BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

RODNEY GITTINGS,	:	
Claimant,	:	File No. 21007468.01
vs.	:	ARBITRATION DECISION
JOHN DEERE DAVENPORT WORKS,	:	
Employer, Self-Insured, Defendant.	:	Head Note Nos.: 1100, 1108, 1402.30, 2601

STATEMENT OF THE CASE

Claimant, Rodney Gittings, filed a petition in arbitration seeking worker's compensation benefits against John Deere Davenport Works, self-insured employer, for an alleged work injury date of December 27, 2020. The case came before the undersigned for an arbitration hearing on April 22, 2022. 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 internet-based video. Accordingly, this case proceeded to a live video hearing via CourtCall, 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 8, Claimant's Exhibit 1, and Defendants' Exhibits A through L.

Claimant testified on his own behalf. The evidentiary record closed at the conclusion of the evidentiary hearing on April 22, 2022. The parties submitted post-hearing briefs on May 9, 2022, and the case was considered fully submitted on that date.

ISSUES

1. Whether claimant sustained an injury arising out of and in the course of his employment on December 27, 2020;

2. Whether claimant is entitled to temporary disability benefits;
3. Whether claimant is entitled to permanent disability benefits;
4. Whether claimant is entitled to reimbursement for his independent medical evaluation under Iowa Code section 85.39; and
5. 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 a 67-year-old person. (Hearing Transcript, p. 18) Claimant has worked at John Deere Davenport Works (hereinafter "Deere") since December 20, 2004; approximately 17 years. (Defendant's Exhibit B, p. 8; Tr., pp. 8-9) Prior to working at Deere, claimant worked at JI Case for 32 years. (Tr., p. 16) At Deere, claimant's job involves "major repair" of large construction loaders for aggregate handlers. (Tr., p. 9) He described working with torque wrenches, Airmatic wrenches, and other such tools to perform his work. (Tr., p. 10) He testified that torque wrenches can be up to three feet long and torque up to 360 newton meters, which requires a great deal of strength. (Tr., pp. 10-11) Some of the bolts he removes are up to 20-inches long, and an inch-and-a-half in diameter. (Tr., p. 11)

Claimant testified that he works twelve hours per day, seven days per week. (Tr., p. 14) While he also has impact wrenches and other vibratory tools in his shop at home, he testified that he rarely works on anything at home because he works so many hours at Deere. (Tr., pp. 13-14)

Claimant testified that because of his work at Deere, he believes he developed bilateral carpal tunnel syndrome. (Tr., p. 9) He had surgery for the right side on January 6, 2021, and the left side on January 27, 2021.[1] (Tr., p. 10; Joint Exhibit 8, pp. 167; 170) Claimant testified that since surgery, his grip strength has diminished, and he still has occasional numbness and tingling in his hands. (Tr., p. 12) However, he has returned to his same position at Deere, and continues working twelve hours per day, seven days per week. (Tr., pp. 13-14)

Medical records submitted by the parties show that claimant has a long history of other health issues. In 1997, he saw Chad Abernathey, M.D., for neck pain radiating into the left upper extremity. (Jt. Ex. 1, p. 1) He had a laminectomy surgery on July 13, 1997. (Jt. Ex. 1, p. 2) On December 10, 2015, claimant saw Jared Terronez, M.D., with complaints of left wrist pain, worsening over the prior six months localized to the dorsal

[1] Claimant testified the second surgery was January 28, 2021, but medical records show it was actually the day prior. (Jt. Ex. 8, p. 170)

thumb. (Jt. Ex. 3, p. 24) He had been using an elastic thumb spica splint, but it was no longer helping. He stated that he had to use his wrist to grab and torque while working, which caused pain. Dr. Terronez diagnosed De Quervain's tenosynovitis, and referred him to orthopedics. (Jt. Ex. 3, p. 25)

On January 12, 2016, claimant saw Tobias Mann, M.D., at ORA Orthopedics. (Jt. Ex. 2, p. 11) He told Dr. Mann that he had been having pain in his left wrist for a year or more. He said he had been a bull rider in the past and had done a lot of arm wrestling, but did not recall any specific trauma to the wrist. At that time, his pain was over the dorsoradial aspect of the wrist. Dr. Mann obtained x-rays, which showed significant SLAC wrist arthritis, stage 2. He was provided with a steroid injection in the wrist, and a prescription for meloxicam. (Jt. Ex. 2, p. 12) Dr. Mann also explained that over time claimant's symptoms may become worse to the point he could require a partial wrist fusion in the future.

