BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

CHRISTOPHER ARDAPPLE,	File No. 5049457
Claimant,	A R B I T R A T I O N
vs.	D E C I S I O N
JOHN DEERE DAVENPORT WORKS,	
Employer, Self-Insured, Defendant.	Head Note Nos.: 1100, 1108, 1801, 2500

STATEMENT OF THE CASE

This case came before the undersigned upon the petition of Christopher Ardapple, claimant, seeking workers' compensation benefits from John Deere Davenport Works, self-insured employer. The petition was filed on November 14, 2014, and the case was heard on October 26, 2015 in Davenport, Iowa and considered fully submitted upon the simultaneous filing of briefs on December 16, 2015.

The record consists of claimant's exhibits 1-28 and defense exhibits A-S along with the testimony of the claimant, Robert Oney, and Lester Kelty, M.D. Exhibit S is subject to a protective order.

ISSUES

1. Whether claimant sustained an injury on September 26, 2014 which arose out of and in the course of his employment.
2. The appropriate rate.
3. Whether claimant is entitled to medical expenses.
4. Whether claimant is entitled to ongoing care.
5. Whether claimant is entitled to a running award.

STIPULATIONS

The parties stipulate the claimant was an employee at the time of the alleged injury. They further agree that the claimant was married and entitled to five exemptions. There are no affirmative defenses asserted in this case.

FINDINGS OF FACT

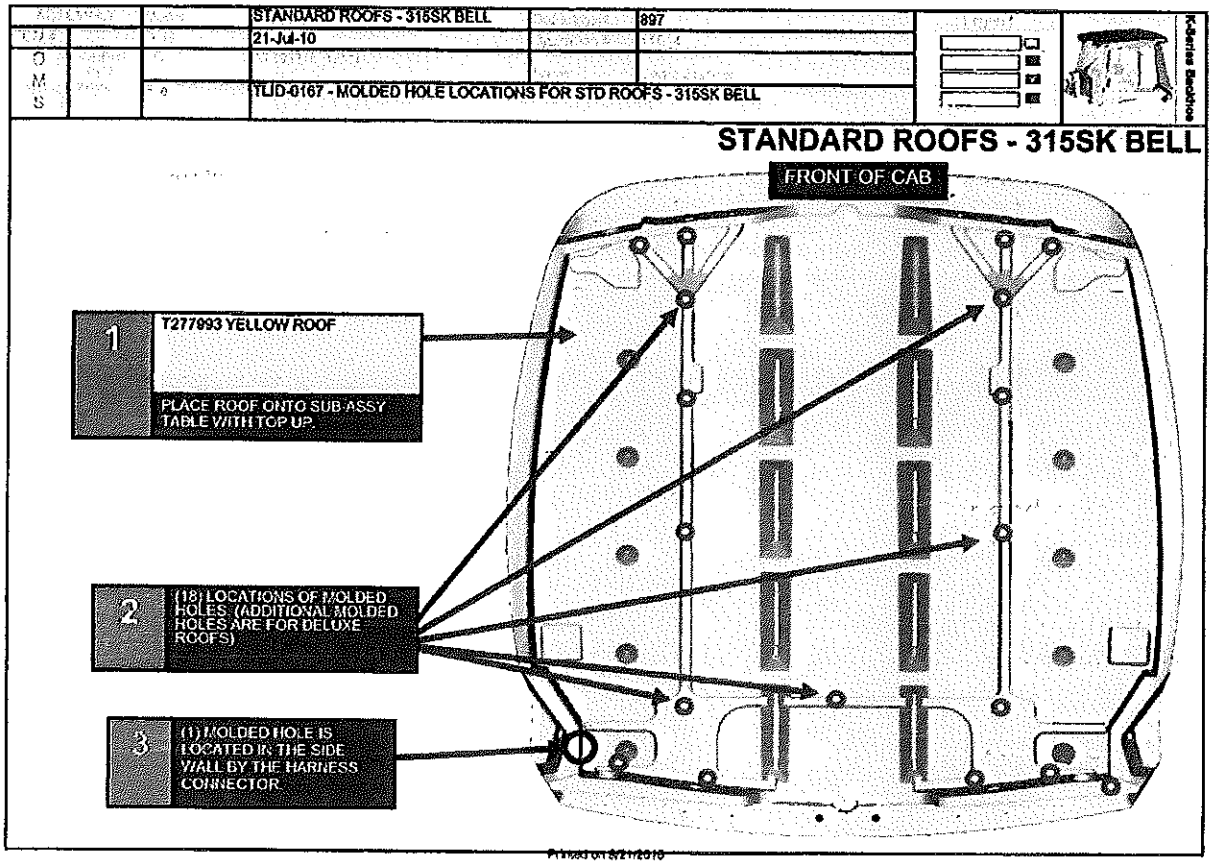
Claimant, Christopher Ardapple, is a 37-year-old male. He is married and has three children under the age of 18. He has a high school diploma and served in the military for approximately four years as a mechanic. During his time in the military, he received a Masters Mechanic badge along with various service award medals. He also attended a community college in Clinton, Iowa for a graphics art program but did not obtain a degree.

