness and an inability to hold on to things. (Jt. Ex. 6, p. 88) Dr. Little's note further indicates claimant "has left neck pain which radiates into the left shoulder area, but not typically into the left upper extremity." (Jt. Ex. 6, p. 88) Pain was exacerbated by movement and cold weather. On physical examination, Dr. Little noted that claimant's left wrist appeared to be "nearly completely fused and positioned with very minimal flexion and extension at the wrist." (Jt. Ex. 6, p. 88) He also noted that strength testing revealed "breakaway weakness throughout the entire left upper extremity, but the patient can achieve up to 4/5 with encouragement." (Jt. Ex. 6, p. 89)

The results of the EMG/NCS revealed moderately severe left median nerve compression at the wrist. (Jt. Ex. 6, p. 87) Claimant returned to Dr. Arnold on February 14, 2017, who noted the nerve study showed moderately severe carpal tunnel syndrome and "some other findings of nerve injury due to trauma." (Jt. Ex. 5, p. 52) Dr. Arnold recommended left carpal tunnel release, median nerve neurolysis, and hardware removal, to be followed by physical therapy. (Jt. Ex. 5, p. 52)

Claimant had the surgery on April 6, 2017, and followed up with Dr. Arnold on April 19, 2017. (Jt. Ex. 5, pp. 58-59) He wanted to get claimant started with therapy at that time. (Jt. Ex. 5, pp. 59) At his next follow up on May 19, 2017, he had started

physical therapy, and was continuing to improve. (Jt. Ex. 5, pp. 63-64) On June 9, 2017, he reported only occasional pain. (Jt. Ex. 5, pp. 68) He was not taking any medication, was using his arm and hand more, and had one more week of therapy. He felt like he had progressed. (Jt. Ex. 5, p. 68) Dr. Arnold indicated he could increase activity as tolerated, and return to work in 2 weeks with no restrictions. (Jt. Ex. 5, p. 68)

Dr. Arnold provided a final medical report on September 6, 2017. (Jt. Ex. 5, pp. 73-74) He placed claimant at maximum medical improvement on that date, and provided an impairment rating of 8 percent of the upper extremity. (Jt. Ex. 5, pp. 73-74) [1] Claimant was also released to return to work with no restrictions as of June 26, 2017. (Jt. Ex. 5, p. 73)

Following his release from care, claimant began to perform more activities with his left arm. (Tr., p. 31) He testified that he started helping around the house, mowing the grass and sweeping. (Tr., p. 32) He also obtained work at Dependable Rug Mills in Georgia, at some point in 2018. (Tr., p. 31-32) As he began to use his left arm more, he began to notice increased pain in his left shoulder. (Tr., pp. 31-32) Claimant testified that his job at Dependable Rug Mills was a light job, but he was using his arms more when they had to roll up the rugs. (Tr., p. 32) He stated that he did not injure his arm while working there, but simply noticed increased shoulder pain because he was now using his arm more. (Tr., p. 32) He testified that his shoulder pain was constant since the time of the injury in July of 2016, but he did not mention it to doctors at first because he was more focused on his wrist, which was more severe at the time. (Tr., pp. 32-33)

Claimant eventually returned to Dr. Arnold for his shoulder pain, as well as increased numbness in his hand, on February 27, 2019. (Jt. Ex. 5, p. 75) Claimant testified that it took "a while" to get that appointment scheduled, but there is no evidence regarding exactly how long. (Tr., p. 33) Dr. Arnold noted:

> He has had increased numbness over the last 6 months. It is now constant in his left hand. Denies any significant changes in his work. He is also complaining of left shoulder pain and was not noticed previously on my exam, but they said it has been there since he fell off a ladder year and a half ago. He just thought it would get better, but it has not. Says the pain is 2/10, it is anterior, worse with motion. Denies any acute injuries recently.

(Jt. Ex. 5, p. 76)

On physical exam, Dr. Arnold noted decreased sensation in the median nerve distribution, and left shoulder pain with overhead motion and internal rotation. (Jt. Ex. 5, p. 76) He provided claimant with a shoulder injection, and recommended a home exercise program and activity modification. (Jt. Ex. 5, pp. 76-77) With respect to his wrist and hand, he recommended a repeat nerve study. (Jt. Ex. 5, pp. 76-77)

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[1] I note on page 73 of exhibit 5, the instructions state to use the 6th Edition of the AMA Guides to the Evaluation of Permanent Impairment. However, on page 74, Dr. Arnold indicated he used the 5th Edition. In reviewing the AMA Guides, it does appear he used the 5th Edition.

