BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

WAYNE PRAZAK, Claimant, vs. ASSA ABLOY, Employer, and TRAVELERS, Insurance Carrier, Defendants.	File Nos. 5046682, 5046683 REVIEW-REOPENING DECISION Head Note Nos.: 1802, 1803, 1804, 2905
WAYNE PRAZAK, Claimant, vs. ASSA ABLOY, Employer, and TRAVELERS, Insurance Carrier, Defendants.	File Nos. 5055662, 5055663, 5055664 ARBITRATION DECISION Head Note Nos.: 1802, 1803, 1804

STATEMENT OF THE CASE

Wayne Prazak, claimant has filed five petitions seeking benefits for Assa Abloy. (Assa Abloy, a/k/a Curries, will be referred to in this decision as Curries). Two of the petitions are review-reopening petitions. The three remaining petitions allege scheduled and industrial disabilities.

This case was heard in Fort Dodge, Iowa and fully submitted on April 18, 2017. The evidence in this case consists of the testimony of claimant, Claimant's Exhibits 1 – 42 and Defendants' Exhibits A - P. Both parties submitted briefs.

ISSUES

For File No. 5046682— date of injury December 1, 2011.

Whether claimant warrants an increase in workers' compensation benefits; and if so;

The extent of claimant's disability.

Whether claimant is entitled to healing period benefits.

Whether the claimant is entitled to payment of an independent medical examination (IME).

Whether claimant is entitled to certain medical costs.

The amount of credit defendants are entitled to for prior payments of short term disability.

Assessment of costs.

For File No. 5056683— date of injury March 6, 2012.

Whether claimant warrants an increase in workers' compensation benefits; and if so;

The extent of claimant's disability.

The commencement date of any additional permanent benefits.

Whether the claimant is entitled to payment of an independent medical examination (IME).

The amount of credit defendants are entitled to for prior payments of short term disability.

Assessment of costs.

For File No. 5055663— date of injury June 3, 2014.

Whether claimant has a temporary disability.

Whether the claimant has permanent disability.

The extent of claimant's temporary and permanent disability.

The commencement date of any temporary or permanent benefits.

Whether the claimant is entitled to payment of an independent medical examination (IME).

Whether claimant is entitled to certain medical costs.

The amount of credit defendants are entitled to for prior payments of short term disability.

Assessment of costs.

For File No. 5055662— date of injury July 7, 2014.

Whether the claimant has permanent disability.

The extent of claimant's permanent disability.

The correct weekly rate for any indemnity benefits.

Whether the claimant is entitled to payment of an independent medical examination (IME).

Whether claimant is entitled to certain medical costs.

Assessment of costs.

For File No. 5055664— date of injury February 24, 2015

Whether claimant has a temporary disability.

Whether the claimant has permanent disability.

The extent of claimant's temporary and permanent disability.

The commencement date of any temporary or permanent benefits.

Whether the claimant is entitled to payment of an independent medical examination (IME).

Whether claimant is entitled to certain medical costs.

The amount of credit defendants are entitled to for prior payments of short term disability.

Assessment of costs.

STIPULATIONS

The parties filed hearing reports at the commencement of the arbitration hearing. On the hearing reports the parties entered into various stipulations. All of

those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

FINDINGS OF FACT

The deputy workers' compensation commissioner, having heard the testimony and considered the evidence in the record, finds that:

Wayne Prazak, claimant, was 64 years old at the time of the arbitration hearing. Claimant graduated from high school. Claimant has taken some courses in a community college. He does not have any degree or certification for his course work. Claimant worked for Armor Foods. He served three years in the army and received an honorable discharge. (Transcript, page 19; Exhibit P, p. 7)

After claimant left the army he tried to be a taxidermist for about a year. He then return to the Armor Food plant and worked there until the plant closed.

Claimant began his work for Curries in June 1995. (Tr. p. 20) The parties have stipulated that claimant had a work injury on December 1, 2011 and March 6, 2012 that arose out and in the course of his employment at Curries. The parties reached a settlement for these two injuries on March 3, 2015. For the December 1, 2011 injury claimant received a settlement for an 18.3 percent, body as a whole for an injury to his right shoulder: Ninety-one point five hundred seventy-one (91.571) weeks of benefits. (Ex. 35, p. 234) For the March 6, 2012 claimant received a settlement for a 19 percent bilateral upper extremity and had injury: Ninety-five (95) weeks of benefits. (Ex. 34, p. 232)

Claimant testified that on June 3, 2014[1] he caught his arm and fell at work and hit a work cart. (Tr. p. 29) Claimant filled out a work accident report the next day that stated, "Caught arm on po. of steel and felt a pull in shoulder and back, pulled wind out of him." (Ex. 31, p. 227) Claimant said that when he filled out and signed the report the notation, "Right Shoulder" was not on the form. (Tr. p. 31; Ex. 40, pp. 32, 33) Claimant said that other than one chiropractic visit he did not seek additional medical care for the June 3, 2014 fall. (Tr. p. 32) The record shows claimant was seen twice for low back pain, on July 31, 2014 and August 4, 2014. (Ex. 2, pp. 21, 23) For the first visit claimant was complaining of low back pain after going on a car trip. On the second visit claimant thought the work at Curries had aggravated his back. Claimant said he was taking ibuprofen and some hydrocodone left over from his operation. (Tr. p. 32)

Claimant went to his family physician, Lisa Kies, M.D., on August 18, 2014 and complained that his hands and shoulders were bothering him again. (Ex. 4, p. 31)

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[1] The Hearing Report lists the stipulated injury date as June 3, 2014. (Tr. p. 11) The parties in their briefs refer to a June 2, 2014 injury date. As the parties stipulated to June 3, 2014, I will use that date.