Claimant's hobbies include mixed martial arts. He has belts in four types of martial arts including, but not limited to: green belt in Tae kwon do, blue belt in Muay Thai, orange belt in Hapkido. In addition, he does Arnis which is stick-fighting. He attends a facility in his hometown of Morrison, Illinois.

(Ex. O, p. 117)

He currently works as a welder on third shift in department 744 for the defendant employer. Just prior to moving into department 744, claimant worked as an assembly roof builder in department 890. That was where he was working at the time of his injury. His job required him to assemble the roof of the back of a cab.

To assemble a roof, claimant would remove a roof from the rack and place the roof onto a cart. He then removes zip ties from the wiring harness and affixes brackets that hold the lights in place.



(Exhibit 19, page 55)

Once the brackets and lights are installed, the wiring connections are made. The entire assembly is tested and if it done correctly, the roof is flipped over and rolled down a long table where the roof is then taken to another assembly point.

The claimant testified that he would use approximately 10 power tools in the course of the roof assembly and remove approximately 450 of the twist ties each day. The ties were thin and hard on his hands.

While he was working the roof assembly position, the department would have a meeting at the beginning of every morning to inform the employees what their production targets were for the day. This "simulation", as they are called, was a master plan or a rough estimate of the time it takes an average person to complete the job or build what they were tasked with. Exhibit 17 is a printout of the different operators within department 894. Claimant was assigned operator number 115.

His job required 1.4 individuals to complete. (Exhibit 17, page 34) The number

of items to be completed in a day varied from as low as 28 to as high as 41. (See Exhibit 17; Testimony of Robert Oney set the production estimates at between 30 and 45 in a day).

He testified that he was so fast at his job that usually he was left to complete his tasks on his own but there was to be a floater person who would come and assist him now and then. Claimant believed he could assemble a roof in approximately 9 to 12 minutes and that if he finished his allotted jobs, he was allowed to leave early. The job description for assembler included the use of hand or power tools, conveyors, testing and runoff equipment, gages, grinders, riveters, arbor presses, hoists, hand and power trucks, dynamometers, tachometers, runoff machines, prints, fixtures, jigs, templates, clamps and various other hand tools. (Ex. 16)

Over time, his position became taxing. At one point he testified that he spoke with the business unit manager and supervisors that he needed more help. Some supervisors were better than others about providing the help the claimant testified he needed.

On September 26, 2014, claimant was seen at Morrison Community Hospital for pain in his hand and wrist. (Ex. 5) He was seen by Duncan Dinkha, M.D. who noted that claimant had tenderness on palpation of the volar area of both wrists and tingling in the first four fingers of both hands upon pressure. There was no weakness in the fingers of either hand. (Ex. 5, p. 12) Claimant described having this pain and tingling after a work day and sometimes in the morning upon waking up. (Ex. 5, p. 12) Claimant was given wrist splints and instructed to wear them at work and at bedtime. (Ex. 5, p. 13)

The situation did not improve, and he reported to the company doctor of continuing pain in his bilateral hands and wrists. (Ex. E, p. 26) He was seen by Dr. Kelty who also testified at hearing. In Dr. Kelty's notes, he states:

> Job site visit. Installs wire harness and lights in cabs. He does various tasks which do not require the same repeated wrist movement, not unusual position, not much vibration. I was able to push the zip tie anchors in without a great deal of effort. There is nothing in this job that would be considered work related bilateral hand neuropathy.