Claimant had the repeat nerve study on April 15, 2019, again with Dr. Little. (Jt. Ex. 6, p. 94) Dr. Little noted claimant had complaints of pain in the wrist area, extending into the hand, which was exacerbated by gripping and other activities, with numbness and tingling of the middle digits extending into the fifth digit. (Jt. Ex. 6, p. 95) He also complained of pain and weakness of the left shoulder, as well as discomfort with reaching and other overhead activities. At that time, he denied associated neck pain or cervical radicular symptoms. (Jt. Ex. 6, p. 95) On physical exam, Dr. Little again noted breakaway weakness of the left shoulder due to discomfort. (Jt. Ex. 6, p. 96)

The results of the EMG/NCS were largely normal, with some minimal residual abnormalities that are noted to be "expected." (Jt. Ex. 6, p. 94) Claimant returned to Dr. Arnold on May 7, 2019, at which time claimant reported the prior shoulder injection only helped for a few days. (Jt. Ex. 5, pp. 80-81) He continued to report pain with reaching and lifting. (Jt. Ex. 5, p. 81) On physical examination, Dr. Arnold noted "essentially full range of motion" of the left shoulder. (Jt. Ex. 5, p. 81) He recommended an MRI. With respect to the ongoing wrist and hand complaints, Dr. Arnold had no further surgical options, and advised claimant that the nerve symptoms may improve with time, or may not. (Jt. Ex. 5, p. 81)

Claimant had a functional capacity evaluation (FCE) on June 5, 2019. (Cl. Ex. 5, p. 8) It is noted that claimant was working part time at the rug factory at that time, where his job involved rolling small to medium sized area rugs on a roller machine. (Cl. Ex. 5, p. 15) He would load the machine, the machine would roll the rug, and then he would wrap the rug with plastic tape. His job did not involve any heavy lifting. (Cl. Ex. 5, p. 15) During testing, claimant had decreased shoulder range of motion bilaterally, left worse than right. (Cl. Ex. 5, pp. 12-13) He was also noted to have decreased shoulder strength, and reported shoulder pain with movement. With respect to his left wrist and hand, he also demonstrated decreased range of motion and strength, and reported pain with movement. (Cl. Ex. 5, p. 13) The results of the FCE were valid, and claimant's abilities fell into the medium work category with the exception of right carry, which fell into the heavy work category. (Cl. Ex. 5, pp. 8-9)

Dr. Arnold signed a letter authored by defense counsel, dated October 4, 2019. (Def. Ex. A, pp. 1-2) [2] He agreed that based on the "timing of the left shoulder complaints, being over 3 years since the original injury, his shoulder complaints were not related to the work injury." He further agreed that even if claimant had complained of shoulder problems after the injury, which defense counsel represented were absent from the medical records, "it would still [be] difficult to relate the shoulder complaints to the original injury given the delay in seeking treatment for his shoulder until 2019." (Def. Ex. A, p. 1)

Based on Dr. Arnold's opinion, defendants denied the shoulder condition was work related. Because compensability of the shoulder injury was denied, and claimant did not have health insurance, he had to wait to obtain the shoulder MRI recommended by Dr. Arnold. He was able to get the MRI on November 27, 2019. (Jt. Ex. 7, pp. 99-100) The MRI showed a full-thickness tear of the supraspinatus tendon; chronic

[2] Dr. Arnold's actual signature on the letter is not dated, but it is assumed he signed it on or around October 4, 2019.

changes of the acromioclavicular joint; and a possible labral tear. (Jt. Ex. 7, pp. 99-100) Following the MRI, claimant returned to Dr. Arnold on December 11, 2019. (Jt. Ex. 5, p. 83) At that time, he reported shoulder pain at level 7 of 10, worse with overhead motion, reaching, and lifting. (Jt. Ex. 5, pp. 84)

Dr. Arnold's record notes that claimant advised his shoulder pain did not start until "after the injuries," and that he did not notice it initially due to the wrist fracture, "which is reasonable." (Jt. Ex. 5, p. 84) Claimant denied shoulder pain prior to the work injury. Dr. Arnold recommended rotator cuff repair and subacromial decompression surgery. He also stated:

> [G]iven the full-thickness nature [of the tear] while I cannot say with 100% certainty given that this came about after the fall, it is reasonable to assume that it was related to the fall. However, there has been some time and (sic) between I do not have access to all the records, but the patient does deny prior shoulder pain.

