BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

FILED
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WORKERS COMPENSATION

DEBRA GRADFORD, Claimant, vs. TIMBERLINE MANUFACTURING COMPANY, Employer, and SFM SELECT INSURANCE COMPANY, Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 5061156 ARBITRATION DECISION Head Note Nos.: 1100, 1402.30, 1803, 1808, 3200

STATEMENT OF THE CASE

Debra Gradford, claimant, filed a petition in arbitration seeking workers' compensation benefits from Timberline Manufacturing, Co., the employer and their workers' compensation insurance carrier, SFM Select Insurance Company, and the Second Injury Fund of Iowa, defendants.

Claimant, along with Pam Patterson and Nathan Price, employees of Timberline Manufacturing, provided testimony at hearing. The evidentiary record also includes Joint Exhibits JE1 through JE10, Claimant's Exhibits 10a through 26, Defendants' Exhibits A through H, and Second Injury Fund of Iowa Exhibits AA and BB.

At hearing, the parties submitted a hearing report, which contains numerous stipulations. The parties' stipulations are accepted. No factual findings or conclusions of law will be made in this decision regarding the parties' stipulations and the parties are now bound by their stipulations.

Hearing was held on September 6, 2017, in Des Moines, Iowa, and following an extension for filing post-hearing briefs, the parties submitted briefs on November 13, 2017. The matter was considered fully submitted on that date.

ISSUES

This case involves an accepted claim for a bilateral arm injury and a disputed neck injury. The parties submitted the following disputed issues for resolution:

1. Whether the injury is limited to the bilateral arms only or includes the neck.
2. Notice under Iowa Code section 85.26 regarding the neck only.
3. If the neck is not included in the work injury, whether Second injury Fund benefits are triggered.
4. Whether the injury is the cause of permanent partial disability and the extent thereof, if any.
5. Rate – Gross Earnings.
6. Whether claimant is entitled to medical bills as set forth in Exhibit 25.
7. Whether claimant is entitled to independent medical evaluation (IME) reimbursement as set forth in Exhibit 26.
8. Costs.

FINDINGS OF FACT

Claimant was 64 years old at the time of the hearing. She completed the 11th grade and did not obtain a G.E.D. She attended cosmetology school, but did not finish. She is right-hand dominant. (Transcript pages 26-27; Exhibit 12, p. 242)

Work History

Claimant's work history primarily involves small electronics assembly. She worked at Intermec Technologies assembling printed circuit boards from 1983 to 2001. She worked for Crystal Group where she did computer and electronic assembly from 2001 to 2005. (Ex. 12, p. 232)

Claimant began working for the defendant employer on March 7, 2005. (Ex. 12, p. 232; Tr. p. 30) Her work involved assembling small wire harnesses, printed circuit boards, using wire connectors and soldering wires and using wire strippers, etc. Her job description refers to "[c]onstant use of both hands" to accomplish the assigned tasks. (Ex. 19) A portion of claimant's job duties occasionally involved working with small

parts and circuit boards that required the use of tweezers and a magnifying glass, as depicted in the photo in Exhibit 20, page 278. Part of claimant's job involved following a drawing to connect color-coded wires and solder them into a wire cup, which was about the size of a pin head. (Tr. pp. 35, 39, 40) She worked with different types of cable, including ribbon cable, which was about 2 inches wide and she operated a crimper, which was activated by pulling the handle down on the ribbon cable and connector to crimp it together. (Tr. pp. 37-38) Claimant testified that her work duties varied and were not dominated by circuit boards or cables. She stated that she loved her job. (Tr. p. 48)

While working at Timberline Manufacturing, claimant was paid $12.64 per hour, plus a quarterly profit sharing bonus when the company was profitable and she met the attendance requirements. (Tr. pp. 31-32)

Claimant was terminated from her employment with defendant on April 4, 2016. (Ex. 12, p. 232; Tr. p. 66) She understood that she was terminated because she did not meet the required production numbers. (Tr. pp. 66-67) She applied for and received unemployment benefits. She conducted a work search following her termination while she received unemployment payments. (Ex. 12, pp. 236-239) She stopped looking for work when the unemployment benefits stopped. (Tr. p. 100) Her job log notes several jobs that were available but they were not desirable to claimant because they were part-time, nights or had a low wage. (Tr. pp. 100-102; Ex. 12, pp. 236-238) Claimant has not worked since being terminated by defendant. (Tr. p. 67) She has not looked for any additional work since receiving Social Security Disability benefits on or about on September 26, 2016. (Ex. 12, p. 233)

Prior Medical Condition

In 1987, claimant was assaulted and complained of head and neck injuries. (Ex. JE1, pp. 1-2; Tr. p. 48) She had no ongoing neck treatment from this incident. (Tr. p. 48)

Claimant stated that she had no problems with her hands, arms or neck when she began working for defendant employer in March 2005.

In 2008, claimant was seen by James C. Johns, Jr., M.D., a hand specialist, for numbness and tingling in her left hand and small and ring fingers. (Ex. JE2, p. 1; Tr. pp. 48-49) In July 2008, Dr. Johns believed that her symptoms were most likely due to ulnar neuropathy of the elbow. (Ex. JE2, p. 2) In March 2010, claimant returned to Dr. Johns reporting that she had intermittently used conservative measures to deal with her problem, but that she believed it was slowly progressing. Claimant underwent EMG testing which suggested neuropathy as well as a cervical MRI to rule out contribution from cervical radiculopathy. (Ex. JE2, p. 2; Ex. JE4; Ex. JE1, p. 5) Surgery was discussed. She initially declined, but later returned to see Dr. Johns in December 2010 and chose to proceed with surgery on her elbow. The surgery occurred on January 28,