(Ex. E, p. 26)

Dr. Kelty is an older gentleman who works part time as a doctor for defendant employer through UnityPoint Health. His past medical training and experience include work at Trinity Medical Center from 1995 to 2011. Since then he has been employed by Concentra Medical Centers in Moline, Illinois. (Ex. F, pp. 27-28) He carries a board certification in emergency medicine. (Ex. F, p. 28)

Claimant was then seen by Peter Matos, D.O. at Medical Associates. (Ex. 6)

Dr. Matos' tests resulted in negative Phalen's and Tinel's bilaterally but claimant was positive for reverse Phalen's. (Ex. 6, p. 5) Dr. Matos concluded claimant had numbness and tingling in the right-hand "due to unclear causation." (Ex. 6, p. 15)

Defendant employer denied any responsibility for the injury.

At the request of the defendant employer, Dr. Matos issued an opinion on September 9, 2015 stating that he did not believe the claimant's employment was a significant or substantial factor in his bilateral upper extremity injury. Instead, Dr. Matos placed the blame on fractures to his right hand, practice of mixed martial arts, smoking marijuana, and history of alcohol abuse along with the use of Buspar. (Ex. L, p. 44) Dr. Matos wrote "The National Institute of Neurologic Disorders and Stroke (NINDS) found that a history of trauma and/or fractures could contribute to carpal tunnel syndrome." (Ex. L, p. 44) The same document (and in the same paragraph) it notes that repeated use of vibratory hand tools and work stress can contribute to carpal tunnel syndrome.

> Carpal tunnel syndrome is often the result of a combination of factors that increase pressure on the median nerve and tendons in the carpal tunnel, rather than a problem with the nerve itself. Most likely the disorder is due to a congenital predisposition – the carpal tunnel is simply smaller in some people than in others. Other contributing factors include trauma or injury to the wrist that cause swelling, such as sprain or fracture; overactivity of the pituitary gland; hypothyroidism; rheumatoid arthritis; mechanical problems in the wrist joint; work stress; repeated use of vibratory hand tools; fluid retention during pregnancy or menopause; or the development of a city or tumor in the canal. In some cases no cause can be identified.

(Ex. L, p. 71) The same article goes on to say:

> The risk of developing carpal tunnel syndrome is not confined to people in a single industry or job, but is especially common in those performing assembly line work – manufacturing, sewing, finishing, cleaning, and meat, poultry, or fish packing. In fact, carpal tunnel syndrome is three times more common among assemblers than among data-entry personnel.

(Ex. L, p. 72)

Additionally, a 1996 Journal of Occupational and Environmental Medicine found that tobacco and alcohol use increased an individual's risk of carpal tunnel syndrome, according to Dr. Matos. (Ex. L, p. 44) The article stated that the alcohol abuse and drinks of beer/month predicted about 3 percent of the explainable risk for definite CTS in male workers. (Ex. L, p. 80) Dr. Matos correctly documented that the medical records

did not reveal "how much alcohol, tobacco or marijuana he may be using on a daily basis." (Ex. L, p. 44) The 1996 study only said that legal drug use or abuse *may* serve as a marker for increased CTS risk. (Ex. L. p. 45)

Dr. Matos viewed the videos of claimant's job and noted that the rapid upper limb assessment (RULA) was low risk:

> Five video clips were viewed. Ardapple welding 1 lasting 18 minutes and 4 seconds. Ardapple 2 welding lasting 18 minutes. Ardapple Welding 3 lasting 2 minutes and 56 seconds. Ardapple roof build video 1 lasting 50 seconds. Ardapple roof build video 2 lasting 15 minutes and 40 seconds. The Rapid Upper Limb Assessment (RULA) tool was used to rate the welder and roof build jobs. RULA looks at upper arm posture, lower arm posture, wrist posture, neck posture, trunk posture, leg posture, muscle use and force to asses ergonomic risk of a job. Both the roof build and welding jobs were rated as low risk.

(Ex. L, p. 45)

Much of Dr. Matos' conclusions regarding possible other contributory factors to claimant's CTS is based on speculation and possibilities. He readily latches on to the nonfavorable causes and completely ignores the other contributory factors listed in the same article and even in the same paragraph which notes that work stress and use of vibratory tools is a factor in CTS and that CTS is "especially common in those performing assembly line work." It is difficult to find his opinion unbiased and trustworthy.