Dr. Kies noted claimant had an appointment to see his workers' compensation doctors. (Ex. 4, p. 31)

Claimant went to the emergency department on January 5, 2015. Claimant was reaching for an item at home and felt pain in his left shoulder. The triage note of the visit indicated claimant was having left arm/wrist pain with exacerbation. (Ex. C, p. 14) Claimant was referred to his primary care physician. Dr. Kies ordered an MRI. (Tr. p. 83) A January 14, 2015 MRI found,

1. Severely degenerative acromioclavicular joint with outlet stenosis in resting position.

2. Subacromial/subdeltoid bursitis.

3. Supraspinatus tendinopathy.

4. Small laminar articular surface tear extending from rotator cuff insertion to infraspinatus musculotendinous junction.

5. Diminutive inferior glenohumeral joint capsule, clinically exclude adhesive capsulitis.

(Ex. 9, p. 70)

Claimant went to Rene Recinos, M.D., due to concerns about his left hand on July 7, 2014. Dr. Recinos noted claimant was approximately 18 months status post left median nerve exploration and ulnar nerve decompression in his palm. (Ex. 1, p. 1) Dr. Recinos' impression and recommendations were, "The patient is having signs and symptoms of recurrent ulnar nerve compression of the left hand and arthritis of the left wrist. I believe both these conditions are materially aggravated by his employment. . . . I will also restrict him from using vibratory power tools with the left hand." (Ex. 1, p. 3) On August 20, 2014, Dr. Recinos went over the results of an EMG with claimant. The EMG showed mild carpal tunnel syndrome on the left and that these studies suggest ulnar nerve compression at the elbow. (Ex. 1, p. 6) Dr. Recinos placed formal restrictions of no work over 40 hours per week and no use of vibrating power tools with his left hand. (Ex. 1, p. 8) On August 18, 2014, Dr. Kies also provided a 40 hour restriction for work. (Ex. 4, p. 31)

On September 17, 2014, claimant told Dr. Recinos he was having his upper extremity concerns evaluated by a workers' compensation doctor. Dr. Recinos ordered an MRI. On October 27, 2014, Dr. Recinos continued the 40-hour work restriction and said that he wanted to manage claimant's cubital tunnel syndrome and carpal tunnel syndrome conservatively and did not recommend surgery. (Ex. 1, p. 19) Claimant contacted Dr. Recinos' office in February 2015. (Ex. 1, p. 20) Claimant testified that Dr. Recinos did not want to perform surgery on his left arm so long as he was working. (Ex. 40, p. 19) Claimant testified that his left ulnar nerve condition has not changed since his last visit with Dr. Recinos. (Ex. 40, p. 21)

Claimant testified that in the fall of 2014 he was having heart problems. He eventually had a stent. At that time claimant was experiencing left shoulder pain which he thought was related to his heart condition. In December of 2014 claimant stopped taking ibuprofen and hydrocodone and he was told that it was not good for his heart. (Tr. p. 38) Claimant said that his shoulders and back started to bother him more at that time. (Tr. p. 38)

Claimant went to the emergency department at Mercy Medical Center-North on January 5, 2015 with left wrist and shoulder pain. (Tr. p. 40; Ex. 5, p. 62) Claimant said there was no specific incident that caused his pain; he was reaching for a can of soup or something else when his pain increased. (Tr. p. 40) Claimant testified that when he was at the emergency department and referred to a recent fall when he landed on his left elbow, he believes he was referring to his fall in June 2014. (Tr. p. 42)

On January 6 2015, Dr. Kies looked over the records of the visit to the emergency department and recited that claimant reported a recent fall. (Ex. 4, p. 35) In her more detailed note of that visit she wrote,

> He notes that he first hurt his shoulder in June at work, but he was controlling it with ibuprofen and thought it would be okay so it hasn't been reported as a Work Comp injury with all of his other problems. But then cardiologists wanted him off the ibuprofen, understandably. And so it got worse. And it got suddenly worse the night he went to the ER. They gave him tramadol and told him to take Tylenol with it. The tramadol makes him really sleepy, so he's trying to back off on that. The ER also mentioned that he might need an MRI or something.
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> His pain was so bad that day, he couldn't even get his hand to his mouth to take a pill. The movement is still quite limited.
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> Dr. DiEnna's note mentions the left shoulder pain in 11/12/2014. We have it in our 12/3/14 note and discussed optimal OTC pain meds at that time.
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> . . . .
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> # SHOULDER REGION Division of Industrial Services OT (728.2): history of 2 right shoulder surgeries, bothering more and more on the left since June but got a lot worse this last week

(Ex. 4, p. 36)

Claimant had an MRI on January 14, 2015. The MRI showed,

1. Severely degenerative acromioclavicular joint with outlet stenosis in resting position.

2. Subacromial/subdeltoid bursitis.

3. Supraspinatous tendinopathy.

4. Small laminar articular surface tear extending from rotator cuff insertion to infraspinatus musculotendinous junction.