2011. (Tr. p. 49; Ex. JE2, pp. 3-5) Claimant stated that the surgery was on a Friday and she was back to work the following Monday. (Tr. p. 50) She returned to the same job at the defendant employer under a 20 pound permanent lifting restriction. (Tr. pp. 51-52; Ex. JE2, pp. 11, 14) Claimant also recalled being restricted from crimping and has not done that task since 2011. (Tr. pp. 82-82) She was also assigned a 10 percent permanent impairment of the left upper extremity under the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition ("AMA Guides"). (Ex. JE 2, p. 14) Claimant testified that the surgery did not resolve all of the symptoms in her left arm. (Tr. p. 52)

She returned again to see Dr. Johns in April 2012. (Ex. JE2, p. 11) She reported "significant residual symptoms" following surgery. (Id.) However, she stated that she was doing fairly well until a "job position switch at Timberline Manufacturing several months ago." (Id.) She lifted a heavy pan and then felt increased pain, and she described the pain at multiple locations in the left arm. (Ex. JE2, p. 12) Dr. Johns suspected continued ulnar neuropathy of the left upper extremity "that is unchanged from her previous evaluations," along with "new onset of lateral epicondylitis." (Id.) She was prescribed therapy and a tennis elbow strap and wrist splint. (Ex. JE2, pp. 15, 16) She had a cervical MRI in May 2012. (Ex. JE1, p. 8) On November 15, 2012, it is recorded by Progressive Rehabilitation that claimant had "resolution of left sided neck, shoulder and parascapular pain following laser treatments," but had "residual dyesthesia [*sic*] in the left hand D4, 5 which persists despite ulnar nerve transposition surgery." (Ex. JE5, p. 1) She was "able to perform her current job duties" and she was to continue to "work with restrictions." (Id.)

Exhibit D is an employment evaluation dated March 26, 2015, about seven weeks before the May 13, 2015 date of injury. (Ex. D, p. 1) The document was signed by claimant and her supervisor on May 5, 2015, about eight days before the date of injury. (Ex. D, p. 3) In that evaluation, claimant generally received satisfactory marks in all categories, except "Meeting Production Times." (Ex. D, p. 2) Claimant was described as chatting with co-workers as part of the problem for not meeting production times. (Ex. D, p. 3) Claimant disagreed that she spent inappropriate time chatting with co-workers. (Tr. pp. 53-54) She was later warned about inadequate production after the alleged injury. She was warned in February and March 2016 and terminated on April 4, 2016. (Ex. 17, pp. 262-270)

Post-Injury Medical Treatment

Claimant testified that on May 13, 2015, she told Dale Larson in human resources that she was having trouble with her hands. She stated that "I wasn't making my times and . . . I was having trouble with my hands, and I felt like I needed to go back and see the doctor, and he agreed." (Tr. p. 52) She stated that her left hand was "never right" and she described numbness in her pinky and ring fingers. (Tr. pp. 54) She had aching in her right hand in her lower palm and at the base of her thumb. (Tr. p. 56) She described difficulty with gripping and holding items. She stated that she

dropped the soldering iron a few times. (Tr. pp. 57-58) Claimant stated that she felt her pain level in her left hand was always 10/10 and her right hand was 7-8/10. (Tr. p. 58)

On May 15, 2015, claimant was seen by Stephen Runde, M.D. (Ex. JE6) He noted that claimant had prior surgery with persistent numbness and tingling in her small and ring fingers that "has not changed too much," and although it "may be a little bit worse now . . . it has basically been [a] pretty stable problem." (Ex, JE6, p. 1) Claimant described some soreness in the hand, arm and biceps area. (Id.) Dr. Runde noted that her work involved a lot of repetition. She had positive Tinel's in the left wrist, some reduced grip strength in the left hand compared to the right, but she had good range of motion of the wrist and elbow. Carpal tunnel on the left was suspected. (Id.)

She was seen by Dr. Johns on July 7, 2015. (Ex. JE2, p. 17) After clinical testing, he concluded that claimant had "residual symptoms of ulnar neuropathy that are unchanged from previous evaluations." (Id.) However, he also found that "she most likely has the new onset of bilateral carpal tunnel syndrome." (Id.)

On July 27, 2015, Dr. Johns stated that claimant had EMG testing that was "consistent with significant bilateral carpal tunnel syndrome." (Ex. JE2, p. 18)

On August 14, 2015, claimant had left carpal tunnel release performed by Dr. Johns. (Ex. JE1, p. 10) She was given a work restriction of no work with the left hand from August 17, 2015 to August 27, 2015. (Ex. JE2, p. 20) She reported post-surgery that she had less numbness than before the surgery. (Ex. JE2, pp. 21, 22)

On September 4, 2015, Dr. Johns performed a right carpal tunnel release. (Ex. JE1, p. 12) Claimant was given a work restriction of no work with the right hand from September 7, 2015 to September 17, 2015. (Ex. JE2, p. 26) She reported post-surgery that she had less numbness than before the surgery. (Ex. JE2, p. 28)

On September 17, 2015, concerning the right hand, claimant continued to report less numbness than before surgery. The left hand "continues to have ulnar nerve distribution paresthesias that are chronic and that predate her recent carpal tunnel surgery." (Ex. JE2, p. 28) Claimant was returned to work effective September 21, 2015 with a weight limit of 10 to 20 pounds and she was to wear a splint on her right hand. (Ex. JE2, p. 29)

When claimant returned to work, she was told that there was no work available in the electronics area and she went to work in the termination, or "term" area. (Tr. pp. 60-61, 118) She remained in that job until she was fired.

On September 29, 2015, claimant contacted Dr. Johns' office to "report that she began having a burning pain in her neck and shoulders yesterday, which persisted through the night and kept her from sleeping." (Ex. JE2, p. 30) Dr. Johns stated that

"these problems were not related to her carpal tunnel releases, so if she is really bothered she should try to see her family Dr. or go to an urgent care center." (Id.)