Claimant returned to Dr. Mann on February 23, 2016. (Jt. Ex. 2, p. 14) He indicated that the injection had helped for some time, but his pain had returned. He was planning to leave on a golfing trip and requested another injection. After examination, Dr. Mann explained that he did not want to give more than three to four steroid injections per year, but since claimant had a big trip coming up he would give him another injection. He was then released to return on an as-needed basis.

On May 22, 2017, claimant saw Dr. Terronez for complaints of pain in his bilateral shoulders for a few weeks. (Jt. Ex. 3, p. 27) He denied any inciting injury. Dr. Terronez explained that with no mechanical trauma and the bilateral nature of the pain, he did not believe it to be a rotator cuff injury or frozen shoulder. (Jt. Ex. 3, p. 29) Rather, his concern was for inflammatory arthritis. He also noted claimant had been working with orthopedic surgery for bilateral hand pain. At his next follow up on May 30, 2017, claimant reported a significant improvement in his shoulder pain after the initiation of prednisone. (Jt. Ex. 3, p. 31) Dr. Terronez noted that claimant's blood work confirmed a diagnosis of polymyalgia rheumatica, but rheumatoid arthritis was still on the differential, so he referred claimant to rheumatology for evaluation. (Jt. Ex. 3, p. 33) He also diagnosed hypothyroidism, and started claimant on thyroid medication as well.

Claimant saw Mudappa Kalaiah, M.D., on June 20, 2017, for his polymyalgia rheumatica. (Jt. Ex. 4, p. 70) Dr. Kalaiah noted that in addition to his bilateral shoulder pain, he also reported chronic pain, swelling, and stiffness in the small joints of both hands, and his bilateral feet. (Jt. Ex. 4, p. 71) Claimant continued to treat with Dr. Kalaiah over the course of 2017 for his polymyalgia rheumatica, with prednisone controlling his symptoms. (Jt. Ex. 4, pp. 74-86) By December 27, 2017, Dr. Kalaiah was also suspecting a component of inflammatory arthritis/seronegative rheumatoid arthritis. (Jt. Ex. 4, p. 87) She suggested and prescribed methotrexate to help, but claimant was concerned about taking an immunosuppressant so he did not start the medication at that time.

On January 22, 2018, claimant saw Dr. Terronez related to his blood pressure and restless leg syndrome. (Jt. Ex. 3, p. 35) He also reported persistent bilateral feet paresthesias for the past two years in the right foot and four or five months in the left foot. Dr. Terronez diagnosed idiopathic peripheral neuropathy based on EMG results. (Jt. Ex. 3, p. 37) He also discussed tapering down claimant's prednisone due to elevated blood pressure. As such, claimant returned to Dr. Kalaiah on February 27, 2018, and his prednisone dosage was decreased. (Jt. Ex. 4, p. 91)

On March 26, 2018, claimant returned to Dr. Abernathey due to recurrent neck pain with radiation into the left upper extremity. (Jt. Ex. 1, p. 3) After a cervical MRI, Dr. Abernathey recommended cervical fusion surgery. (Jt. Ex. 1, p. 4) Claimant had a C4-5 anterior cervical discectomy and fusion on April 19, 2018. He recovered from the procedure with no complications. (Jt. Ex. 1, pp. 4-5)

Claimant followed up with Dr. Kalaiah on May 8, 2018, at which time she noted he was not able to taper below 10 milligrams of prednisone daily for his polymyalgia rheumatic symptoms. (Jt. Ex. 4, p. 95) He continued to have pain, stiffness, and swelling in his hands with active synovitis. As such, he agreed to try methotrexate. At his next follow up on June 19, 2018, he reported he was 80 percent better with respect to pain, stiffness, and swelling in the wrists, shoulder, and knees with the methotrexate. (Jt. Ex. 4, p. 100) He continued to have swelling in the right metacarpal joints, and received injections. Claimant continued to take methotrexate and report significant relief of his symptoms from polymyalgia rheumatica over the course of 2018. (Jt. Ex. 4, pp. 107-118)