(Jt. Ex. 5, p. 84) Dr. Arnold provided claimant with work restrictions at that time of no lifting, pushing, or pulling with the left upper extremity. (Jt. Ex. 5, p. 85)

Claimant testified that he has not worked since his last appointment with Dr. Arnold due to his ongoing pain and work restrictions. (Tr., pp. 34-35) He has not been able to get the surgery Dr. Arnold recommended because he does not have the means. (Tr., p. 34)

Dr. Arnold signed a second letter authored by defense counsel on February 28, 2020. (Def. Ex. B, p. 3) The letter notes the apparent inconsistencies between Dr. Arnold's October 4, 2019 opinion, and his December 11, 2019 medical record. The letter states:

> Specifically, you clarified that while it is possible [claimant's] left shoulder condition is related to the accident, you are not able to say within a reasonable degree of medical certainty or probability that his left shoulder condition was caused or aggravated by the July 20, 2016 accident.

(Def. Ex. B, p. 3)

Claimant's attorney wrote to Dr. Little on March 30, 2020. (Cl. Ex. 6, p. 17-18) Dr. Little acknowledged by signature dated April 6, 2020, that on February 7, 2017, claimant had left shoulder pain/complaints, and his examination on that date was consistent with/demonstrated left shoulder pathology. Likewise, on April 15, 2019, claimant had left shoulder pain/complaints, and his examination on that date was also consistent with/demonstrated left shoulder pathology. (Cl. Ex. 6, pp. 17-18)

Dr. Little later provided a report to claimant's attorney, in response to questions. (Cl. Ex. 6, pp. 19-20) The first question essentially asked Dr. Little what was different about his April 2019 examination of claimant, compared to the previous examination in February 2017. (Cl. Ex. 6, p. 19) Dr. Little noted that during the first physical examination in February of 2017, claimant remained:

> [S]ignificantly symptomatic throughout the entire left upper extremity, including shoulder, elbow, and wrist pain, with increased discomfort with examination including range of motion and strength testing. The patient had significant trauma including a wrist fracture which required surgical intervention with complicating left median nerve compression at the wrist.

(Cl. Ex. 6, p. 19)

During his second physical examination in April 2019, Dr. Little noted that claimant continued to complain specifically of left upper trapezius and shoulder pain, as well as pain and weakness of the left shoulder, despite an injection being performed two months prior. His other symptoms involving his wrist had "improved significantly." He also continued to have breakaway weakness due to pain at the left shoulder. (Cl. Ex. 6, p. 19) In summary, Dr. Little opined that claimant had shoulder symptoms that did not improve significantly from the initial trauma until his second examination in April 2019. (Cl. Ex. 6, p. 20) He had ongoing treatment for his left shoulder, including an injection, which indicates claimant was "significantly symptomatic." Although claimant had x-rays of the shoulder, he had not had soft tissue imaging, which would be necessary to document specific soft tissue injuries such as a rotator cuff tear. (Cl. Ex. 6, p. 20)

On July 13, 2020, Dr. Little provided an independent medical evaluation (IME). (Cl. Ex. 6, pp. 21-27) He noted related diagnoses of: 1) severely comminuted displaced Colles fracture treated initially with external fixator followed by ORIF, with residual pain and limitation of wrist motion and mild left grip/wrist weakness; 2) left median nerve compression at the wrist (carpal tunnel syndrome) with subsequent left carpal tunnel release, median nerve neurolysis, hardware removal, and manipulation under anesthesia of the wrist joint; 3) persisting left shoulder pain with delayed MRI demonstrating full thickness tear of the supraspinatus tendon, chronic changed of the acromioclavicular joint with fluid signal (possible acute-on-chronic injury), and possible labral tear; and 4) FCE limiting claimant to medium work category. (Cl. Ex. 6, p. 21) Dr. Little noted the mechanism of claimant's work injury involved a fall onto his outstretched left upper extremity. (Cl. Ex. 6, p. 22)

Dr. Little reviewed claimant's medical treatment following the work injury. He noted that when he first examined claimant in February 2017, "the patient was noted to have left shoulder pain." Given the possibility of cervical root or suprascapular nerve pathology, Dr. Little included electrodiagnostic studies of the neck and shoulder girdle, as well as the rotator cuff muscles. (Cl. Ex. 6, p. 22) There was no evidence of cervical root or plexus pathology or of injury to the supraspinatus or infraspinatus muscles. (Cl. Ex. 6, p. 22) When he next saw claimant in April 2019, his wrist symptoms had significantly improved, but he "continued to have pain in the left shoulder with breakaway weakness, but no associated electrodiagnostic abnormalities proximally in the left upper extremity." (Cl. Ex. 6, p. 23)