Christine C. Deignan, M.D. also issued an IME report. (Ex. O) She described his job as follows:

> Roof building job: The roof building job involves collecting parts and hoses. The hoses are pushed into preformed grooves in the roof. Some hoses need to be threaded through holes and then attached to each other. Attaching a hose involves grasping and pressing.
>
> The assembler needs to retrieve parts and bring them over to the work area. The act of retrieving parts is rest time from the grasping tasks. The grasping is never sustained more than a few seconds. Because the hoses are threaded in different locations, the hands continually shift position. There are no intense vibratory tools used during assembly of the roof. This job does not require sustained postures of the wrists. There is no heavy lifting required in this job.
>
> Welding: Videos of the welding, show a hoist being used with magnetic clamps to place parts into a fixture. A pneumatic gun is used to fasten the parts into the fixture. The duration of time with the gun

activated is 1-2 seconds. After the part is placed in the fixture, parts need to be retrieved for welding. The retrieval process gives the hands time to rest.

Welding is done by holding the weld gun in the right hand, while the left hand is used to guide the weld tip. Welds are brief, lasting from 5-20 seconds before moving to the next weld area. The fixture needs to be readjusted for other welds. During most of the welding, the left hand is totally at rest. A hoist is used to maneuver parts on and off the fixtures. The hoist does the heavy lifting so that the hands are protected.

The welding job shows occasional grasping with the right hand and rare exposure to vibratory tools. The left hand shows rare grasping and no exposure to vibratory tools. Motions with the right hand are varied. There are no parts of the job that are repetitive.

These jobs are not likely to cause symptoms of carpal tunnel syndrome.

(Ex. O, p. 121-22)

Dr. Deignan determined that claimant did have bilateral carpal tunnel syndrome and that he was not at MMI. (Ex. O, p. 124) His diagnostic testing has been abortive and incomplete, and he has received no treatment for his symptoms.

Dr. Deignan's report concluded that claimant's injuries are not work related primarily because the injuries were bilateral in nature and because the work that he does is not of the type and nature that would result in bilateral CTS.

The World Health Organization considers carpal tunnel syndrome as a multi-factorial disease which may be work related but also occurs in the general population. Occupational exposures are not necessarily risk factors in every case of carpal tunnel syndrome. When carpal tunnel syndrome is bilateral; the scale shifts away from an occupational cause and more toward personal factors.

. . .

There is evidence to support that a combination of risk factors such as force, repetition, and posture together may be causally associated with carpal tunnel syndrome. However, epidemiological studies define high repetition as performing the same task every 30 seconds or spending 50% of the cycle time performing the same activity. High force is denied as requiring average hand forces of more than 4 kg (8.8 pounds). Awkward wrist posture is defined as more than 45 degrees of wrist flexion or extension. Multiple risk factors must be present in the job to support an

argument of positive causation.

Mr. Christopher Ardapple worked as an assembler and as a welder at John Deere Davenport Works, but the jobs are not repetitive. The jobs are not heavy. The jobs do not require sustained awkward wrist postures. The use of vibratory tools is rare.

To say that bilateral carpal tunnel syndrome is caused by occupational factors would require that causation for each hand be considered independently. Mr. Ardapple is right hand dominant. For much of the time Mr. Ardapple is working, his non-dominant hand is at rest.

Mr. Ardapple is accomplished in mixed martial arts. He attends a Dojo in Morrison, Illinois. The Dojo advertises "Open Hand Self Defense." Mr. Ardappel [sic] holds numerous belts and works out regularly. In fact, one of his frustrations is that his current symptoms interfere with his work-outs.

Martial arts self-defense use the hands as weapons of defense. Using the hand as a weapon, results in trauma to the hands. Striking with the palm of the hand puts direct pressure on the median nerve as it comes out of the carpal tunnel. The physical examination for carpal tunnel syndrome include two tests, the Tinel's and the Durkin's, that are performed by striking or putting pressure on the median nerve at the carpal tunnel. Stick fighting, Arnis, requires continuous grasping during training and performance testing.