On October 19, 2015, claimant reported some ongoing symptoms concerning her prior bilateral carpal tunnel, left greater than right and she did not feel that she was ready to return to full-duty work and she was maintained on light duty restrictions for an additional four weeks and was instructed to wear her splints as needed. (Ex. JE2, pp. 31, 32)

On November 16, 2015, claimant was again seen by Dr. Johns who noted that claimant continued to have "considerable residual symptoms in both hands." (Ex. JE2, p. 33) No additional intervention was recommended. Dr. Johns believed that claimant has "some component of cervical radiculitis or radiculopathy" and he recommended that "she contact her family physician for possible evaluation of that condition." (Id.) He then assigned restrictions of no lifting over ten pounds, wear splints as needed and no hand crimping. (Ex. JE2, p. 34) He later assigned permanent impairment of five percent to each upper extremity based on the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides). (Ex. JE2, p. 37) On January 19, 2016, Dr. Johns clarified his opinion that claimant's neck condition was not related to her carpal tunnel syndrome; however, he also stated that "I have no opinion as to whether the other conditions, including cervical radiculitis, are work-related." (Ex. JE2, p. 35)

On December 9, 2015, claimant was seen by Diane Norton, ARNP, her primary care provider, with complaints of neck and bilateral arm pain and rated the pain level as 12/10. (Ex. JE7, p. 5) Concerning the neck complaints, Ms. Norton scheduled an MRI and stated that it was "not Work Comp related." (Ex. JE7, p. 6) Claimant was referred to Loren Mouw, M.D. (Ex. JE7, p. 8)

On January 5, 2016, claimant was seen by Dr. Mouw for neck pain and bilateral arms. (Ex. JE3, p. 1) The neck pain was described as being present for 5 months at a level of 9/10. Claimant noted that the onset of symptoms was not associated with any particular event or activity. Dr. Mouw's assessment included degenerated cervical disc and cervical spondylosis without myelopathy. However, he also noted that claimant's "symptoms are out of proportion to the findings on the MRI of the C spine," and she was referred back to her primary care physician, Ms. Norton. (Ex. JE3, p. 4)

On January 14, 2016, claimant returned to Ms. Norton and reported that Dr. Mouw did not provide her with any treatment and she was referred for a second opinion to Darin Smith, M.D. (Ex. JE7, pp. 8-11)

Claimant was seen by Dr. Smith on January 18, 2016, and reported that her pain had been present for "several years." (Ex. JE3, p. 5) Dr. Smith concluded that concerning claimant's cervical spine, there was "nothing severe and nothing to account

for her hand symptoms." (Ex. JE3, p. 7) Nevertheless, claimant was sent to the Interventional Pain Clinic for a cervical epidural steroid injection (ESI). (Ex. JE7, p. 14)

On February 5, 2016, claimant received the ESI. (Ex. JE7, p. 17) She again advised that she's "had many years of increasing neck and bilateral arm pain," which "comes and goes," but "seems to increase with work and carrying things." (Ex. JE7, p. 14) She described the pain level as 10/10 and "the worst pain imaginable." (Id.)

On February 15, 2016, claimant had a follow-up appointment with Dr. Smith and reported some relief with the injection. (Ex. JE3, p. 9) However, she testified at hearing that the injection did not help. (Tr. p. 64)

Claimant was terminated from her employment with defendant employer on April 4, 2016. (Tr. p. 66)

On June 13, 2016, claimant completed a personal pain questionnaire for a Social Security Disability application. She was instructed to answer the questions "as thoroughly and completely as you can." (Ex. E, p. 7) When asked to describe her pain, she discussed her hands, but made no mention of any neck pain. (Id.) She also wrote that the surgery for cubital tunnel "did not fix anything. Went through therapy still the same. I kept telling my boss that my hands did not work right. Then I started to have trouble with both hands . . . I went to HR and told him that my hands were [affecting] my work . . . I ended up having surgery carpal tunnel on both hands." (Ex. E, p. 9) There is no mention of her neck. Claimant's daughter, Ebony Jackman, completed a questionnaire for claimant's application and described claimant's difficulties with her hands, but did not mention any neck complaints. (Ex. E, p. 11) However, the application did include the neck as one of the many reasons that claimant was seeking disability. (Ex. BB, p. 25)

Claimant was awarded Social Security Disability benefits on or about September 24, 2016, and she testified that she receives $1,417.60 per month. (Ex. 22, p. 287; Tr. p. 77) The claim was based on bilateral carpal tunnel, left cubital tunnel, neck, atrial fibrillation, diabetes, high blood pressure, and depression. (Ex. BB, p. 25) Since receiving Social Security Disability benefits, claimant has not looked for any jobs. (Tr. p. 78)

Claimant's diagnoses of atrial fibrillation, diabetes and anxiety/depression occurred before she was terminated. She stated that she was able to do her job with those conditions and was never disciplined for attendance problems due to those conditions. (Tr. p. 72)

On September 13, 2016, Accelerated Rehabilitation/Athletico Physical Therapy, prepared a Disability Report. At that time, claimant reported pain in her bilateral hands and arms, worse on the left side that started while she worked for the defendant

employer in about 2011. (Ex. JE9, p. 1) She described her pain level as 8/10 at the least and 10/10 at the worst. There is no report of any neck pain. (Ex. JE9, pp. 1, 2)