On physical examination, Dr. Little noted some restriction in range of motion with respect to claimant's left wrist. (Cl. Ex. 6, p. 24) He had good range of motion in his bilateral shoulder, although he had some discomfort with "extremes" of rotation and abduction in the left shoulder as compared to the right. He further noted continuing

breakaway weakness in the left shoulder, while the right shoulder was normal. (Cl. Ex. 6, p. 19-20)

In his summary, Dr. Little noted that claimant had significant trauma when he fell and was injured while working on July 20, 2016. (Cl. Ex. 6, p. 25) His wrist injury left him with some restriction of wrist range of motion. With respect to his shoulder, he continues to have pain and associated breakaway weakness. He further stated:

> Regarding the mechanism of the shoulder injury, it is unclear as to the patient's actual onset, but as the orthopedic surgeon's final note . . . indicated on 12/11/2019, "Well, (sic) I cannot say with 100% certainty given that this came about after the fall, it is reasonable to assume it was related to the fall." As has been noted in my history and physical examination findings on dates of performance of electrodiagnostic studies, the patient consistently had complaints of shoulder pain and breakaway weakness.

(Cl. Ex. 6, p. 25)

In response to questions, Dr. Little opined that that claimant's injuries resulting from the July 20, 2016 work accident included a comminuted left Colles fracture involving the left wrist and median nerve with probable left shoulder injury at that time as well, with subsequent MRI confirmation of a rotator cuff tear. (Cl. Ex. 6, p. 25) He placed claimant at MMI for the wrist injury on the date of his last electrodiagnostic study, April 15, 2019. (Cl. Ex. 6, pp. 25-26) With respect to the left shoulder, he stated that because claimant has a documented full-thickness tear of the left rotator cuff with current surgical recommendations, he is not considered to be a MMI, pursuant to the AMA Guides. (Cl. Ex. 6, p. 26) Because claimant is not considered to be at MMI for the shoulder, Dr. Little deferred providing an impairment rating or long-term restrictions. He did note, however, that claimant "will have a ratable injury distally as well as including limitation of motion at the left wrist and incomplete median nerve injury." (Cl. Ex. 6, p. 26)

Claimant's attorney asked some follow up questions of Dr. Little via letter dated August 4, 2020. (Cl. Ex. 6, p. 28) Dr. Little specifically agreed that it is more likely than not that the work incident on July 20, 2016, caused claimant's need for the left shoulder surgery recommended by Dr. Arnold. He further agreed that in the absence of additional treatment, the shoulder injury is permanent, and the restrictions noted in the 2019 FCE are reasonable in the absence of additional care. Finally, he agreed that claimant should follow the FCE restrictions until he receives additional treatment for his shoulder, including surgery. (Cl. Ex. 6, p. 28)

Claimant had another IME with Sunil Bansal, M.D., on June 5, 2019. (Cl. Ex. 8) Dr. Bansal's report was not completed and signed until August 20, 2020, however, and includes his review of medical records from treatment that occurred after the date of the IME, including the MRI report from November 2019. (Cl. Ex. 8, pp. 46-47; 53) After review of the medical records and examination of claimant, Dr. Bansal opined that claimant's work-related injuries arising from the July 20, 2016 incident included left wrist distal radius fracture, left carpal tunnel syndrome, and left shoulder rotator cuff tear. (Cl. Ex. 8, p. 50) He agreed with Dr. Arnold that claimant reached MMI for his left wrist on

June 9, 2017. (Cl. Ex. 8, p. 51) With respect to the left shoulder, he opined that in the absence of further treatment, claimant reached MMI as of the date of his exam on June 5, 2019. (Cl. Ex. 8, p. 51) (emphasis added).