By March 26, 2019, claimant's prednisone was reduced to 2.5 milligrams per day for two to three weeks, after which he was to discontinue. (Jt. Ex. 4, p. 119) He remained nearly symptom free on methotrexate. However, it appears around August or September of 2019, claimant went off methotrexate because he ran out, and was unable to get back in to see Dr. Kalaiah due to his work schedule. (Jt. Ex. 4, pp. 124, 126) On October 10, 2019, he reported ongoing low back pain with radiculopathy down both legs to Dr. Terronez. (Jt. Ex. 3, p. 53) He also reported being completely off steroids at that time. He finally saw Dr. Kalaiah again on October 21, 2019, who noted his rheumatoid arthritis was flaring. (Jt. Ex. 4, p. 124) He reported pain and stiffness with reduced range of motion in his bilateral shoulders, and pain and stiffness in his bilateral hands with inability to make a fist. (Jt. Ex. 4, p. 126) He was re-started on methotrexate and prednisone. (Jt. Ex. 4, p. 124) At his next follow up on December 2, 2019, he was much better since restarting methotrexate. (Jt. Ex. 4, p. 130) However, due to elevated liver enzymes, there was concern for his continued use of methotrexate, so his dosage was decreased and hydroxychloroquine was added to his medication regimen.

By April 30, 2020, Dr. Kalaiah determined claimant's rheumatoid arthritis appeared to be in remission, with no significant swelling, joint pain, or stiffness. (Jt. Ex. 4, p. 138) Claimant requested to discontinue prednisone, so he was given instructions

to taper and stop. (Jt. Ex. 4, pp. 138-139) It appears he also stopped taking the methotrexate and hydroxychloroquine in June of 2020. (Jt. Ex. 4, p. 142)

Claimant saw Dr. Abernathey on August 24, 2020, who noted a chronic history of neck pain and low back pain. (Jt. Ex. 1, p. 6) At that visit, claimant also reported paresthesia in the upper extremities with certain activities. Dr. Abernathey recommended an MRI of the cervical spine. Claimant next saw Dr. Terronez on September 1, 2020. (Jt. Ex. 3, p. 57) At that visit he noted he was seeing Dr. Abernathey for his neck and low back, and that he had stopped his medication for the polymyalgia rheumatica with "no recurrence of hand pain." (Jt. Ex. 3, pp. 58, 61) However, at his return visit to Dr. Abernathey on September 4, 2020, claimant requested evaluation of his chronic hand paresthesia and weakness. (Jt. Ex. 1, p. 7) Dr. Abernathey scheduled an EMG of both hands.

On September 8, 2020, claimant reported bilateral hand pain and tingling to Mary Heusmann, NP, at the John Deere on-site clinic. (Jt. Ex. 5, pp. 151-153) He stated it began about three months prior. (Jt. Ex. 5, p. 151) According to NP Heusmann, claimant reported having an EMG 30-years prior that showed carpal tunnel. (Jt. Ex. 5, p. 152) However, claimant testified that he told her that EMG did not show carpal tunnel. (Tr., pp. 17-18) In any event, he reported that his symptoms in 2020 were worse than the symptoms 30-years prior. (Jt. Ex. 5, p. 152) He was provided with elastic wrist supports to wear while working, and non-rigid supports to wear while sleeping. (Jt. Ex. 5, pp. 152-153) X-rays of both hands and wrists were taken on September 11, 2020, which all showed osteoarthritic changes. (Jt. Ex. 6, pp. 155-162)

On September 14, 2020, he followed up with NP Heusmann, who noted claimant was wearing the elastic supports while working, but was unsure if they were helping. (Jt. Ex. 5, p. 150) However, he was also wearing wrist supports at night that were helping some. That same day, NP Heusmann, along with claimant's supervisor and a John Deere safety analyst, attended a "job site visit" for claimant. The notes indicate that no work was seen during the "several minute" job site visit, as claimant was waiting for a unit to arrive. In discussing his job duties, claimant indicated that no one specific work activity exacerbated his symptoms, and that his job is different every day. He stated that he may perform one task one day and not repeat that task for the next week or longer. He also described varied use of tools as well as varied frequency of use of tools. The John Deere clinic records indicate claimant was scheduled for an EMG/NCV to take place on September 23, 2020. (Jt. Ex. 5, p. 149)

Claimant's EMG/NCV of the bilateral upper extremities took place on September 23, 2020, at 8:30 a.m. (Jt. Ex. 7, p. 163) The testing showed a "moderate degree of bilateral median neuropathies at the wrist – carpal tunnel syndrome." (Jt. Ex. 7, p. 164) The ulnar studies were normal on both sides.