Mr. Ardapple has had fractures of both hands that were not work-related. Because Mr. Ardapple has had trauma with fractures to both hands, it would be appropriate to obtain x-ray films of both wrists and hands. Although Mr. Ardapple is very flexible the right wrist is less flexible than the left. This asymmetry could be due to old trauma. Undiagnosed wrist fractures of the carpal bones can lead to necrosis and collapse of the bone. This event leads to less space in the carpal tunnel and more pressure on the median nerve as it traverses the canal. Pressure on the median nerve products the symptoms known as carpal tunnel syndrome.

(Ex. 125-26)

Dr. Deignan, like Dr. Kelty, is an employee of the defendant and works as their "workers' compensation medical manager." (Ex. P) Her past medical experience is in occupational medicine, but she has been employed by John Deere in some capacity since 1993. Her opinion is given less weight, not solely because of her allegiance to the defendant employer, but because claimant's work conditions, something he does five days a week for at least seven hours a day, is disregarded as a cause for his injuries

whereas three times a week, one hour a day, martial arts as well as alcohol use is deemed to be of much greater concern.

Claimant testified that the safety environmental risk assessement (SERA) of his position was 64, an assessment he had performed after he left the job so that it would aid the next worker assigned to his tasks. Robert Oney testified that SERA is a safety environmental risk assessment. These SERAs are performed by the engineering department. Dr. Kelty, the company doctor, was unfamiliar with the term. Mr. Oney testified that if there was a SERA of 64 that the company would try to change the job to reduce the SERA number.

Claimant's prior medical history includes a fracture of the metatarsal on his left hand which he suffered after a transmission fell onto his hand while he was working. This injury occurred on April 8, 2006. (Ex. A) Claimant testified that he fully recovered from this injury. He sustained a right fifth phalanx fracture on May 18, 2010. (Ex. C, p. 19) He was seen at Morrison Community Hospital for physical therapy for sharp pain and stiffness across his low back, right scapular area and bilateral posterior neck along with aching in both of his hands. (Ex. C, p. 21) He did not seek further treatment due to interference with his work schedule. It was noted that in addition to claimant's work as a welder and assembler, he practiced Tae Kwon Do two times a week. (Ex. C, p. 21)

He presented in November 2013 to Medical Associates with complaints of decreased hearing in his right ear. Claimant attributed this to head trauma suffered during mixed martial arts. (Ex. B, p. 12) Testing showed that he had right eustachian tube dysfunction and he was prescribed Flonase, a topical nasal steroid. (Ex. B, p. 13)

Claimant was seen on July 21, 2015 by Richard Kreiter, M.D. for an independent medical evaluation. During the examination, claimant exhibited positive Tinel's with percussion of the ulnar nerve at the right elbow and positive Tinel's and positive Phalen's on the right side, less so on the left. (Ex. 2, p. 6) He had somewhat diminished sensitivity to light touch and pinprick in the median distribution on the right, less so on the left. He also had reduced grip strength on the right as compared to the left. (Ex. 2, p. 6)

On July 21, 2015 Dr. Kreiter wrote in an opinion letter that his diagnosis of the claimant included bilateral carpal tunnel syndrome with median nerve entrapment, greater on the right, with chronic pain and intermittent numbness, spasms and grip strength weakness. (Ex. 2, p. 1) He attributed these injuries to claimant's assembly of roofs. He cited the AMA guidelines in support of his conclusion, stating "occupational risk factors for carpal tunnel symptoms include force, posture, high repetitive work such as meat packing and automobile assembly work." (Ex. 2) Dr. Kreiter recommended further testing to evaluate the degree of entrapment and was concerned that the claimant would suffer a progression of symptoms that would make it hard for him to continue to be a productive employee. (Ex. 2, p. 1)

Currently claimant has difficulty opening plastic bags and jars, interacting with his children, carrying heavy objects. On November 13, 2014 claimant changed jobs into the CNC robotic welding position in department 744, which resulted in a loss of seniority and requires him to work third shift.

The parties agree that the claimant's base wage was $856.67. They further agree on the weeks to be used in calculating the workers' compensation benefit rate. Where they differ is on whether additional monies should be included. Claimant received profit-sharing amounts as follows:

Period End Date	Amount
01/08/12	$5,495.22
01/06/13	$5,364.27
01/05/14	$5,357.53
01/04/15	$4,876.70

(Ex. 21, p 77)

Claimant's wage calculations include CIPP, profit sharing less legal services.