With respect to permanent impairment, Dr. Bansal provided a 9 percent upper extremity rating related to range of motion deficits in the left wrist, and 3 percent of the upper extremity related to the carpal tunnel syndrome. (Cl. Ex. 8, pp. 51-52) For the shoulder, he provided a 7 percent upper extremity rating, which converts to 4 percent of the body as a whole. (Cl. Ex. 8, p. 52) He recommended permanent restrictions of avoiding frequent turning and twisting with the left wrist; no lifting over 20 pounds with the left hand occasionally, 10 pounds frequently; and no over shoulder lifting with the left hand. (Cl. Ex. 8, p. 52-53) Finally, he recommended surgical repair of the left full-thickness rotator cuff tear. (Cl. Ex. 8, p. 53)

On August 20, 2020, Dr. Wilkerson responded to a letter from claimant's attorney. (Cl. Ex. 14, p. 77) The letter indicated that Dr. Wilkerson was provided with claimant's medical records related to his work injury. After review of the records, Dr. Wilkerson indicated he agrees that the mechanism of claimant's injury – a fall onto his left upper extremity – is consistent with the full- thickness tear of his supraspinatus tendon as demonstrated on the MRI. He further agreed that in the absence of additional trauma, it is more likely than not that claimant's work-related fall in 2016 caused the injury to his left shoulder, including the rotator cuff tear. (Cl. Ex. 14, p. 77)

Defendants had Matthew Bollier, M.D., perform a chart review of medical records, and his report is dated August 22, 2020. (Def. Ex. C) Dr. Bollier noted that the chart review was conducted without medical examination, but he did not believe an in-person examination was necessary to provide any further information to answer the questions requested in this particular case. (Def. Ex. C, p. 5) His review was also based on the assumption that the medical record "is true and accurate." (Def. Ex. C, p. 5)

After review of the medical records, Dr. Bollier concluded that claimant's work injury on July 20, 2016, did not cause the left shoulder rotator cuff tear. (Def. Ex. C, p. 7) He based his decision on three main factors. First, that there was no record of left shoulder pain in the initial medical records following the injury. According to Dr. Bollier, "[t]he first clear indication of left shoulder pain occurred in 2019." (Def. Ex. C, p. 7) He notes that there was no mention of left shoulder pain by Dr. Arnold in 2017, and that "Dr. Little mentioned left neck pain radiating into the left shoulder but no specific left shoulder complaints in 2017." (Def. Ex. C, p. 7) Second, Dr. Bollier stated that claimant's "work as a manual laborer before and after the July 2016 injury contributed to left shoulder rotator cuff tearing." (Def. Ex. C, p. 7) Third, Dr. Bollier stated that the medical record does not support claimant's claim that the shoulder pain started after the work injury. He concluded that without "clear evidence of left shoulder complaints in the medical record from 2016-2019 and no left shoulder imaging during this time period, I do not think the work injury in July 2016 caused the left shoulder rotator cuff tear." (Def. Ex. C, p. 7)

Dr. Bollier added an addendum to his report dated August 24, 2020. (Def. Ex. C, p. 8) He notes in the addendum that claimant "worked as a manual laborer" prior to the July 2016 work injury as well as after. However, he stated that he does not believe that

claimant had a cumulative injury at Signet Builders. He then stated that "[c]umulative work injuries causing rotator cuff tears involve greater than 25-30 years of repetitive work at the same employer. This did not occur in this case." (Def. Ex. C, p. 8)

There are a number of problems with Dr. Bollier's report. First, it is unclear whether he was provided with a complete or accurate description of how claimant's injury occurred. All Dr. Bollier notes regarding the mechanism of injury is that claimant was working for the employer and "stepped down with a nail gun in his right hand. He slipped and broke his left wrist with the fall." (Def. Ex. C, p. 5) There is no indication Dr. Bollier was aware that claimant was standing on some type of step-stool when he fell, or if he was aware that claimant landed on his outstretched left arm. Second, Dr. Bollier notes claimant's first surgery with Dr. Wilkerson, which involved "closed reduction and external fixation left distal radius." (Def. Ex. C, p. 6) However, he then states that "[a]fter a couple follow up visits, he then returned to his native Mexico." (Def. Ex. C, p. 6) There is no mention of the second ORIF surgery that occurred on August 10, 2016, or the fact that claimant was essentially forced to return to Mexico prior to completing his course of treatment.

Additionally, it is unclear what information Dr. Bollier was provided regarding claimant's work both before and after the injury. He notes that claimant worked as a manual laborer, which is true prior to the injury. (Def. Ex. C, p. 7) However, after the injury, claimant never returned to work at Signet. The only job claimant has had since the work injury was working for Dependable Rug Mills, which claimant testified was a light job. (Tr., p. 32) Additionally, he did not begin working there until sometime in 2018, and he stopped working in December 2019. It is difficult to understand why Dr. Bollier believes claimant's work as a manual laborer "before and after" the July 2016 injury contributed to the rotator cuff tear when he does not provide an explanation for what he understood claimant's work to be, and how that work would have contributed. This becomes even more confusing when he notes in the addendum that claimant would have had to do the same repetitive work for 25 to 30 years in order to have a cumulative rotator cuff tear, which he notes did not occur in this case. (Def. Ex. C, pp. 7-8)