Independent Medical Evaluations

On April 12, 2017, claimant was examined by John Kuhnlein, D.O. of Medix for the purpose of an IME at the request of defendants. (Ex. F, p. 1) Dr. Kuhnlein reviewed claimant's job duties, including taking a plant tour to observe how the particular jobs were done. (Ex. F, pp. 3-4) He reviewed claimant's medical history back to 2008. (Ex. F, pp. 8-13) He noted that on December 22, 2015, claimant was seen at Mercy Medical Center Emergency Room, in Cedar Rapids after a fall and a physical exam revealed a normal cervical range of motion. (Ex. F, p. 11) Dr. Kuhnlein also reviewed claimant's work history, her current medications and her social history, among other things. In total, Dr. Kuhnlein reviewed nearly 1,800 pages of records. (Ex. F, p. 24) Dr. Kuhnlein conducted a physical examination and recorded his objective findings. (Ex. F, pp. 15-17) His diagnoses were: (1) bilateral carpal tunnel, left release on August 24, 2015 and right release on September 4, 2015; and, (2) complaints of neck pain. Concerning the bilateral carpal tunnel, he stated that claimant performed work with "awkward and sometimes sustained postures in both hands, with prolonged and significant narrow pinch gripping and grasping." (Ex. F, p. 17) Concerning the cervical condition, Dr. Kuhnlein stated that the job did include static neck posturing. (Ex. F, p. 18) However, he noted that claimant advised that she has had neck pain beginning in 2000. He described the medical record concerning claimant's neck complaints as "confusing and contradictory." (Ex. F, p. 21) He noted a number of different dates of onset of the neck pain given by claimant to different providers and a contradictory history. (Ex. F, pp. 20-21) He stated that "[i]t is this combination [that] makes it impossible to relate her cervical symptoms to a specific incident occurring on or about September 28, 2015, or to a cumulative cause related to her work." (Id.) Dr. Kuhnlein presumably selects September 28, 2015 as a possible date of acute injury given claimant's complaint to Dr. Johns on September 29, 2015 that she had onset of neck pain on the previous day. (Ex. JE2, p. 30) Dr. Kuhnlein agreed with Dr. Johns' MMI date for the bilateral carpal tunnel claim of March 15, 2016, but did not attribute the neck injury to her work. He then assigned an impairment rating of 12 percent to the left upper extremity and 12 percent to the right upper extremity. (Ex. F, p. 22) He assigned lifting restrictions of 10 pounds occasionally from floor to waist and 20 pounds from waist to shoulder with the weight being held close to the body, and 10 pounds over the shoulder. On August 9, 2017, Dr. Kuhnlein affirmed and defended his opinions after reviewing Dr. Bansal's report. (Ex. F, p. 30)

On July 7, 2017, claimant was seen by Sunil Bansal, M.D. for the purpose of an IME at the request of claimant's counsel. Dr. Bansal reviewed claimant's medical history, her current complaints, and her job duties. (Ex. 10a, pp. 200-215) Dr. Bansal noted that claimant denied "any previous injuries or problems with her neck or bilateral shoulders." (Ex. 10a, p. 213) He described claimant doing "surface mounting using tweezers" and having "her neck in a bent position for most of her entire shift." (Ex. 10a,

p. 215) Claimant testified while doing this job, she would use a magnifying glass as seen in the lower middle photograph in Exhibit 20, p. 278. (Tr. pp. 42-42) However, she testified at hearing, that in reality, this job may only take a small portion of her day. (Tr. p. 43) She also testified that she would only do this job as often as a couple times a week or as infrequently as once a month. (Tr. p. 138) Dr. Bansal diagnosed claimant with: (1) aggravation of cervical spondylosis and facet arthropathy; (2) right carpal tunnel - post release; and, (3) left carpal tunnel – post release. (Ex. 10a, p. 217) Dr. Bansal opined that claimant's "sustained static flexion of her neck while performing the fine intricate manipulation work with the circuit boards was the substantial aggravating factor for her spondylosis." (Ex. 10a, p. 218) Concerning bilateral carpal tunnel, Dr. Bansal opined that claimant's job duties have "a strong potential to cause carpal tunnel syndrome." (Ex. 10a, p. 219) He assigned maximum medical improvement (MMI) for the neck on February 15, 2016, which was claimant's last appointment with Dr. Smith. Dr. Bansal agreed that March 15, 2016 is the correct date of MMI as assigned by Dr. Johns concerning the bilateral arms. He then assigned 5 percent permanent impairment to the whole person for the neck and 12 percent to the left upper extremity and 12 percent to the right upper extremity. Dr. Bansal assigned work restrictions of avoiding repeated neck motion being in a flexed position for longer than 15 minutes; a 5 pound lifting restriction; no lifting over shoulder and avoid repeated elbow flexion; and, no frequent squeezing, pinching, or grasping with either hand. (Ex. 10a, p. 221) Dr. Bansal, in his IME, also discussed the 2011 left arm cubital tunnel and assigned 11 percent upper extremity impairment, and agreed with a 20 pound lifting restriction. (Ex. 10a, pp. 222, 223)

Considering the permanent impairment applicable to the right arm, which is the second injury in the claim against the second injury fund: Dr. Johns, the treating surgeon, assigned a 5 percent permanent impairment; Dr. Kuhnlein assigned a 12 percent permanent impairment; and, Dr. Bansal assigned 12 percent. I accept the opinion of Dr. Kuhnlein of 12 percent based on his thorough and detailed report, which included his specific and measured examination findings and analysis of the applicable AMA Guides. I likewise accept Dr. Kuhnlein's opinion of 12 percent applicable to the left arm concerning the bilateral arm injury of May 13, 2015.