According to the collective bargaining agreement, a profit share is paid each year as follows:

> **Section 4. Amount of Benefit**
>
> A. The amount of the benefit which shall accrue for a participant for any Plan Year shall be computed by multiplying the following three elements:
>
> (1) the number of hours worked in that Plan Year by the participant;
>
> (2) the average straight-time hourly rate of pay plus any cost-of-living and general wage increase allowances as of the last day of the Plan Year (or as of the last day of active work of the employee if earlier).. In the calculation of the Average Earnings Rate for CIPP employees, weeks in which the employee is required to work when their CIPP plan is not in operation will be excluded from this calculation.
>
> (3) the Profit Sharing Benefit Percent(s) as determined in Paragraph B below times 50%.
>
> The total benefit will equal the addition of the 50% benefit determined from the combined North American Agricultural & Turf and Construction &

Forestry rate schedule, plus the 50% benefit determined from the Worldwide rate schedule.

(Ex. R, p. 155)

Claimant calculated the CIPP for each week by using the total amount of CIPP for the year of 2014, which was $4,230.03, and dividing that by fifty-two (52) weeks:

$4,230.03/52 = $81.35

Claimant calculated the amount of profit sharing by using the total amount of profit sharing for that year of 2014, which was $5,357.53, and dividing that by fifty-two (52) weeks:

$5,357.53/52 = $103.03

Claimant's calculation for each weekly earnings is: "Gross Comp" + CIPP + Profit Sharing – "Legal Serv." "Gross Comp" can be found under cod 912 and "Legal Serv" can [sic] found under code 031.

For example, the week of 3/9/14 was calculated as follows:

Gross Comp: $856.67

+ CIPP: $81.35

+ Profit Sharing: $103.03

- Legal Serv: $3.70

- $1,037.35

Claimant calculated the average weekly earnings and has attached the chart to the instant interrogatory.

Claimant submits that Defendants calculations are too low because they do not take into account the proper amount of CIPP and profit sharing.

(Ex. 20, p. 75)

Claimant is also seeking reimbursement for medical visits to Morrison Community Hospital and Morrison Family Care Clinic in the amount of $302.22. (Ex. 25) These bills represent the visit regarding his bilateral wrist pain on October 21, 2014.

Claimant further seeks reimbursement of costs including $468.00 for the appointment with Dr. Kreiter. (Ex. 26) According to Exhibit 27, Dr. Kreiter spent four hours and 30 minutes for record review and report dictation. (Ex. 27)

1. Iowa Workers' Comp. Comm. – filing fee	$100.00
2. Certified Mail – service on Defendants.	$13.46
3. Alternate Medical Care-Certified Mail for two petitions	$13.46
4. Dr. Kreiter Appointment (270 minutes)	$468.00
5. Copy of Deposition Transcript	$143.75
6. Copy of Hearing Transcript	$_____
	$738.67

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 R. App. P. 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.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Defendant presents the opinions of two John Deere employed medical professionals along with Dr. Matos in support of its position that claimant's symptoms are not work-related. All three pin claimant's carpal tunnel problems on his alcohol and marijuana use as well as his martial arts hobby rather than the work-related jobs. In one medical article attached to Dr. Matos' opinion, it states as follows:

> The risk of developing carpal tunnel syndrome is not confined to people in a single industry or job, but is especially common in those performing assembly line work – manufacturing, sewing, finishing, cleaning, and meat, poultry, or fish packing. In fact, carpal tunnel syndrome is three times more common among assemblers than among data-entry personnel.

The risk of developing carpal tunnel syndrome building 35 to 40 roof cabs a day is three times greater than those who are involved in data entry, according to an article relied upon by Dr. Matos. Further, it appears from the articles included by Dr. Matos that the tobacco and alcohol use may increase the risk of CTS, rather than causing the CTS outright. Being at greater risk for a work-related injury because of a prior injury does not move a worker outside the workers' compensation code.