Later on September 23, 2020, at 4:00 p.m., claimant saw Dr. Kalaiah. (Jt. Ex. 4, p. 142) Her notes indicate that claimant was recently diagnosed with bilateral carpal tunnel syndrome (CTS), likely from active inflammatory arthritis. She noted his CTS

symptoms worsened since he stopped methotrexate, which is consistent with what he told NP Huesmann. She stated that he had discontinued the medication in the past, with prompt worsening of his inflammatory arthritis, and since stopping again in June, he has "active rheumatoid arthritis with new CTS symptoms (CTS likely from active inflammatory arthritis)." (Jt. Ex. 4, p. 142) She "once again" stressed the need for long term medications to manage his condition, but noted claimant did not want to be on methotrexate or hydroxychloroquine due to concerns about side effects and alcohol abstinence.

On September 24, 2020, NP Huesmann reviewed the EMG/NCV results. (Jt. Ex. 5, p. 148) Using the AMA Guides to the Evaluation of Disease and Injury Causation, Second Edition, she noted that non-occupational risk factors for median nerve entrapment at the wrist include both age and high BMI. She also noted the simultaneous diagnoses of two peripheral nerve issues make a personal medical condition more likely than an occupational cause, and that no factors were noted during the job site visit that would produce bilateral CTS. As such, she opined that the bilateral wrist conditions were not work related.

On September 30, 2020, John Deere issued a letter to claimant formally denying his workers' compensation claim for bilateral carpal tunnel syndrome and explaining the basis of that decision. (Def. Ex. C, pp. 10-11) Following the denial, claimant chose to seek treatment at ORA Orthopedics, where he had previously treated for his left wrist SLAC arthritis. Claimant saw Thomas VonGillern, M.D., on December 3, 2020. (Jt. Ex. 2, p. 19) At that time he told Dr. VonGillern that he had bilateral hand pain for the past four months and it was getting worse, and his right hand was worse than the left hand. On physical examination, Dr. VonGillern noted claimant's bilateral hands had "the usual stigmata of osteoarthritis." He reviewed the EMG and agreed with the interpretations. After discussion with the doctor, claimant decided to have surgery. (Jt. Ex. 2, pp. 19-20)

Claimant had right median nerve lysis for carpal tunnel syndrome on January 6, 2021. (Jt. Ex. 8, p. 165) He followed up with Dr. VonGillern's office on January 19, 2021, where he saw Lauren Haas, PA-C. (Jt. Ex. 2, p. 21) He reported doing well, with the numbness and tingling resolved in his right hand. He was released from treatment for his right hand, to return on an as-needed basis. On January 27, 2021, claimant had a left median nerve lysis. (Jt. Ex. 8, p. 170) On February 9, 2021, he again followed up with PA-C Haas, and reported doing well, with the numbness and tingling resolved. (Jt. Ex. 2, p. 22) He was told not to lift more than five pounds with his left upper extremity for two and a half weeks, and to return to work with no restrictions on March 1, 2021.[2] He was to follow up on an as-needed basis.

Claimant saw Rick Garrels, M.D., at the John Deere clinic on February 25, 2021, for a return-to-work evaluation. (Jt. Ex. 5, p. 147) He noted that claimant reported no numbness or tingling, and had no concerns about returning to work. On exam, he noted

[2] While the office note indicates five pounds with the left upper extremity, the return-to-work sheet states no lifting more than ten pounds. (Jt. Ex. 2, p. 23) It is unclear which is correct.

normal grip strength bilaterally and full wrist range of motion. He agreed that claimant could resume regular work on March 1, 2021.

