BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

SADIJA RAKANOVIC,	File No. 5046583
Claimant,	A R B I T R A T I O N
vs.	D E C I S I O N
TYSON FRESH MEATS, INC.,	
Employer, Self-Insured, Defendant.	Head Note No.: 1803

STATEMENT OF THE CASE

Claimant has filed a petition in arbitration and seeks workers' compensation benefits from Tyson Fresh Meats, Inc., self-insured employer, defendant.

Deputy Workers' Compensation Commissioner, Stan McElderry, heard this matter in Waterloo, Iowa.

ISSUES

The parties have submitted the following issues for determination:

1. Whether the claimant suffered an injury arising out of and in the course of employment on February 2, 2012;

2. Whether the alleged injury is the cause of any temporary disability;

3. Whether the alleged injury is the cause of any permanency, and if so, the extent; and

4. Medical benefits.

FINDINGS OF FACT

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

The claimant was 43 years old at the time of hearing. She completed the eighth grade in Bosnia and Herzegovina. She came to the United States from Bosnia in 2009. Shortly thereafter she obtained employment as a motel maid in Sioux Falls, South Dakota. She and her husband then moved to Waterloo, and she began

employment with Tyson on July 5, 2010. Her first position with Tyson was to "Trim Giblet." She then moved to "Pack Front Feet/Tails/Hocks," which she referred to at hearing as "Lining Boxes." The claimant would take a premade box weighing about 1.7 pounds, tear a plastic liner off a perforated roll, line the box with the liner, and pass the box on to be filled with feed and hocks.

On February 9, 2012 the claimant was seen by Robert Gordon, M.D., for her bilateral upper extremities, which claimant attributed to work duties. Dr. Gordon diagnosed bilateral brachialgia, but indicated that the etiology was not clear. The claimant saw Dr. Gordon again on February 16, 2015. Dr. Gordon performed a job site evaluation. (Exhibit E, page 2) Based on his examinations of the claimant and the job site evaluation, Dr. Gordon opined that work activities were not the cause of the claimant's physical complaints. (Ex. E, p. 4)

The claimant was seen by Vinko M. Bogdanic, M.D., on February 21, 2012 with reports of shoulder and hand pain. (Ex. 5, p. 1) Dr. Bogdanic referred the claimant to physical therapy, which the claimant attended eight times from February 22, 2012 through March 15, 2012. The claimant reported improvement from the physical therapy. On April 17, 2012 the employer denied the claim based on Dr. Gordon's opinions.

Dr. Bogdanic referred the claimant to Arnold E. Delbridge, M.D., who first saw the claimant on September 28, 2012. (Ex. 1, p. 1) He recommended a right side carpal tunnel release, which was performed on December 3, 2012. He last saw her on November 10, 2014. Eventually he rated the carpal tunnel as causing a 1 percent upper right extremity impairment. (Ex.1, p. 43) For range of motion loss to the right shoulder he opined a 9 percent impairment, for a combined impairment of 10 percent of the upper right extremity (6 percent body as a whole). (Ex. 1, p. 43) He also opined that the carpal tunnel and right shoulder problems were materially aggravated by the work activities at Tyson. (Ex. 1, pp. 43-44) On January 5, 2015 Dr. Delbridge responded to the opinions of Robert L. Broghammer, M.D. (Ex. 1, pp. 45-46) He disagreed that the claimant reached maximum medical improvement on February 16, 2012. (Ex. 1, p. 46) Dr. Delbridge believed the MMI date was June 9, 2014 for the right shoulder as opined by Farid Manshadi, M.D., and January 1, 2014 for the right wrist. (Ex.1, p. 43) He also reaffirmed his belief that the right carpal tunnel and shoulder problems were caused by work at Tyson. (Ex. 1, pp. 45-46)

The claimant was referred to Dr. Manshadi by Dr. Bogdanic. (Ex. 2)
Dr. Manshadi first saw the claimant on January 15, 2014. (Ex. 2, p. 1) Dr. Manshadi also performed an independent medical evaluation (IME) of the claimant on October 8, 2014. (Ex. 2, p. 18) He issued his report on October 15, 2014. In his report Dr. Manshadi opines that right carpal tunnel and right shoulder problems were caused/significantly aggravated by claimant's work activities at Tyson. He opined an MMI date of June 9, 2014 for both conditions. (Ex. 2, p. 21) He provided a 12 percent impairment for the right extremity due to the shoulder injury and zero percent for the carpal tunnel. (Ex. P, 21) He opined restrictions of no lifting over 8-10 pounds, avoid

using vibratory tools, and to avoid repetitious reaching, shoulder height and overhead activities. (Ex. 2, p. 21)