5. Diminutive inferior glenohumeral joint capsule, clinically adhesive capsulitis.

(Ex. 9, p. 70)

On January 15, 2015, Dr. Kies noted that the MRI of the left shoulder showed significant abnormalities. (Ex. 4, p. 37)

Claimant was referred to Timothy Gibbons, M.D. Claimant saw Dr. Gibbons on February 3, 2015 for left shoulder pain. Claimant reported to Dr. Gibbons that he started to have left shoulder pain after a fall in June 2014. (Ex. 19, p. 88; Ex. E, p. 22) Claimant saw Dr. Gibbons one time. (Tr. p. 88) Dr. Gibbons' impression was, "Right shoulder pain. It could be associated with adhesive capsulitis verses rotator cuff tendinitis." (Ex. 19, p. 90) Dr. Gibbons recommended claimant have a subacromial injection, which claimant declined on that day. (Ex. 19, p. 90) Claimant contacted Dr. Gibbons' office the next day to see if he could receive an injection. (Ex. 19, p. 91) On February 16, 2015, claimant was told he could not proceed with an injection due to medication he was on and requested surgery. (Ex. 19, p. 92) On June 18, 2015, Dr. Gibbons noted that he spent a little less than one-half hour with defendants' attorney and reviewing the medical records provided him and the MRI of January 2015. He could not causally relate the claimant's left shoulder pain to work. (Ex. 19, p. 94) On January 30, 2016, Dr. Gibbons met with defendant's attorney. He also reviewed the chart from the Mason City Clinic. Dr. Gibbons was unable to find any reference to a right shoulder injury and does not believe claimant's right shoulder problems were caused or materially aggravated by his employment at Curries. Part of his opinion was based upon the AMA Guides to the Evaluation of Disease and Injury Causation, 2nd Edition. (Ex. 19, p. 98; Ex. E, p. 28) On July 22, 2015, Dr. Gibbons wrote defendants that he had last seen claimant in February 2015 and at that time claimant was complaining of left shoulder pain. The MRI in February showed tendinitis, which was consistent with Dr. Gibbons' opinion with the aging process. He concluded that the claimant's left shoulder problem was predominantly age-related and that his employment at Curries did not materially aggravate his shoulder. (Ex. E, 28A)

On February 24, 2015, claimant fell at Curries while working. Claimant said that he fell into his tool chest and caused pain in his back and shoulders. (Tr. p. 45) Claimant reported this injury. (Ex. 32, p. 228) Claimant saw Samuel Hunt. M.D., on March 2, 2015 due to his injury of February 24, 2015. Claimant was complaining of strained neck, left shoulder, mid-back and lower back. (Ex. 20, p. 101) Claimant was given restrictions of lifting no more than 10 pounds and light work. (Ex. 20, p. 101) Claimant's lifting restrictions was changed to 5 pounds on April 17, 2015 and to limit above shoulder level activities. (Ex. 20, pp. 111, 112)

Claimant was referred to an orthopedist. Claimant saw Eric Potthoff, D.O. Claimant saw him on May 7, 2015 about his left shoulder. (Ex. 21, p. 117) Dr. Potthoff commented in his examination of the claimant that claimant had a little bit better strength in his left shoulder than his right. (Ex. 21, p. 117) Dr. Potthoff's impressions were, "1. Left shoulder pain with partial thickness rotator cuff tearing and impingement syndrome. 2. Acromioclavicular joint arthropathy, left shoulder." (Ex. 21, p. 118) Claimant testified that he did not ask Dr. Potthoff to look at his right shoulder when he first saw him. (Tr. p. 90) Dr. Potthoff recommended surgery on May 7, 2015. (Ex. 21, p. 118) In a July 8, 2015 letter to defendants' counsel Dr. Potthoff said that claimant reported to him onset of left shoulder pain after a fall at work. And that in the absence of injury, claimant's partial thickness tear could be age related. (Ex. 21, p. 121) In a pre-operative examination of August 24, 2015, the clinical notes reflect that claimant was having shoulder problems ever since a fall at work about a year ago. (Ex. 16, p. 80) Dr. Potthoff performed surgery to his left shoulder on September 2, 2015. (Ex. 17, p. 84; Tr. p. 91) The postoperative diagnosis was, "Low-grade partial thickness rotator cuff tear with impingement syndrome and acromioclavicular joint degenerative joint disease." (Ex. 17, p. 84) Claimant paid for this operation with health insurance. It was not paid by the workers' compensation carrier. (Tr. p. 54) Claimant testified that the surgery helped his mobility. (Tr. p. 55)