Another issue with Dr. Bollier's report is the fact that he did not personally interview or examine claimant. While he stated that he did not believe it was necessary in this case, had he talked to claimant, he might have obtained additional helpful information. For example, claimant testified that his shoulder pain was constant since the time of the injury in July of 2016, but he did not mention it to doctors at first because he was more focused on his wrist, which was more severe at the time. (Tr., pp. 32-33) I cannot speculate as to whether this information would have changed Dr. Bollier's opinions regarding causation, but it is certainly relevant information that he did not appear to have when he reached his conclusions. Given these issues, I do not find Dr. Bollier's report convincing.

Dr. Little reviewed Dr. Bollier's report, and issued a "response to attorney letter" dated September 9, 2020. (Cl. Ex. 6, p. 29) Dr. Little reviewed his dictated reports and his "scratch sheets" regarding claimant's history as taken prior to the February 7, 2017 electrodiagnostic study, which he then provided to claimant's attorney. (Cl. Ex. 6, p. 29; Jt. Ex. 6, pp. 92-93) Dr. Little then notes that both his scratch sheet and his subsequent dictation on that date "reference specific complaints of shoulder pain." (Cl. Ex. 6, p. 29;

Jt. Ex. 6, p. 92) He goes on to explain both neck and shoulder pain are common findings in his practice, so he frequently performs electrodiagnostic studies to help "differentiate primary shoulder pathology vs cervical root or brachial plexus radiculopathy." (Cl. Ex. 6, p. 29) Claimant's studies in February 2017 were negative, "making a cervical root or plexus source of shoulder pain symptoms unlikely."

Dr. Little also notes that on physical exam, claimant demonstrated breakaway weakness throughout the entire right upper extremity, "which of course includes proximal, i.e. shoulder, as well as elbow and more distal muscles." (Cl. Ex. 6, p. 29) At both the 2017 and 2019 examinations, Dr. Little noted shoulder "pain with associated weakness." (Cl. Ex. 6, p. 29)

Dr. Little further explained that in the absence of electrodiagnostic abnormalities, the next step in the diagnostic process would be to obtain bony imaging studies to rule out bony pathology. (Cl. Ex. 6, p. 29) If that is negative, and symptoms persist, the next step is a soft tissue study such as an MRI. As Dr. Little notes, when that step was taken in claimant's case, it was positive for a rotator cuff tear. (Cl. Ex. 6, p. 29)

Dr. Little then concluded:

> Given the mechanism of the patient's injury which included a fall on an outstretched upper extremity, it is likely that the shoulder injury occurred at the same time as the most distal injuries, with subsequent confirmation when appropriate soft-tissue studies were performed.

(Cl. Ex. 6, p. 30)

Claimant testified credibly that he heard his shoulder crack when he fell, but the severity of his wrist injury overshadowed any issues with his shoulder at the time. After his wrist injury finally improved and he was able to begin using his left arm for more activity, he began to notice more shoulder pain. There is no evidence that claimant had any prior injuries or problems with his left shoulder. There is no evidence that claimant had a subsequent injury to his left shoulder after July 20, 2016. Dr. Little and Dr. Bansal have provided well-reasoned opinions indicating that the left rotator cuff tear is more likely than not related to the work injury. Dr. Arnold's opinions are inconsistent, but he ultimately concluded that the shoulder injury possibly occurred at work. Dr. Bollier's opinions are not convincing, as discussed above. Based on all the evidence in the case, I find that claimant's left shoulder injury arose out of and in the course of his employment with Signet Builders.

CONCLUSIONS OF LAW

The first issue to determine is whether claimant sustained an injury to his left shoulder on July 20, 2016, which arose out of and in the course of his employment with Signet Builders. The party who would suffer loss if an issue were not established ordinarily 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" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

Defendants' argument regarding causation is based on the opinions of Dr. Arnold and Dr. Bollier. The question of medical causation is "essentially within the domain of expert testimony." Cedar Rapids Community School v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The deputy commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Systems. Inc. v, Prince, 366 N.W.2d 187, 192 (Iowa 1985).

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).