Claimant saw Dr. Terronez on March 1, 2021, for a Medicare Wellness Exam, as well as newer right hip pain. (Jt. Ex. 3, p. 63) At that visit, Dr. Terronez noted claimant was doing well after his bilateral carpal tunnel release, with resolution of paresthesias and return of some grip strength.

Claimant testified at hearing that while the numbness and tingling went away right after surgery, it gradually returned. (Tr., p. 12) He testified that he gets periodic tingling in both hands, depending on what he is doing. (Tr., pp. 12, 20) He also stated that he does not have nearly the amount of grip strength that he had before surgery. (Tr., p. 12) However, claimant has been back working since he was released, and continues to work the same position at John Deere. (Tr., p. 13)

On October 8, 2021, claimant attended an independent medical evaluation at his attorney's request with Sangeeta Shah, M.D., CIME. (Cl. Ex. 1, p. 1) Dr. Shah's report indicates she reviewed records from UnityPoint Family Care clinic, John Deere's clinic, ORA Orthopedics, and Dr. Abernathey. There is no indication that she reviewed any records from Dr. Kalaiah. It also appears that she did not review any records prior to August 24, 2020. The letter claimant's attorney provided to Dr. Shah prior to her examination states that claimant sustained "repetitive and cumulative bilateral carpal tunnel while working for John Deere" on approximately December 27, 2020. (Def. Ex. I, p. 26) It also asks for her report to include "the amount of permanency and whether the same is more likely than not related to the work injury."

Dr. Shah indicated claimant's symptoms at the time of her examination included bilateral hand pain, burning, and tingling. (Cl. Ex. 1, p. 6) She noted he complained of difficulty brushing his teeth, combing his hair, and writing and holding a pen due to difficulty gripping. She noted he has to reposition himself when sitting because his hands start tingling, and that he cannot put weight on his hands when getting out of a chair. He also reported difficulty driving because of the tingling in his hands, and waking up multiple times during the night because of burning and tingling in his hands.

Dr. Shah included prednisone and Levothyroxine in the list of claimant's medications. In his past medical history, she noted idiopathic peripheral neuropathy, polymyalgia rheumatica, and hyperthyroidism, as well as the 2016 diagnosis of significant left SLAC wrist arthritis. On motor examination, she found hand grip strength of 4 out of 5 in each hand. (Cl. Ex. 1, p. 7) On sensory examination, she found decreased sensation in the bilateral median nerve distribution. Her impression was bilateral carpal tunnel syndrome, status post-surgery, with residual symptoms of tingling and pain. (Cl. Ex. 1, p. 8)

Under the heading "Causation," Dr. Shah stated:

> Repeated use of bilateral hands at his job. Patient has worked for John Deere for 17 years. He is an assembler and uses both hands at work. He is right-handed but his job involves working with both hands. His work activity involves but not limited to using impact guns, long wrenches with high torques. [sic] (Cl. Ex. 1, p. 8)

Dr. Shah found claimant had reached maximum medical improvement (MMI), but did not provide a specific date. Using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, she provided a 10 percent right upper extremity rating, and an 8 percent left upper extremity rating. (Cl. Ex. 1, p. 8) When converted to whole person ratings and combined, she provided a total of 11 percent of the whole person. (Cl. Ex. 1, p. 9)

On February 15, 2022, defense counsel met with Dr. VonGillern. (Def. Ex. J, p. 27) He wrote a letter to Dr. VonGillern on February 16, 2022, summarizing their conversation, which Dr. VonGillern signed as accurate on March 22, 2022. (Def. Ex. J, pp. 27-29) The letter summarizes claimant's care with Dr. VonGillern, including the bilateral median nerve lysis procedures. (Def. Ex. J, pp. 27-28) He also notes that claimant was released to return on an as-needed basis on February 9, 2021. (Def. Ex. J, p. 28) The last time Dr. VonGillern saw claimant was on March 23, 2021, but that visit was "solely for right hip pain."