The last day claimant physically worked at Curries was September 1, 2015. (Tr. p. 91; Ex. 40, p. 8) Dr. Potthoff allowed claimant to return to work on September 16, 2015 with restrictions of no lifting, pushing/pulling with the left upper extremity. (Ex. 21, p. 125) Clamant did not return to work at Curries due to his restrictions. Dr. Gibbons saw claimant on November 3, 2015 for right shoulder pain and ordered an MRI. Dr. Gibbons reviewed the MRI and his impression was biceps tendonitis with possible rotator cuff tear. (Ex. E, p. 27) Claimant testified that he sought treatment from a doctor other than Dr. Gibbons. (Tr. p. 57)

On October 7, 2015, Charles Mooney, M.D., performed a records review at the request of the defendants. Dr. Mooney's assessment was,

> Medical record evidence of long-standing cervical, thoracic, and lumbar spondylosis and chronic cervical, thoracic, and lumbar pain preexisting date of injury provided of February of 2015 and June of 2014. There is [*sic*] conflicting findings in the medical records as to the onset of his symptoms in 2014. Chiropractic records reflecting pain after a long car ride in June of 2014 and then in February 2015, a slip and near fall during the course of his duties for Curries Company.

(Ex. I, p. 35) Dr. Mooney stated he did not believe further medical care for claimant's spine would be beneficial and that claimant was at MMI for his February 2015 injury. (Ex. I, p. 35)

On November 24, 2015, Dr. Potthoff spoke with claimant's attorney and noted that the partial thickness tear would most likely be secondary to a work injury. (Ex. 21, p. 131) On February 23, 2016, claimant went to Dr. Potthoff for both his left and right

shoulder. The note of that visit states that the right shoulder had been bothering him since last fall and also that it started bothering him the same time his left shoulder had started to bother him. (Ex. 21, p. 139) Dr. Potthoff's impressions were, "1. Right shoulder pain with partial thickness rotator cuff tearing, questionable long head biceps tendonitis based on examination. 2. Status post diagnostic and operative arthroscopy left shoulder with debridement of rotator cuff, subacromial decompression, distal clavicle resection." (Ex. 21, p. 140) Dr. Potthoff performed right shoulder surgery on March 2, 2016. His postoperative diagnosis was, "[p]artial-thickness rotator cuff tearing, right shoulder with tearing of the superior labrum and biceps anchor." (Ex. 21, p. 142) Claimant was released to light work with no lifting, pushing, pulling with the right upper extremity on April 19, 2016. (Ex. 21, p. 149) On August 25, 2016, Dr. Potthoff stated claimant was at MMI for the left shoulder and that a fall was consistent with his diagnosis of partial thickness tears in both shoulders. (Ex. 21, p. 162) On October 21, 2016, Dr. Potthoff's impression was, "1. Status post repair of a high grade partial thickness rotator cuff tear to the right shoulder with residual high grade tearing based on the magnetic resonance image (MRI). 2. Low grade partial thickness tearing to the left shoulder." (Ex. 21, p 171) The claimant informed him that he was not interested in further surgery. Dr. Potthoff placed claimant at MMI and provided permanent restrictions. The restrictions were, "He is not to do any lifting, pushing, or pulling above the shoulder level with both upper extremities. Additionally, he is not to do any lifting, pushing, or pulling of greater than 5 pounds with the right upper extremity or greater than 10 pounds with the left upper extremity below the shoulder level." (Ex. 21, p. 171)

Dr. Potthoff was deposed on January 31, 2017. (Ex. 22) Dr. Potthoff said that he would focus his physical exam to the primary complaint and that at the time of his first examination, he examined the left shoulder. There was no record of claimant complaining of his right shoulder at the first visit by claimant. (Ex. 22, p. 2) Dr. Potthoff stated that if claimant had two falls it would be difficult to differentiate which fall caused a shoulder injury without MRIs between each fall. (Ex. 22, p. 6) Dr. Potthoff said that claimant informed him that his right shoulder pain occurred at the same time as the fall that caused his left shoulder pain. (Ex. 22, p. 7)

Claimant had an MRI on October 14, 2016 as he continued to have pain in his right shoulder. The impression of the MRI was,

> Status post previous rotator cuff tendon repair involving the infraspinatus and supraspinatus. Today's examination however, demonstrates diffuse articular and bursal surface "partial tearing" involving about 90% of the thickness of the tendons. No full-thickness component is seen.