As discussed above, there were several problems with Dr. Bollier's opinion. Ultimately, I do not find it convincing. Dr. Arnold's opinions are inconsistent, but he did conclude that it was possible claimant's shoulder injury occurred at work. That being said, both Dr. Little and Dr. Bansal provided well-reasoned, detailed reports, concluding

that the shoulder injury more likely than not occurred at the same time as the wrist injury on July 20, 2016. Their reports are supported by the medical evidence in the record, as well as claimant's testimony. Viewing the evidence as a whole, I find claimant met his burden to prove by a preponderance of the evidence that his left shoulder injury arose out of and in the course of his employment at Signet Builders.

Because claimant sustained an injury to his shoulder, he does not qualify for Second Injury Fund benefits. Iowa Code section 85.64(1) does not provide for the shoulder as one of the enumerated body parts that might trigger Fund liability. As such, claimant is not entitled to benefits from the Second Injury Fund of Iowa. The issue of whether he sustained a first qualifying injury in 2005 is moot.

The next issue to determine is whether claimant is entitled to healing period benefits with respect to his left shoulder. Claimant argues that he is entitled to a running award of healing period benefits beginning on December 11, 2019. Defendants disputed this issue on the hearing report, but made no arguments supporting their position in post-hearing briefing.

Iowa Code 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, 312 N.W.2d 60 (Iowa App. 1981). Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Id. Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

Dr. Arnold assigned work restrictions related to claimant's left shoulder injury on December 11, 2019. Claimant has not worked since that date, and based on his restrictions, he is not medically capable of returning to substantially similar employment at this time. The only remaining issue is whether he has reached maximum medical improvement (MMI). Claimant argues that he is not at MMI, given the recommendations for surgery. Again, defendants did not provide any argument regarding claimant's MMI status in their post-hearing brief, although it is a disputed issue on the hearing report.

Dr. Arnold recommended surgery, which is a clear indication that there is a "reasonable expectation of improvement of the disabling condition." Dr. Little specifically stated that claimant has not reached MMI. Dr. Bansal only found MMI "in the absence of further treatment." Given the evidence, I find that claimant is not at MMI. As he has not met any of the conditions in Iowa Code section 85.34(1), he is entitled to a running award of healing period benefits, beginning on December 11, 2019.

The next issue to determine is the disputed medical care. Claimant seeks reimbursement for unauthorized medical expenses, as well as authorization for future treatment. Defendants argue that claimant is not entitled to payment for the unauthorized medical treatment he sought at Hamilton Medical Center on October 22,

2016, related to the accepted left wrist, but make no arguments regarding any additional medical care.

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 (2013).

The right to select the authorized medical provider is a qualified right. West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999). In making its selection of the authorized medical provider, the employer must provide prompt care that is reasonably suited to treat the injury. Id. at 693. The care must also be "without undue inconvenience to the claimant." Id. Additionally, an employer does not have the right to control the methods the providers choose to evaluate, diagnose and treat the injured employee. An employer is not entitled to control a licensed health care provider's exercise of professional judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling, May 19, 1988). An employer's failure to follow recommendations of an authorized physician in matters of treatment is commonly a failure to provide reasonable treatment. Boggs v. Cargill, Inc., File No. 1050396 (Alt. Care January 31, 1994). Reasonable care includes care necessary to diagnose the condition and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening June 17, 1986).

When defendant employer decided to send claimant back to Mexico in October 2016, he had not yet completed his treatment with the authorized treating physician. Dr. Wilkerson had placed claimant in a soft wrist splint, with restrictions of no using his left hand for three weeks. He also ordered occupational therapy to take place three times per week, as well as "working very hard at home to get these fingers moving." He wanted to see claimant back in three weeks for recheck and new X-rays. (Jt. Ex. 3, p. 33) Defendant employer's decision to send claimant back to Mexico with no instructions as to how to continue with the recommended treatment caused an unreasonable delay and substantial inconvenience to claimant, and was an unreasonable interference with his treatment. Defendant employer abandoned its responsibility to provide medical care and treatment for claimant's injuries at that time. This abandonment of care was unreasonable. It interfered with the claimant's ability to receive timely and appropriate medical care for his wrist injury.

Once an abandonment of care has occurred, the claimant is free to seek care on his own at defendant's cost. See West Side Transport v. Cordell, 601 N.W.2d 691 (Iowa 1999) (the court upheld the holding that the defendant employer had "lost the right to choose the care" and that "allow and order other care" language is broad enough to include treatment by a doctor of the employee's choosing).