The letter then discusses claimant's current and past medical history, including polymyalgia rheumatica and hypothyroidism. It states that Dr. VonGillern agreed that polymyalgia rheumatica is associated with the development of carpal tunnel syndrome, and agreed that hypothyroidism is a non-occupational risk factor as well. Dr. VonGillern also agreed that the fact that claimant had bilateral CTS makes it more likely that the condition was caused by a personal medical condition, and less likely that it was caused by his work at John Deere, as manual laborers typically do not use the non-dominant arm as frequently on the job as they do their dominant arm. Finally, it is noted that claimant's BMI on September 8, 2020, was calculated to be 32.9, which is considered to be obese. Dr. VonGillern agreed that both his increased age and higher BMI are non-occupational risk factors for the development of CTS.

In conclusion, Dr. VonGillern agreed that given the presence of the non-occupational risk factors and that the CTS was bilateral, he could not state that claimant's work at John Deere caused claimant's bilateral carpal tunnel syndrome. (Def. Ex. J, p. 28) He further agreed that claimant would have been at MMI on each side four months after each nerve lysis procedure was performed. (Def. Ex. J, p. 29) While Dr. VonGillern did not perform a formal impairment evaluation, he did not anticipate claimant having any permanent impairment in either arm, given that he was "doing well" on the date he was released from care for each arm, and reported that the numbness and tingling had resolved, and each wrist was non-tender to palpation and he had full active and passive range of motion in his wrist and fingers, with sensation intact. Finally,

Dr. VonGillern agreed that claimant does not need any permanent restrictions related to the bilateral CTS, and no future treatment is anticipated. (Def. Ex. J, p. 29)

Claimant argues that Dr. VonGillern's opinion lacks credibility because the February 16, 2022 letter was written by defense counsel, whereas Dr. Shah's opinion was written by the doctor herself after examination and review of the medical records. However, Dr. Shah did not review all of the medical records, most importantly the records from Dr. Shah documenting claimant's history and treatment related to polymyalgia rheumatica and inflammatory arthritis. Additionally, it does not appear that Dr. Shah was provided with an actual job description, or any details regarding claimant's day-to-day work activities. Finally, the letter that claimant's attorney provided did not specifically ask for her opinion as to whether claimant's job caused or materially aggravated his bilateral CTS. (Def. Ex. I, p. 26) Rather, the letter provides a blanket statement that claimant sustained "repetitive and cumulative bilateral carpal tunnel while working for John Deere," and then asks Dr. Shah to provide "the amount of permanency and whether the same is more likely than not related to the work injury." (Def. Ex. I, p. 26) In other words, she was asked to opine whether the permanency is related to the work injury, not whether the injury was work related. Given that Dr. Shah was not provided full information regarding claimant's medical history and job duties, and was potentially under the impression causation had already been determined, I cannot find her opinion regarding causation of the bilateral CTS credible.

Additionally, as defendants point out in their brief, Dr. Shah's opinion does not directly state that claimant's work at John Deere caused or materially aggravated his bilateral CTS. However, even if it is implied that she found the CTS to be work related, there was no consideration given to the variety of non-occupational risk factors present in this case, and no explanation as to why it is more likely than not that claimant's work was the cause of condition.

Dr. VonGillern was claimant's treating physician, who claimant chose to provide treatment for his CTS after the workers' compensation claim was denied. While he did not personally author the February 16, 2022 letter, he signed it with no additional comment, indicating he agreed with the contents entirely. (Def. Ex. J) All of the information defense counsel provided in the letter is consistent with the medical records in evidence. There are no apparent inaccuracies or omissions regarding claimant's medical history. Dr. VonGillern could have provided his own letter in response, but signed defense counsel's letter as it was. As such, I find the February 16, 2022 letter signed by Dr. VonGillern accurately represents his opinions.

Additionally, Dr. VonGillern's opinion is supported by the other medical evidence in the record. Specifically, Dr. Kalaiah's records dated September 23, 2020, in which she stated that the bilateral CTS was likely from active inflammatory arthritis. (Jt. Ex. 4, p. 142) Dr. Kalaiah has been treating claimant since 2017. She is familiar with his history and medication regimen related to his polymyalgia rheumatica and rheumatoid arthritis, including what happens when he decreases or discontinues certain medications. (Jt. Ex. 4, pp. 124-132) Specifically, claimant has previously developed

issues including pain and stiffness in his hands and wrists when he stopped taking methotrexate. When Dr. Kalaiah saw him on September 23, 2020, he had stopped both methotrexate and hydroxychloroquine about three months prior. (Jt. Ex. 4, p. 142) This coincides with his report to NP Huesmann on September 8, 2020, that his bilateral wrist symptoms began about three months prior. (Jt. Ex. 5, p. 151) The fact that his symptoms coincided with his discontinuation of his medication is another factor Dr. Shah did not appear to know, and further supports the opinions of Dr. VonGillern and Dr. Kalaiah. Ultimately, I find Dr. Kalaiah's opinion to be highly credible, given her history and experience with treating claimant.