Vocational Reports

On August 3, 2017, James Carroll of Ohara, LLC, issued a vocational report at the request of the defendant employer. (Ex. H, p. 1) Mr. Carroll reviewed claimant's medical history, education and work history. He reviewed claimant's deposition, the first report of injury and a job description along with employment records from the defendant employer. (Ex. H, p. 1) Mr. Carroll did not interview claimant. Mr. Carroll relies upon the restrictions of Dr. Johns for the initial injury and Dr. Kuhnlein for the second injury. (Ex. D, p. 6) Mr. Carroll assigned a loss of 40 percent of access to employment. (Id.) On August 17, 2017, Mr. Carroll provided a supplemental report, which included a medical update, the IME of Dr. Bansal, and the vocational assessment of Ms. Carma

Mitchell. (Ex. H, p. 7) After reviewing these additional documents, Mr. Carroll maintained his opinion of a 40 percent loss of access to employment. (Ex. H, p. 13)

On August 7, 2017, Ms. Carma Mitchell of Mitchell Rehabilitation Services issued a vocational evaluation at the request of claimant. Ms. Mitchell interviewed claimant and reviewed her education, work history, and functional abilities. Both the restrictions assigned by Dr. Kuhnlein and Dr. Bansal are described in her report. Ms. Mitchell, opined that claimant has no transferable skills and that she has lost access to more than 99 percent of the jobs that she previously had access to, due significantly to her limitations on gripping, grasping squeezing and pinching. (Ex. 11, p. 228)

Also on August 7, 2017, Rene Haigh of Encore Unlimited issued a report at the request of the Second Injury Fund of Iowa. (Ex. AA, p. 1) Ms. Haigh did not interview claimant. Ms. Haig reviewed claimant's medical history. (Ex. AA, pp. 2-6) She considered claimant's work history, educational history, and personal background, among other things. She reviewed the impairment ratings and restrictions concluding that all of the medical experts concluded that claimant was capable of work in the light physical demand category. She conducted a market survey and found about 16 jobs that were available and she described them as "a snapshot" of the type of jobs available to claimant. (Ex. AA, p. 14) Ms. Haigh concluded that claimant's work history, education, and residual functional capacity would allow her to obtain employment in light physical demand jobs. (Ex. AA, p. 23)

I am persuaded that if claimant desired to return to the workforce, she would be employable in the light physical requirement job category, with regard to her work injuries. However, I acknowledge that her age and limited education would be hurdles to overcome in returning to the workforce.

I accept the opinion of James Carroll as the most convincing and thorough regarding claimant's loss of access to employment. I also find noteworthy the job market survey performed by Rene Haigh, which revealed jobs that were available and within claimant's physical capabilities.

Current Condition

Claimant testified that she has numbness in her left hand and arm and that her hand will hurt with use. (Tr. pp. 67-68) She stated that it is difficult to open jars and sometimes it is hard for her to pick up things. She stated that concerning her arms and her neck, it is her arms that are more painful and more directly keep her from working. (Tr. p. 111) She stated that her neck hurts every morning. She stated that she takes 800 mg of ibuprofen in the morning and again at night and uses heat and cold on her neck and hands. (Tr. pp. 65-66, 70) She described her pain as always 10/10 in the left hand and 7-8/10 in the right hand. (Tr. p. 58)

Additional Findings

Claimant's quarterly profit sharing bonuses were contingent on whether or not the company made a profit and whether the employee met an attendance requirement. (Tr. pp. 31-32) Claimant stated that "you didn't always get one." (Tr. p. 32)

Pam Patterson, claimant's Team Lead, testified that it was "not a guaranteed bonus." (Tr. p. 125) Ms. Patterson stated that in 2016, she believed that she only received one bonus out of a potential four, and that "it's not something that I count on." (Id.)

Claimant believed that she had been disciplined for failing to meet production rates before 2015, but could not be sure. (Tr. pp. 115-116) The records show that she "had continuous problems regarding productivity while working in the Electronics area," which "were addressed on both verbal and written basis." (Ex. 17, p. 266) Claimant worked in the electronics area before her carpal tunnel release surgeries in 2015.

Claimant was warned about her slow production in February 2016 and again in March 2016. (Ex. 17, pp. 262, 265) It was noted in March that claimant did not have any ideas about improving her productivity. (Ex. 17, p. 267) Pam Patterson testified that sometimes, claimant seemed to just sit and daydream. (Tr. p. 124)

Nathan Price testified that claimant may only perform the job involving the magnifying glass from once a week to a couple times per month. He estimated that on average she may perform the job about 3 to 5 times per month for no more than 5 hours per shift. He stated that the magnifying glass is moveable and the worker is free to realign the glass and move it as needed. (Tr. pp. 138-140)

Mr. Price stated that claimant was moved into the termination department and out of the electronics department to accommodate her restrictions because in the electronics area, the jobs required workers to use utensils and they are "always holding on to something." (Tr. p. 141) This was intended to address issues claimant had with gripping.

Concerning the cervical complaints, Dr. Johns opined that the claimant's neck complaints were not related to her bilateral carpal tunnel. (Ex. JE2, p. 30) He had no opinion whether the cervical spine condition was related to claimant's employment, but concluded that it was not related to the bilateral carpal tunnel. (Ex. JE2, p. 35)
Dr. Kuhnlein reviewed claimant's job duties, including an in-person tour of the facility, he reviewed claimant's medical history, and after a physical examination concluded that he could not relate the cervical symptoms to her work, either as an acute or cumulative injury. (Ex. F, pp. 20-21) Dr. Bansal reviewed claimant's medical history, job duties and conducted an examination, after which he concluded that claimant's "sustained static flexion of her neck while performing the fine intricate manipulation work with the circuit

boards was the substantial aggravating factor for her spondylosis." (Ex. 10a, p. 218) This was based on his understanding that claimant held her "neck in a bent position for most of her entire shift." (Ex. 10a, p. 215) However this is not accurate. The job which required static cervical flexion and involved the use of the magnifying glass was done only a few times per month for about half of the shift, according to the testimony of both claimant and Nathan Price. I find that Dr. Bansal's opinion concerning causation of the cervical spine is based on an incorrect understanding of claimant's primary job duties and the duration and frequency of claimant's static neck position. I therefore give his opinion little weight.

I accept the causation opinions of Dr. Kuhnlein as the most well informed expert opinion, noting not only his review of claimant's medical history and physical examination of claimant, but also his in-person review of the jobs being performed. I find that claimant has failed to carry her burden of proof that she sustained a cervical spine injury.