Defendants argue that before claimant went to the emergency room at Hamilton Medical Center, he did not attempt to contact the employer or insurance carrier to obtain authorization. (Def. Brief, p. 13) However, as of October 22, 2016, when claimant presented to the emergency room, the employer had not yet reported the claim to its

insurance carrier. Claimant had never been contacted by the insurance carrier, and had no way of knowing which insurance company to contact. Further, his last contact with the employer involved being put on a bus to Mexico while his wrist remained in a soft splint, and his treatment had not yet been completed. He was not provided with any instructions as to how to continue receiving the treatment that the authorized treating physician had recommended. The abandonment of care had already taken place, and claimant was free to seek care on his own at that point.

Defendants further argue that claimant did not prove the care he received at the emergency room was "more helpful than the authorized care being offered." (Def. Brief, p. 13) The Iowa Supreme Court has held that unauthorized medical care is beneficial if it provides a more favorable medical outcome than would likely have been achieved by the care authorized by the employer. Bell Bros. Heating & Air Conditioning v. Gwinn, 779 N.W.2d 193, 206 (Iowa 2010). At the time claimant reported to the emergency room, no care was being offered by the employer. Defendants completely abandoned claimant's care when they put him on a bus to Mexico on or around October 2, 2016. Claimant is entitled to reimbursement for the medical care he received on October 22, 2016, as reflected in claimant's exhibit 12, pp. 68-69.

Additionally, I have found claimant's left shoulder injury to be compensable. As such, claimant is entitled to reimbursement for any out of pocket expenses he incurred in seeking treatment for his shoulder. He is also entitled to future medical care for his left upper extremity, including his left shoulder. Defendants shall immediately authorize claimant to return to Dr. Arnold, or other provider of claimant's choosing, for additional treatment, including but not limited to the surgery that was previously recommended.

Claimant seeks reimbursement of his IME costs pursuant to Iowa Code section 85.39. Again, while disputed on the hearing report, defendants offer no argument as to why claimant should not be reimbursed for this expense.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination. Iowa Code section 85.39. In this case, Dr. Arnold offered an impairment rating on September 6, 2017. (Jt. Ex. 5, p. 74) Claimant had Dr. Bansal perform an IME on June 5, 2019, and Dr. Bansal's report was issued on August 20, 2020. I find that the requirements of section 85.39 have been met, and claimant is entitled to reimbursement for Dr. Bansal's IME. (Cl. Ex. 13, p. 76)

Finally, claimant seeks an assessment of costs. Iowa Code section 86.40 states:

> **Costs.** All costs incurred in the hearing before the commissioner shall be taxed in the discretion of the commissioner.

Iowa Administrative Code Rule 876—4.33(86) states:

> **Costs.** 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. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

The invoice related to the FCE is itemized as to the cost of the evaluation and the cost of the report. Using my discretion, I award claimant the cost of the FCE report, in the amount of $620.00, as a practitioners' report. I do not award the cost of the evaluation. Claimant also seeks reimbursement of the $100.00 filing fee, which is also awarded. (Cl. Ex. 13, p. 70-75)

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing from the Second Injury Fund of Iowa.

Defendants shall pay claimant healing period benefits commencing December 11, 2019, at the stipulated rate of four hundred seventy and 65/100 dollars ($470.65). Said benefits will continue until such time as claimant meets the requirements of Iowa Code section 85.34(1).

Defendants are entitled to a credit for all weekly benefits previously paid.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology File No. 5054686 (App. Apr. 24, 2018).

Defendants shall reimburse claimant for all out of pocket expenses associated with treatment for his left shoulder, including but not limited to the expenses totaling one thousand two hundred fifty-three and 99/100 ($1,253.99), as set forth in claimant's exhibit 12.

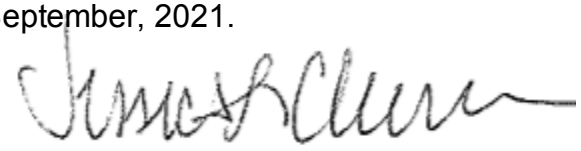
Defendants shall immediately authorize claimant to return to Dr. Arnold, or other provider of claimant's choosing, for additional treatment for claimant's left shoulder, including but not limited to the surgery that was previously recommended. Defendants remain responsible for any future causally related treatment for claimant's left wrist injury.

Pursuant to Iowa Code section 85.39, defendants shall reimburse claimant two thousand nine hundred seventy-two and 00/100 dollars ($2,972.00) for the full amount of Dr. Bansal's IME.

Defendants shall reimburse claimant's costs in the amount of seven hundred twenty and 00/100 dollars ($720.00), representing the FCE report and filing fee.

Defendants 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 16th day of September, 2021.



JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Samuel Aden (via WCES)

Andrew Portis (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.