Carpal tunnel syndrome is deemed an injury compensable under the workers' compensation statute. See Noble v. Lamoni Prods., 512 N.W.2d 290, 294 (Iowa 1994). See generally Jay M. Zitter, Workers' Compensation: Recovery for Carpal Tunnel Syndrome, 14 A.L.R.5th 1, 11-12 (1993) ("Carpal tunnel syndrome is a condition produced by compression of the median nerve as it travels through the carpal tunnel at the wrist, resulting in symptoms of tingling, pain, and weakness in the wrist and in the thumb and first three fingers of the hand.... [T]he cause which has been the focus of considerable recent attention is repetitive minor trauma in the modern workplace. Many assembly line tasks ... involve thousands of repetitive hand and wrist motions, such as slicing, pushing, or pressing, often without sufficient break or resting time."). It is known as a repetitive-trauma injury, or cumulative injury, because it normally develops over time. Meyer v. IBP, Inc., 710 N.W.2d 213, 221 (Iowa 2006).

Tort standards for causation do not apply in workers' compensation. Instead, the question to be answered is whether the employment contributes to the risk or aggravates an injury. Id. At 223.

In this case, claimant did the work of at least 1.4 workers per the defendant's own documents. He did his work quickly, sometimes so quickly he was allowed to leave his shift early. He assembled anywhere from 38 to 45 roofs each day, and every roof took 10 screws/bolts with the impact gun/wrench meaning he used the vibrating tool 380 to 450 times per day, every day, for six to eight hours a day, sometimes up to twelve hours a day. In addition to his use of the power tool, he is required to wrap zip ties around brackets and pull them tight, push in brackets and other plastic pieces. Claimant's job required constant use of his hands, wrists and arms.

The dismissiveness of claimant's regular, daily use of his upper extremities by Drs. Kelty, Matos, and Deignan render their opinions less than helpful. It does not seem rational, on its face, that all other factors in the claimant's life that are non-work-related have greater impact on the condition of claimant's upper extremities than something he does more than anything else in his life on a day-to-day basis.

While he may have suffered trauma to his hands and wrists while doing martial arts, there is no confirmed documentation that it has led to bilateral carpal tunnel. In Dr. Deignan's report she writes that it would be appropriate to obtain x-rays of both wrists and hands because of an asymmetry in claimant's flexibility, greater on the right than the left. "This asymmetry could be due to old trauma. Undiagnosed wrist fractures of the carpal bones can lead to necrosis and collapse of the bone." (Ex. O) Yet there are no x-rays that confirm Dr. Deignan's speculation. Further, the fracture in martial arts occurred in the right hand and not the left, which would undermine Dr. Deignan's theory that fracture was leading to necrosis and collapse of the bones triggering the carpal tunnel syndrome.

The more credible expert testimony comes from Dr. Kreiter, a board-certified orthopedic surgeon. Defendant argues that his opinion is not credible because it does not contain any causation language, and he merely signs a letter drafted by claimant's attorney. Defendant also asserts that the opinion lacks a rationale or basis. I disagree. Dr. Kreiter diagnosed the claimant as suffering from "probable bilateral carpal tunnel syndrome with median nerve compression, more on the right with grip strength weakness and mild paresthesias and chronic pain." (Ex. 2, p. 6)

He further identified the start of the symptoms as occurring after claimant began working on the roof assembly and that the AMA Guides to Evaluation of Disease and Injury Causation states that the occupation risk factors for CTS include force, posture, high repetitive work such as meat packing and automobile assembly work.

While claimant's past history with alcohol, marijuana (which is not synonymous with tobacco), and martial arts may have predisposed claimant to a CTS injury, those have lower risk factors—based on defendant's own expert reports—than repetitive work.

It is found that claimant's bilateral carpal tunnel syndrome arose out of and in the course of his employment. Claimant's work was of the type that caused carpal tunnel syndrome. He had no previous symptoms of numbness and tingling before working in the roof assembly line despite prior use of alcohol and a prior martial arts injury. After working an assembly job that is assigned to 1.4 people, per defendant employer's own assessment, claimant developed CTS symptoms.

The next issue is whether claimant has reached MMI. Claimant's treatment has been truncated. He cannot take time off of work because he has used all his authorized leave to address his wife's illness. He was actually given an unexcused absence for attending the workers' compensation hearing.

Dr. Kreiter has recommended future care including EMG tests as well as possible surgical repair. However, claimant has returned to substantially similar work. At the moment, he does not qualify for any temporary benefits pursuant to Iowa Code section 85.34(1). Should he miss time because he is taken off of work by a medical provider or because of surgery or other medical appointments, he would be entitled to temporary or healing period benefits, but because he is working a substantially similar job, there is no award of temporary or healing period benefits. However, neither is claimant at MMI. The case is not ripe for a permanency award.