CONCLUSIONS OF LAW

This case involves an accepted claim for a bilateral arm injury and a disputed neck injury.

1) Cervical Spine

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 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).

When an expert opinion is based upon an incomplete history, the opinion is not necessarily binding upon the commissioner. The commissioner as trier of fact has the duty to determine the credibility of the witnesses and to weigh the evidence, together with the other disclosed facts and circumstances, and then to accept or reject the opinion. Dunlavey v. Economy Fire & Casualty Co., 526 N.W.2d 845 (Iowa 1995).

I have given little weight to the opinion of Dr. Bansal, finding that his opinion is based on an incorrect understanding of the duration of certain job duties carried out by claimant. I have accepted the causation opinion of Dr. Kuhnlein as the most well informed opinion. I note that not only did Dr. Kuhnlein have a better understanding of claimant's job duties, but he received an in-person tour of the work facility and observed the jobs being performed.

I conclude that claimant has failed to carry her burden of proof that her cervical spine condition arose out of and in the course of her employment with the defendant employer.

2) Bilateral Arms – Permanent Partial Disability

I now address the bilateral arm injury alone as it relates to the employer only.

Where an injury is limited to scheduled member the loss is measured functionally, not industrially. Graves v. Eagle Iron Works, 331 N.W.2d 116 (Iowa 1983).

The courts have repeatedly stated that for those injuries limited to the schedules in Iowa Code section 85.34(2)(a-t), this agency must only consider the functional loss of the particular scheduled member involved and not the other factors which constitute an "industrial disability." Iowa Supreme Court decisions over the years have repeatedly cited favorably the following language in the 66-year-old case of Soukup v. Shores Co., 222 Iowa 272, 277; 268 N.W. 598, 601 (1936):

The legislature has definitely fixed the amount of compensation that shall be paid for specific injuries . . . and that, regardless of the education or qualifications or nature of the particular individual, or of his inability . . . to engage in employment . . . the compensation payable . . . is limited to the amount therein fixed.

Our court has even specifically upheld the constitutionality of the scheduled member compensation scheme. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404 (Iowa 1994). Permanent partial disabilities are classified as either scheduled or unscheduled. A specific scheduled disability is evaluated by the functional method; the industrial method is used to evaluate an unscheduled disability. Graves, 331 N.W.2d 116; Simbro v. DeLong's Sportswear 332 N.W.2d 886, 887 (Iowa 1983); Martin v. Skelly Oil Co., 252 Iowa 128, 133, 106 N.W.2d 95, 98 (1960).

Evidence considered in assessing the loss of use of a particular scheduled member may entail more than a medical rating pursuant to standardized guides for evaluating permanent impairment. A claimant's testimony and demonstration of difficulties incurred in using the injured member and medical evidence regarding general loss of use may be considered in determining the actual loss of use compensable. Soukup, 222 Iowa 272, 268 N.W. 598. Consideration is not given to what effect the scheduled loss has on claimant's earning capacity. The scheduled loss system created by the legislature is presumed to include compensation for reduced capacity to labor and to earn. Schell v. Central Engineering Co., 232 Iowa 421, 4 N.W.2d 339 (1942).

I have accepted the opinions of Dr. Kuhnlein concerning the bilateral arm injury. I agree that claimant sustained permanent impairment of 12 percent for each arm as opined by Dr. Kuhnlein. Dr. Kuhnlein does not convert these percentages to body as a whole. However, I note that the AMA Guides, page 439, Table 16-3, provides that a 12 percent upper extremity rating converts to 7 percent of the whole person. I further note that the AMA Guides, page 604, which is the Combined Values Chart, provides that combining the two 7 percent impairment ratings produces a result of 14 percent impairment of the whole person. Fourteen percent of 500 weeks per Iowa Code section 85.34(2)(s) is 70 weeks (500 x .14 = 70). I conclude that defendants are obligated to pay claimant 70 weeks of permanent partial disability benefits for the bilateral arms injury.

Exhibit B, page 1, identified payment of permanent partial disability benefits by defendants to claimant prior to the arbitration hearing ($7,984.50 / $319.38 = 25 weeks). I conclude that defendant is entitled to a credit of 25 weeks of permanent partial disability.

3) Industrial Disability

Claimant alleges that if the neck is found to be unrelated, that her claim qualifies under the Second Injury Fund Compensation Act. I have concluded above that claimant

has failed to carry her burden of proof concerning the neck claim and therefore consider the Second Injury Fund claim.

Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, page 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 335 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

The Second Injury Fund argues that the second injury is a non-qualifying injury because it involves the cervical spine. However, as found above, claimant failed to carry her burden of proof that she sustained a cervical injury that arose out of and in the course of her employment. The Second Injury Fund does not argue that the first or second alleged injuries do not otherwise qualify under the Act when consideration of the cervical spine is removed.

The first injury involves claimant's left arm. On January 28, 2011, Dr. Johns performed surgery on claimant's left elbow. (Tr. p. 49; Ex. JE2, p. 6) Dr. Johns assigned a 10 percent permanent impairment of the left upper extremity under the AMA Guides and assigned a 20 pound permanent lifting restriction. (Ex. JE 2, p. 14) Claimant testified that the surgery did not resolve of the symptoms in her left arm. (Tr. p. 52) But, she was able to return to work under the lifting restriction and continued to work her regular job. (Tr. p. 105) Dr. Bansal opined that claimant sustained 11 percent impairment to her left upper extremity concerning the first injury and he agreed with the restrictions assigned by Dr. Johns. (Ex. 10a, pp. 222, 223) Dr. Bansal's opinion is very similar to that of Dr. Johns. I rely on the opinion of Dr. Johns as the treating surgeon who had a greater opportunity to observe claimant's condition on multiple occasions. I conclude that claimant sustained a 10 percent impairment to her left arm, which was the first injury.