(Ex. 18, p. 86)

Claimant did not return to work at Curries after this surgery. (Tr. pp. 55, 56) Claimant said that he was told he was terminated on November 21, 2016 when he brought in work restrictions. Claimant was told by Curries that they had sent him a letter

previously terminating him, but claimant did not receive that letter. (Ex. 40, p. 7) Claimant has not looked for work since his termination. (Ex. 40, p. 9)

On February 23, 2016, claimant complained to Dr. Potthoff about pain in his right shoulder that began last fall, about the same time as his left shoulder began bothering him. (Ex. 21, p. 139) Claimant was formally terminated at Curries on October 21, 2016. (Tr. p. 64; Ex. 37, p. 237) Claimant saw Dr. Potthoff about his right shoulder. Dr. Potthoff performed surgery on the right shoulder on March 2, 2016. (Ex. 21, p. 142) On October 21, 2016, Dr. Potthoff provided permanent restrictions of no overhead lifting and no lifting over 5 pounds with the right upper extremity and no lifting greater than 20 pounds with the left upper extremity below shoulder level. (Ex. 21, p. 171) Claimant could not perform his job at Curries with those restrictions. (Tr. p. 60)

Claimant applied for and was found eligible for Social Security Disability as of August 2015. (Tr. p. 64; Ex. 29, p. 219) Claimant said that he is not able to lift his grandchildren, does not garden any more, uses a 4-wheeler to plow snow and uses equipment to help feed his horses and elk. (Tr. pp. 65 -67) Claimant is right-hand dominant. (Ex. P, p. 18)

Claimant testified that most of his work at Curries was at waist level. Although occasionally he would have a frame to work on that required bending and not working at waist level. (Tr. p. 70) Claimant did not remember a fall that he had in the autumn of 2015. (Tr. p. 94, 95) Claimant also has not received any additional treatment for his left arm since before he settled his March 6, 2012 claim. (Tr. p. 99)

Claimant was deposed on August 19, 2014. (Ex. P) Claimant said that most of his work was at waist level and he would occasionally work above his chest. Claimant was working about 8 hours overtime at that time. (Ex. P, p. 32) Claimant testified that after he injured his right shoulder he had two surgeries. The first surgery did not resolve his shoulder issues. (Ex. P, p. 44) Claimant had a second surgery on his right shoulder. At the time of his deposition in 2014 he was not receiving any additional care for his shoulder and had no shoulder restrictions. (Ex. P, p. 47) Claimant said about two months prior to his deposition claimant caught his elbow and it pulled him around and "popped things loose again." (Ex. P, p. 47) Claimant testified that this recent injury was pretty much just on the right. (Ex. P. p. 48) Claimant had surgery on his left wrist in April 2013. (Ex. P, p. 63) Claimant said he was off work for about two weeks for that surgery and that he did not receive any workers' compensation indemnity or medical benefits. (Ex. P, pp. 70, 71)

Claimant testified in the hearing that when he was asked about the July 3, 2014 injury during his deposition and answered a question about his injury he thought the question specifically referred to the settlement on his right shoulder. (Tr. p. 36) Claimant said that his left shoulder was bothering him, but he did not seek medical care. (Tr. p. 37)

On August 19, 2015, Lynn Nelson, M.D., saw claimant for an evaluation of posterior neck and left shoulder pain. Dr. Nelson's impression was, "1. Cervical,

thoracic and lumbar spondylosis 2. Myofascial pain" (Ex. 23, p. 175) Dr. Nelson did not recommend any surgical intervention. Dr. Nelson did not recommend restrictions and said that claimant did not have a ratable impairment. (Ex. 23, pp. 177, 178)

On November 10, 2015, Sandeep Bhangoo, M.D., examined claimant for neck pain, low back pain, right leg pain and left arm pain. In a letter to Dr. Potthoff he noted claimant had falls at work in June 2014 and February 2015. (Ex. 24, p. 179) Dr. Bhangoo said that claimant's low back and neck pain are probably the result of diffuse arthritis. He was not sure as to the origin of the left arm pain and recommended an EMG. (Ex. 24, p. 180) On December 8, 2015, Dr. Bhangoo reviewed the EMG, which showed claimant had an ulnar mononeuropathy, as well as a median mononeuropathy. Dr. Bhangoo did not believe a third revision carpal tunnel surgery would be wise and that claimant could consider surgery for his ulnar neuropathy. (Ex. 24, p. 182) Dr. Bhangoo did not state that the claimant's falls at work caused or materially aggravated claimant's underling back condition. Dr. Bhangoo did not state that the falls at work caused or materially aggravated claimant's ulnar nerve problem.

On December 14, 2016 Robin Sassman, M.D., performed an independent medical examination (IME). (Ex. 26) Dr. Sassman's diagnoses were,

1. Right shoulder rotator cuff tear status post right shoulder arthroscopy with debridement of the superior labrum, biceps tenotomy and mini open exploration with rotator cuff repair on March 2, 2016, by Dr. Potthoff.

2. Left shoulder rotator cuff tear status post left shoulder arthroscopy and debridement, subacromial decompression and distal clavicle resection on September 2, 2015, by Dr. Potthoff.