On December 3, 2014 the claimant was evaluated by Dr. Broghammer at the defendant's request. (Ex. C) Dr. Broghammer issued his report on December 9, 2014. (Ex. C, p. 1) Dr. Broghammer opined that the claimant's shoulder condition was a personal genetic condition and not the result of work at Tyson. He opined a return to baseline and MMI as of February 16, 2012. He also found no causal connection to the work performed and the carpal tunnel. He did note markedly reduced range of motion globally on the right shoulder as compared to the left. (Ex. C, p. 16) He opined an intolerance to physical activity. (Ex. C, p. 18)

Dr. Gordon performed a records review on December 16, 2014. (Ex. D) Dr. Gordon opined that the claimant's work at Tyson did not contribute to either carpal tunnel or the right shoulder condition. (Ex. D, pp. 7-8)

Dr. Delbridge is the only orthopedic surgeon and specialist to render opinions in this case. He provided treatment for the claimant for over a year. He responded to the report of Dr. Broghammer effectively and countered each reason Dr. Broghammer opined no work injury. Dr. Delbridge also noted that Dr. Broghammer did notice the marked loss of range of motion in claimant's right shoulder. Dr. Delbridge's opinions on causal connection to work, impairment, and restrictions are accepted as to the right shoulder. The opinions of Drs. Gordon, Broghammer, and Manshadi as to zero percent residual impairment from the carpal tunnel are accepted; particularly since Dr. Delbridge indicated he would reconsider any impairment of the carpal tunnel if another EMG was conducted.

An injury of the shoulder is a body of the whole injury. So claimant's benefits will be looked at industrially. The claimant has an eighth grade education in another country. She is not fluent in English. Her work history consists of just over half a year in motel housekeeping, and then her job as a meatpacker at Tyson. Her restrictions limit what jobs she can perform at Tyson. She had difficulty returning to work although she has suffered no actual rate of wage loss to present. Given the claimant's pain, claimant's medical impairment, training, permanent restrictions, as well as all other factors of industrial disability, the claimant has suffered a 30 percent loss of earnings capacity.

On the February 2, 2012 date of injury plead the claimant was married, entitled to two exemptions, and had gross earnings of $635.68 per week. The weekly rate is therefore $432.60. The claimant seeks payment/reimbursement of medical bills relating to treatment of her right shoulder and wrist. Those bills are detailed in Exhibit 8. Claimant missed work from August 29, 2012 through November 18, 2013 and December 5, 2013 through June 9, 2014 from the work injuries.

REASONING AND CONCLUSIONS OF LAW

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 Elec. 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.

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).

It was found that the claimant's right shoulder (BAW) injury/disease arose out of and in the course of her employment with Tyson and caused permanent restrictions and impairment.

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.2d 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.

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). 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).

Based on the finding that the claimant has suffered a 30 percent loss of earning capacity, she has sustained a 30 percent permanent partial industrial disability entitling her to 150 weeks of permanent partial disability pursuant to Iowa Code section 85.34(2)(u).

Temporary benefits.

An employee is entitled to appropriate temporary partial disability benefits during those periods in which the employee is temporarily, partially disabled. An employee is temporarily, partially disabled when the employee is not capable medically of returning to employment substantially similar to the employment in which the employee was engaged at the time of the injury, but is able to perform other work consistent with the employee's disability. Temporary partial benefits are not payable upon termination of temporary disability, healing period, or permanent partial disability simply because the employee is not able to secure work paying weekly earnings equal to the employee's weekly earnings at the time of the injury. Section 85.33(2).

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

The claimant was off work from August 29, 2012 through November 18, 2013 and December 5, 2013 through June 9, 2014 due to her work injury of February 2, 2012. The periods were healing periods, and defendant is responsible for payment of those benefits.

MEDICAL

Medical benefits.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

The claimant seeks medical bills detailed in exhibit 8 relating to treatment of her right shoulder and wrist. Those bills were reasonable and necessary for the treatment of the work injury. The defendants shall pay/reimburse the medical bills as appropriate.

ORDER

Therefore it is ordered:

That defendant pay claimant one hundred fifty (150) weeks of permanent partial disability commencing June 9, 2014, at the rate of four hundred thirty-two and 60/100 dollars ($432.60).

That the defendant pay the claimant healing period benefits at the rate of four hundred thirty-two and 60/100 dollars ($432.60) from August 29, 2012 through November 18, 2013 and December 5, 2013 through June 9, 2014.

The defendant shall pay/reimburse the medical bills as detailed above as appropriate.

Costs are taxed to the defendant pursuant to 876 IAC 4.33.

Accrued benefits shall be paid in lump sum together with interest pursuant to Iowa Code section 85.30 with subsequent reports of injury pursuant to rule 876 IAC 3.1.

Signed and filed this 27th day of July, 2015.

STAN MCELDERRY
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies To:

Adnan Mahmutagic
Attorney at Law
PO Box 178
Waterloo, IA 50704
adnan@beecherlaw.com

Chris J. Scheldrup
Attorney at Law
PO Box 36
Cedar Rapids, IA 52406-0036
cscheldrup@scheldruplaw.com

SRM/sam

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.