The second injury involves claimant's right upper extremity. Claimant had right carpal tunnel surgery in September 2015. Dr. Johns assigned permanent impairment of

five percent to the right upper extremity based on the AMA Guides. (Ex. JE2, p. 37) He also assigned permanent restrictions of no lifting over ten pounds, wear splints as needed and no hand crimping. (Ex. JE2, p. 34) Dr. Kuhnlein assigned an impairment rating of 12 percent to the right upper extremity. (Ex. F, p. 22) He assigned lifting restrictions of 10 pounds occasionally from floor to waist and 20 pounds from waist to shoulder with the weight being close to the body, and 10 pounds over the shoulder. Dr. Bansal assigned 12 percent to the right upper extremity with restrictions of no lifting over 5 pounds and no overhead work.

I have accepted the opinion of Dr. Kuhnlein as the most persuasive concerning impairment of the right arm and restrictions based on his thorough evaluation as discussed above.

I conclude that Second Injury Fund benefits are triggered as claimant has sustained qualifying first and second injuries.

Because this is a Second Injury Fund case, disability is considered industrially, as to the whole body. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 593; 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man." Functional impairment is an element to be considered in determining industrial disability, which is the reduction of earning capacity. However, consideration must also be given to the injured worker's medical condition before the injury, immediately after the injury and presently; the situs of the injury, its severity, and the length of healing period; the work experience of the injured worker prior to the injury, after the injury, and potential for rehabilitation; the injured workers' qualifications intellectually, emotionally and physically; the worker's earning before and after the injury; the willingness of the employer to re-employ the injured worker after the injury; the worker's age, education, and motivation; and, finally the inability because of the injury to engage in employment for which the worker is best fitted. Thilges v. Snap-On Tools Corp., 528 N.W.2d 614, 616 (Iowa 1995); 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).

There are no weighting guidelines that indicate how each of the factors is to be considered. Neither does a rating of functional impairment directly correlate to a degree of industrial disability to the body as a whole. In other words, there are no formulae which can be applied and then added up to determine the degree of industrial disability. It therefore becomes necessary for the deputy or commissioner to draw upon prior experience as well as general and specialized knowledge to make the finding with regard to degree of industrial disability. See Christensen v. Hagen, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 529 (App. March 26, 1985); Peterson v. Truck

Haven Cafe, Inc., Vol. 1 No. 3 Industrial Commissioner Decisions, 654 (App. February 28, 1985).

Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha, 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W.2d 614 (Iowa 1995).

Claimant's age, limited education, her limited variety of work experiences, her functional impairment and permanent work restrictions support a finding of significant industrial disability. However, the fact that she was not precluded from doing her job with defendant employer due to her work restrictions, and her limited motivation to return to the workforce weigh against significant industrial disability.

Based on the above and all other appropriate factors concerning industrial disability, I conclude that claimant has sustained 40 percent industrial disability.

I conclude the applicable credit for the first injury, the left upper extremity, to be 25 weeks based on the 10 percent impairment assigned by Dr. Johns. (Ex. JE 2, p. 14) The credit for the second injury, the right upper extremity, is 30 weeks, based on the 12 percent assigned by Dr. Kuhnlein. (Ex. F, p. 22) Therefore, the total credit applicable to benefits owed by the Second injury Fund is 55 weeks. The Second Injury Fund is not entitled to the 70 weeks that the employer is ordered to pay herein, because the employer's obligation for the left arm and the left arm injury applicable to the Second Injury Fund claim represent two different injuries.

Interest accrues on unpaid Second Injury Fund benefits from the date of the decision. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990).

4) Rate

In the case at bar, the parties agree that the difference in their respective rate calculations is the inclusion or exclusion of the profit sharing bonus regarding the gross wage. Claimant seeks to include it as part of the overall compensation. Defendants seek to exclude it as an irregular bonus.

> Iowa Code section 85.36 sets forth the basis for determining an injured employee's compensation or rate. Mercy Med. Ctr. v. Healy, 801 N.W.2d 865, 870 (Iowa Ct. App. 2011). The statute expressly provides the determination is made using the last thirteen consecutive calendar weeks immediately preceding the injury. Iowa Code § 85.36(6). Under the statute,
>
> > The basis of compensation shall be the weekly earnings of the injured employee at the time of the injury. Weekly earnings

> means 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, as regularly required by the employee's employer for the work or employment for which the employee was employed, computed or determined as follows and then rounded to the nearest dollar:
>
> . . . .
>
> 6. In the case of an employee who is paid on a daily or hourly basis, or by the output of the employee, the weekly earnings shall be computed by dividing by thirteen the earnings, including shift differential pay but not including overtime or premium pay, of the employee earned in the employ of the employer in the last completed period of thirteen consecutive calendar weeks immediately preceding the injury. If the employee was absent from employment for reasons personal to the employee during part of the thirteen calendar weeks preceding the injury, the employee's weekly earnings shall be the amount the employee would have earned had the employee worked when work was available to other employees of the employer in a similar occupation. A week which does not fairly reflect the employee's customary earnings shall be replaced by the closest previous week with earnings that fairly represent the employee's customary earnings.

Id. The statute defines "gross earnings" as "recurring payments by employer to the employee for employment, before any authorized or lawfully required deduction or withholding of funds by the employer, excluding irregular bonuses, retroactive pay, overtime, penalty pay, reimbursement of expenses, expense allowances, and the employer's contribution for welfare benefits," and "pay period" as "that period of employment for which the employer customarily or regularly makes payments to employees for work performed or services rendered." Id. § 85.61(3), (5)

The Commissioner has recently issued a Declaratory Order in John Deere Des Moines Works et al., filed July 12, 2017, regarding profit sharing bonuses. In that case the Commissioner noted the profit sharing bonus was an extra payment beyond the employee's hourly wage as an incentive, based on the company's performance and the hours worked by the employee. It was not guaranteed and therefore irregular. The Commissioner noted two years out of the prior 18 years that no bonus was paid in support of the conclusion that the bonus was irregular.