Claimant is entitled to medical benefits and ongoing care. The claimant filed an alternate care petition on December 23, 2014. Defendant denied the claim. Therefore, defendant has no right to contest authorization or direct further care.

> The first circumstance in which an employee can select his or her own medical care is when the employer denies compensability of the injury. The right to control medical care emanates entirely from the duty to furnish medical care for injuries compensable under the workers' compensation laws. See Id. (describing employer's duty to furnish reasonable medical care for compensable injuries). Without the duty to furnish care, the employer has no right to control care. Thus, if the employer contests the compensability of the injury following notice, the statutory responsibility of the employer to furnish reasonable medical care to the employee or pay other employee benefits described in the workers' compensation statute is not imposed until the issue of compensability is resolved in favor of the employee. Likewise, the employer has no right to choose the medical care when compensability is contested. Instead, the employee is left to pursue his or her own medical care for the injury at his or her own expense and is free to pursue a claim against the employer to recover the reasonable cost of medical care upon proof of compensability of the injury. If the employee establishes the compensability of the injury at a contested case hearing, then the statutory duty of the employer to furnish medical care for compensable injuries emerges to support an award of reasonable medical care the employer should have furnished from the inception of the injury had compensability been acknowledged.
>
> Thus, the statute contemplates that an injured employee may select his or her own medical care when the employer abandons the injured employee through the denial of compensability of the injury. When this circumstance occurs, the employee may subsequently recover the costs of the reasonable medical care obtained upon proof of compensability of the injury derived from the statutory duty of the employer to furnish reasonable medical care and supplies for all compensable injuries.

Bell Bros. Heating v. Gwinn, 779 N.W.2d 193, 202 (Iowa 2010)

Therefore, claimant is entitled to reimbursement of his medical expenses and is

entitled to seek future medical care from the physicians and providers of his selection.

The final issue is that of rate, despite no benefits being owed at this time. The parties dispute whether CIPP and profit sharing should be included.

An employee's basis of computation for workers' compensation benefits is based upon the employee's weekly earnings, which means the "gross salary, wages, or earnings of an employee to which such employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured." Iowa Code section 85.36 (2011). The term "gross earnings" excludes irregular bonuses. Id. Section 85.61(3); Mycogen Seeds v. Sands, 686 N.W.2d 457, 470 (Iowa 2004).

Defendant included CIPP for the weeks that it was paid and not the entire amount of CIPP that was paid during the year divided by 52. Neither party provided any testimony regarding Exhibit Q. That said, it does appear that there are CIPP payments each pay period. (Ex. Q) Claimant's calculations uses the gross compensation line in Exhibit Q which includes, among other things, CIPP as well as something such as CO UNEMP for the week of April 6, 2014. The $1,287.42 for CO UNEMP does not appear customary. In the 27 weeks of pay periods provided, CO UNEMP only appears three times and only once for four figures.

Defendants also argue that the bonus was only paid once during the year. That is consistent with past John Deere profit sharing plans which have been considered ordinary and customary. See Davis v. John Deere Davenport Works, File No. 5039241 (Arb. Dec. 01/03/13); Spaete v. John Deere Davenport Works, File No. 5031216 (App. June 12, 2012); Freeman v. John Deere Davenport Works, File No. 5026012 (Dec. February 3, 2011).

The customary wage appears to be the straight time in addition to CIPP and Profit sharing.

The average weekly wage was $1050.20. He was married and entitled to five exemptions.

Based on the foregoing figures, the rate is $688.48.

ORDER

That claimant's September 26, 2014, injury arose out of and in the course of his employment.

That claimant is entitled to reimbursement of medical bills paid and/or direct payment to the medical providers for care associated with his bilateral carpal tunnel symptoms.

That claimant is entitled to ongoing care associated with his bilateral carpal

tunnel symptoms and that claimant is entitled to direct his own care due to defendant's denial of liability.

That the benefit rate is six hundred eighty-eight and 48/100 dollars ($688.48).

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

That defendant shall pay the costs of this matter pursuant to rule 876 IAC 4.33.

Signed and filed this 29th day of January, 2016.

JENNIFER S. GERRISH-LAMPE
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.