3. Left ulnar neuropathy with EMG evidence of progression since previous EMG.

4. Low back pain with radicular symptoms.

5. Thoracic pain.

6. Cervical pain.

(Ex. 26, p. 208) Dr. Sassman opined that claimant's right shoulder was injured in a June 2, 2014 fall and the claimant's left shoulder was injured in a February 24, 2015 fall at work. (Ex. 26, p. 208) She also opined that the cervical, thoracic and low back symptoms were aggravated by the February 24, 2015 fall at work causing low back, mid back and neck symptoms. (Ex. 26, p. 208) As claimant did not want to pursue further treatment she placed claimant at MMI as of October 21, 2016. Dr. Sassman opined claimant had a 10 percent whole body impairment to the lumbar spine, 5 percent impairment to the thoracic spine and 5 percent for the cervical spine. (Ex. 26, p. 209) For the right shoulder she provided an 11 percent rating and for the left shoulder she

provided an 11 percent impairment rating. For the ulnar nerve she provided a 6 percent upper extremity rating. She recommended claimant limit lifting, pushing, pulling and carrying to 20 pounds occasionally floor to waist and 5 pound occasional right hand lift to waist and no lifting, pushing, pulling or pulling above waist height. Claimant should not use vibratory tools. (Ex. 26, p. 210)

Claimant has requested medical costs as listed in Exhibit 41, pages 250 through 277. Claimant is requesting costs of filing and service fees of $113.90, cost of claimant's deposition of $143.50 and the IME expense of Dr. Sassman of $4,670.00. (Ex. 43, p. 278)

Dr. Kies saw claimant in March 2011 for left neck pain. Her assessment was a neck sprain. (Ex. A, p. 1) On March 27, 2012, claimant went to a chiropractor complaining of neck and back pain due to hauling water and grain. (Ex. B, p. 10) In a letter to defendants on July 7, 2015, Dr. Kies reported that claimant mentioned shoulder problems in both shoulders in the August 18, 2014 visit and then again in December 2014. She stated that given the number of medical issues claimant was facing it was not surprising that he did not mention his shoulder issues. (Ex. A, p. 9)

I find that the work injury of June 3, 2014 has resulted in permanent impairment and industrial disability to claimant's right and left shoulders. I find these are new injuries caused by the June 3, 2014 injury. Claimant has a very significant restriction of lifting no more than 5 pounds with his right arm and is not to work above his shoulders. He cannot use vibratory tools and can only occasionally lift 20 pounds floor to waist. Claimant has been found to be totally disabled by the Social Security Administration. Claimant's relevant vocational work history is work in factories. His age is not a positive factor. Claimant's post-high school education is limited. I find that claimant has a 100 percent loss of earning capacity.

I find that the claimant's gross earnings were $960.00 and that he was married and entitled to 2 exemptions and his weekly rate is $609.82 for File No. 5055633 – date of injury June 3, 2014.

RATIONALE AND CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational

consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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

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

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

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense.

Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961

File No. 5046682— date of injury December 1, 2011 and

File No. 5056683— date of injury March 6, 2012.

Claimant has filed for a review-reopening of these two files.

Under Iowa Code section 86.14(2), the workers' compensation commissioner is authorized to "reopen an award for payments or agreement for settlement . . . [to inquire] into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon."

Upon review-reopening, claimant has the burden to show a change in condition related to the original injury since the original award or settlement was made. The change may be either economic or physical. Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Henderson v. Iles, 250 Iowa 787, 96 N.W.2d 321 (1959). A mere difference of opinion of experts as to the percentage of disability arising from an original injury is not sufficient to justify a different determination on a petition for review-reopening. A failure of a condition to improve to the extent anticipated originally may also constitute a change of condition. Meyers v. Holiday Inn of Cedar Falls, Iowa, 272 N.W.2d 24 (Iowa App. 1978).

Under Iowa Code section 86.14(2), the workers' compensation commissioner is authorized to "reopen an award for payments or agreement for settlement . . . [to inquire] into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon." When an employee seeks an increase in compensation, the employee bears the burden of establishing by a preponderance of the evidence that his or her current condition was "proximately caused by the original injury." Simonson v. Snap-On Tools Corp., 588 N.W.2d 430, 434 (Iowa 1999) (quoting Collentine, 525 N.W.2d at 829). The commissioner must then evaluate "the condition of the employee, which is found to exist subsequent to the date of the award being reviewed." Stice v. Consol. Ind. Coal Co., 228 Iowa 1031, 1038, 291 N.W. 452, 456 (1940). The commissioner is not supposed to "re-determine the condition of the employee which was adjudicated by the former award." Id.

Kohlhaas v. Hog Slat, Inc., 777 NW 2d 387, 391 (Iowa 2009). Interest accrues on awards of permanent disability in review-reopening proceedings upon the commencement date of the additional benefits awarded in a review-reopening.

I find that claimant has failed to prove by a preponderance of the evidence that he is entitled to a review-reopening in these two files. Claimant had returned to work

and was not having difficulties working and was not diagnosed with a worsening of these conditions prior to his injury of June 3, 2014. Nor was there any evidence of a worsening financial condition caused by the December 1, 2011 and March 6, 2012 injuries.

Claimant takes nothing further as indemnity benefits for these two files. Claimant is entitled to ongoing medical benefits. Claimant is entitled to the future medical care and past medical expenses for the left arm as well as his shoulders.

File No. 5055662— date of injury July 7, 2014

Claimant has asserted that the work injury of July 7, 2014 has caused a permanent injury to his left upper extremity. Dr. Sassman provided a 6 percent upper extremity rating for the claimant's ulnar nerve problem in his left arm.