Finally, NP Huesmann also opined that the claimant's non-occupational risk factors, combined with the job site visit, led her to conclude that the bilateral wrist conditions were not work related. (Def. Ex. B, p. 9) Claimant has presented no argument or evidence to suggest either Dr. Kalaiah or NP Huesmann had inaccurate or incomplete information. I find the opinions of Dr. VonGillern, Dr. Kalaiah, and NP Huesmann to be more convincing on the issue of causation than that provided by Dr. Shah, and supported by the record as a whole. As such, I find that claimant has not met his burden to prove that his bilateral carpal tunnel syndrome arose out of and in the course of his employment.

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 6.904(3).

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, 150 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309, 311 (Iowa 1996). The words "arising out of" refer to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124, 128 (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 at 311. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Elec. v. Wills, 608 N.W.2d 1, 3 (Iowa 2000); Miedema, 551 N.W.2d at 311. 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 at 150.

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 that 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. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

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 possibility of causation is not sufficient; a probability is necessary. Sanchez v. Blue Bird Midwest, 554 N.W.2d 283, 285 (Iowa Ct. App. 1996) (citing Holmes v. Bruce Motor Freight, Inc., 215 N.W.2d 296, 297 (Iowa 1974).

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).

In this case, I found that claimant has not met his burden to prove the bilateral carpal tunnel syndrome arose out of and in the course of his employment. Claimant relies on Dr. Shah's opinion in arguing he sustained a work injury. However, Dr. Shah was not provided complete medical information - most importantly the records of claimant's treatment with Dr. Kalaiah. Dr. Shah was not provided with a job description, and it is unclear what she understood claimant's job duties to entail. There is no consideration in Dr. Shah's report regarding claimant's various non-occupational risk factors, including his age, BMI, hyperthyroidism, polymyalgia rheumatica, and active inflammatory arthritis at the time of his CTS diagnosis. There is no mention that the onset of claimant's bilateral wrist symptoms coincided with his discontinuation of methotrexate and hydroxychloroquine. Essentially, Dr. Shah provides no real basis or explanation for her causation opinion, other than "repeated use of bilateral hands at his job." I find this insufficient given the weight of the remaining evidence, including the opinions of Dr. VonGillern, Dr. Kalaiah, and NP Huesmann. Each of those practitioners examined claimant more frequently, participated in his treatment, and understand his medical history more completely. Additionally, NP Huesmann performed a job site visit, and found no factors present that would produce bilateral CTS. Overall, the evidence does not prove that claimant's bilateral CTS arose out of and in the course of his

employment. While it is possible, a possibility of causation is not sufficient; a probability is necessary. Sanchez, 554 N.W.2d at 285.

As claimant did not prove he sustained an injury arising out of and in the course of his employment, the issues of temporary and permanent disability benefits are moot.

Claimant also seeks reimbursement for his IME with Dr. Shah. Iowa Code section 85.39 permits an employee to be reimbursed for a 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. Iowa Code section 85.39(2). The section also provides that an employer is only liable to reimburse the employee for the cost of an examination if the injury for which the employee is being examined is determined to be compensable. I found the injury is not compensable, as it did not arise out of and in the course of claimant's employment. As such, claimant is not entitled to reimbursement of Dr. Shah's IME under section 85.39.

With respect to costs, assessment of costs is a discretionary function of this agency. Iowa Code § 86.40. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33. Given that claimant was unsuccessful on the merits of his claim, I decline to assess costs against defendants.

ORDER

THEREFORE, IT IS ORDERED:

Claimant shall take nothing in this proceeding.

The parties shall bear their own costs.

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

Signed and filed this 24th day of August, 2022.

JESSICA L. CLEEREMAN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

James Hoffman (via WCES)

Troy Howell (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.