Upon review of the reports of Dr. Recinos and Dr. Bhangoo I find that claimant has failed to prove an injury to the left arm on July 4, 2014. Claimant settled the bilateral upper extremity injury in File No. 5046683 on March 15, 2015. Dr. Recinos diagnosed claimant's left nerve problems before the approved settlement. Dr. Recinos recommended surgery and noted that claimant was likely to continue having problems as long as he was working for Curries. While Dr. Recinos found work at Curries was casually related to claimant's left arm nerve problems, he made that determination before the claimant settled the bilateral upper extremity case, File No. 5046683. I find that claimant has failed to prove an injury to the left arm for this date. The claimant shall take nothing further in indemnity benefits in this case.

File No. 5055664— date of injury February 24, 2015

Claimant has failed to prove that the fall on February 24, 2015 caused a permanent impairment or materially aggravated the claimant's spine and neck. The claimant was complaining of back pain in late 2014 before the fall in February 2015. The fall temporally aggravated his conditions.

Dr. Bhangoo said that claimant's low back and neck pain are probably the result of diffuse arthritis. While Dr. Sassman stated that the fall in February 2015 aggravated claimant's back condition she relies upon the assumption that claimant's back was not symptomatic before that period. Given the past treatment claimant had for his back I do not find Dr. Sassman's opinion about this issue convincing. As such, I find that claimant has not proven a permanent impairment for File No. 5055664. Claimant shall take nothing further in this claim. Dr. Sassman found a left shoulder injury of February 2014. That is after claimant went to ER and had a MRI. I do not find her report convincing. Dr. Mooney's report is not specific about causation and is not persuasive as to causation.

File No. 5055663— date of injury June 3, 2014.

Claimant was working full time when he fell June 3, 2014. Claimant was taking over-the-counter medication at this time. He had a number of medical problems at that time. He stopped some of his over-the-counter pain medication due to his heart condition and had more pain in his shoulder. He informed Dr. Kies his shoulders were hurting after the fall at work in June 2014. MRI's eventually showed torn rotator cuffs.

I find that claimant did fall on June 3, 2014 and the fall is the cause of his shoulder impairments and limitations. Dr. Potthoff agreed that the claimant's shoulder injuries would be casually related to his work if he had fallen at work. Dr. Potthoff's opinion is the most convincing opinion in the record. Claimant has shown by a preponderance of the evidence that he suffered permanent injuries and impairment due to his work injury of June 3, 2014.

Defendants point out that claimant did not specifically mention the fall of June 3, 2014 to his family physician, Dr. Kies, on his August 18, 2014 visit. While that is true based upon Dr. Kies' notes, it is also true that claimant told Dr. Kies he was going to see his workers' compensation doctors about his hands and shoulders. Under those facts it was reasonable for the claimant to not provide Dr. Kies detailed information about his work injury. Dr. Kies noted in her July 7, 2015 letter that claimant did mention problems about his shoulders on the August 18 visit and not again until December 2014, which she did not find surprising given the number of medical issues he had. (Ex. A, p. 9)

I do not find Dr. Gibbons' opinions convincing on causation. His reliance on the AMA Guides to the Evaluation of Disease and Injury Causation, 2nd Edition is somewhat puzzling as this publication states, "As stated above causation is usually multifactorial, either both patient - and work-related factors acting concomitantly to produce SIS [subacromial impingement syndrome]." (AMA Guides to the Evaluation of Disease and Injury Causation 2nd Edition, p. 319) His reference to page 320 also is not convincing as there is "some evidence" that the type of work claimant performed-combined risk factors, highly repetitive work, and awkward posture was an occupational risk. Defendants also agreed the 2011 and 2012 injuries to claimant's right shoulder and bilateral upper extremities were due to his work at Curries.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation,

loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

In assessing an unscheduled, whole-body injury case, the claimant's loss of earning capacity is determined as of the time of the hearing based upon industrial disability factors then existing. The commissioner does not determine permanent disability, or industrial disability, based upon anticipated future developments. Kohlhaas v. Hog Slat, Inc., 777 N.W.2d 387, 392 (Iowa 2009).

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

The refusal of defendant-employer to return claimant to work in any capacity is, by itself, significant evidence of a lack of employability. Pierson v. O'Bryan Brothers, File No. 951206 (App. January 20, 1995). Meeks v. Firestone Tire & Rubber Co., File No. 876894, (App. January 22, 1993); See also, 10-84 Larson's Workers' Compensation Law, section 84.01; Sunbeam Corp. v. Bates, 271 Ark. 609 S.W.2d 102 (1980); Army & Air Force Exchange Service v. Neuman, 278 F. Supp. 865 (W.D. La. 1967); Leonardo v. Uncas Manufacturing Co., 77 R.I. 245, 75 A.2d 188 (1950). An employer who chooses to preclude an injured worker's re-entry into its workforce likely demonstrates by its own action that the worker has incurred a substantial loss of earning capacity. As has previously been explained in numerous decisions of this agency, if the employer in whose employ the disability occurred is unwilling to accommodate the disability, there is no reason to expect some other employer to have more incentive to do so. Estes v. Exide Technologies, File No. 5013809 (App. December 12, 2006).

I found above that claimant has a 100 percent loss of earning capacity. Claimant was 64 years old at the time of the hearing and he has limited formal training post-high

school. He has very significant lifting and weight limitations. He has been found to be 100 percent disabled by the Social Security Administration.

I acknowledge that he is able to do some chores around his home. However he is not able to be competitively employed given his work restrictions, vocational background and education. He was terminated by his employer due to his restrictions. I find that claimant has a 100 percent industrial disability. Claimant is permanently totally disabled under Iowa Code section 85.34(3).

Claimant's last day actually at work was September 1, 2015. I find that claimant's permanent total benefits shall start September 2, 2015. No healing period benefits are awarded as claimant is awarded permanent benefits after he stopped working.

Claimant has requested $4,927.40 in costs and the IME performed by Dr. Sassman. (Ex. 42, p. 278) In my discretion I award the filing fee, service costs and deposition cost under 876 IAC 4.33 to the claimant in the amount of $257.40. The cost of the IME by Dr. Sassman is $4,670.00. Claimant is entitled to be reimbursed the reasonable costs of an IME pursuant to Iowa Code section 85.39 so long as the defendant retained and obtained a rating which the claimant did not agree with. The claimant is entitled to reimbursement of costs in this case.

The question is whether the IME costs are reasonable. The IME costs are on the higher end of what costs are reasonable. These five claim files and the number of injuries to be evaluated is also more complex than most IME's performed. Due to the complexity of the case, I find the IME costs to be reasonable and order defendants to pay this cost.

The parties agreed that $15,010.95 was paid to the claimant and the defendants are entitled to a credit. Claimant agreed that defendants are only entitled to a credit for the net amount the claimant received, not the full amount. In a 2013 appeal decision King v. Marion Independent Comm, Sch. Dist., File No. 5036224 (App. June 10, 2013), the commissioner stated:

> It has long been observed that employers in this jurisdiction occasionally continue an injured worker's regular pay during absences from work due to a work injury either on their own volition or pursuant to collective bargaining agreements. There is no reason to discourage such activity. It is necessary, however, to address the impact of such agreements as to entitlement to a credit. As workers' compensation benefits are not subject to income or payroll taxes, the amount of the credit is the net remaining after deducting federal, state, and FICA tax consequences that claimant experiences as a result of the taxable nature of the long-term "disability payment" in comparison to the non-taxable nature of workers' compensation benefits. Beller v. Iowa State Penitentiary, File No. 799401 (Arb., January 23, 1990); Preul v. Farmland Foods, File No. 879940 (Arb., July 6, 1990); Taylor v. The University of

Iowa, File No. 886089 (App., May 18, 1993); Waters v. University of Iowa Hospitals and Clinics, File No. 1159901/1205026 (App., January 20, 2001). The rationale in these cases begins with the governing interpretive rule that when there is ambiguity in workers' compensation statutes, they are to be liberally construed in favor of the injured worker, Caterpillar Tractor Co. v. Shook, 313 N.W.2d 503 (Iowa 1981). Given the intent of Iowa Code section 85.61 to provide weekly benefits which are 80 percent of claimant's after-tax gross earnings, it would be improper to provide a before-tax credit for a payment of wages in lieu of compensation. This rationale is logical and affirmed.

Therefore, based on the agency's precedent, defendants are entitled to a net credit.

PAYMENT OF MEDICAL EXPENSES

Pursuant to Iowa Code section 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

The last legal issue is whether the defendants are responsible for payment of the medical expenses in Exhibit 41. The expenses are summarized and show that $75,786.35 was charged, insurance paid $22,166.22, claimant paid $2,610.96 and the balance owed is $2,549.25. (Ex. 41, pp. 250 – 253) I find that these expenses are related to work injuries of December 1, 2011; March 6, 2012; June 3, 2014 and February 24, 2015. I find the expenses are reasonable and medically necessary. Defendant shall pay these medical expenses.

ORDER

File No. 5046682— date of injury December 1, 2011.

The claimant shall take nothing further in indemnity benefits.

File No. 5056683— date of injury March 6, 2012.

The claimant shall take nothing further in indemnity benefits.

File No. 5055662— date of injury July 7, 2014.

The claimant shall take nothing further in indemnity benefits.

File No. 5055664— date of injury February 24, 2015.

The claimant shall take nothing further in indemnity benefits.

File No. 5055663— date of injury June 3, 2014.

Defendants shall pay claimant permanent total disability benefits for so long as he is permanently and totally disabled at the weekly rate of six hundred nine and 82/100 dollars ($609.82) commencing September 2, 2015.

Defendants shall receive a credit for the net payment they previously made under Iowa Code section 85.28(2) as set forth in this decision.

Defendants shall pay medical expenses as set forth in this decision.

Defendants shall pay costs in the amount of four thousand nine hundred twenty-seven and 40/100 dollars ($4,927.40).

Defendants shall pay all past due payments in a lump sum and with interest as provided by law.

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

Signed and filed this 19th day of December, 2017.

JAMES F. ELLIOTT
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876 4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.