In this case, the testimony of both Pam Patterson and claimant was that the bonuses were not guaranteed and were not regularly occurring, but did occur from time

to time. Pam Patterson stated that in 2016, she received one of a possible four quarterly bonuses. (Tr. p. 125) Claimant stated that "you didn't always get one." (Tr. p. 32) Claimant's payroll records show that claimant received the bonus on most occasions, but not each quarter. (Ex. 23, pp. 288-295)

I conclude from the testimony, the payroll records and applying John Deere Des Moines Works et al., filed July 12, 2017, that the profit sharing bonus is an irregular bonus and should not be included in the gross wage calculation. Therefore, I accept defendants' rate calculation of $319.96, based on gross weekly earnings of $506.68.

5) Medical Reimbursement

Claimant seeks reimbursement of medical expenses and mileage as set forth in Claimant's Exhibit 25.

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 16, 1975).

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See, Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995)

I have found above that claimant has failed to carry her burden of proof that her neck condition is related to the alleged work injury. Claimant is not entitled to payment of medical expenses caused by the unrelated neck complaints.

Claimant asserts a claim for out of pocket medical expenses of $211.26. I conclude that those expenses relate to the neck claim and are not subject to reimbursement. Claimant also asserts a claim for medical mileage reimbursement of $375.63.

Defendants, in their brief have correctly separated out the medical mileage expenses related to the neck or that which are not clearly documented as related to the bilateral arms and assert that claimant is entitled to medical mileage reimbursement of $331.72. I accept defendants' calculations and conclude that defendants are obligated to pay $331.72 in medical mileage reimbursement.

6) IME Reimbursement

Claimant asserts a claim for reimbursement of her IME with Dr. Bansal in the amount of $3,688.00.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

On March 6, 2016, Dr. Johns, the authorized treating physician, assigned five percent to each of the upper extremities and told claimant the neck condition was not related to the bilateral carpal tunnel condition. (Ex. JE2, p. 37) On January 19, 2016, Dr. Johns stated that claimant's neck condition was not related to her carpal tunnel syndrome. (Ex. JE2, p. 35)

On July 7, 2017, claimant was seen by Sunil Bansal, M.D. for the purpose of an IME at the request of claimant's counsel. Dr. Bansal offered opinions regarding the bilateral arms and the neck, but also offered an opinion concerning the first injury, which was not part of the bilateral carpal tunnel syndrome and is not subject to reimbursement under Iowa Code section 85.39. However, clearly, the portion of Dr. Bansal's report related to the first injury was minor compared to the entirety of the report.

In my discretion, I conclude that it is reasonable to assign 10 percent of the cost of Dr. Bansal's evaluation and report to the first left arm injury. I therefore conclude that defendants are obligated to reimburse 90 percent of the total IME expense, which is $3,319.20 ($3,688.00 x .90 = $3,319.20).

7) Costs

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

> Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by

> Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, (8) costs of persons reviewing health service disputes. Costs of service of notice and subpoenas shall be paid initially to the serving person or agency by the party utilizing the service. Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested. Witness fees shall be paid in accordance with Iowa Code section 622.74. Proof of payment of any cost shall be filed with the workers' compensation commissioner before it is taxed. The party initially paying the expense shall be reimbursed by the party taxed with the cost. If the expense is unpaid, it shall be paid by the party taxed with the cost. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case unless otherwise required by the rules of civil procedure governing discovery. This rule is intended to implement Iowa Code section 86.40.

Iowa Administrative Code rule 876—4.17 includes as a practitioner, "persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation." A report or evaluation from a vocational rehabilitation expert constitutes a practitioner report under our administrative rules. Bohr v. Donaldson Company, File No. 5028959 (Arb. November 23, 2010); Muller v. Crouse Transportation, File No. 5026809 (Arb. December 8, 2010). The entire reasonable costs of doctors' and practitioners' reports may be taxed as costs pursuant to 876 IAC 4.33. Caven v. John Deere Dubuque Works, File Nos. 5023051, 5023052 (App. July 21, 2009).

Assessment of costs is a discretionary function of this agency. Iowa Code section 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. I conclude that claimant was successful in this claim and therefore exercise my discretion and assess costs against the defendants in the amount set out in claimant's Exhibit 26, less the IME amount set out therein, which has been addressed above. I therefore conclude that defendants shall pay costs in the amount of $695.71 ($4,383.71 - $3,688.00 = $695.71).

ORDER

IT IS THEREFORE ORDERED:

Concerning the bilateral arm claim against the employer, the defendant employer shall pay claimant permanent partial disability benefits seventy (70) weeks, less a credit

of twenty-five (25) weeks, commencing on the stipulated commencement date of March 15, 2016.

Defendant employer shall pay accrued benefits in a lump sum along with interest on the accrued weekly benefits pursuant to Iowa Code section 85.30.

Concerning the Second Injury Fund claim, the Second Injury Fund of Iowa shall pay to claimant industrial disability benefits of two hundred (200) weeks less a credit for fifty-five (55) weeks for the first and second injuries (twenty-five [25] weeks – left arm and thirty [30] weeks – right arm) for a total amount owed to claimant of one hundred forty-five (145) weeks, commencing at the expiration of benefits to be paid by defendant employer above. Accrued benefits shall be paid in a lump sum. Interest shall accrue on unpaid Second Injury Fund benefits from the date of this decision.

All weekly benefits shall be paid at the rate of three hundred nineteen and 96/100 dollars ($319.96) per week.

Defendant employer shall pay claimant medical mileage benefits in the sum of three hundred thirty-one and 72/100 dollars ($331.72).

Defendant employer shall pay for or reimburse to claimant the cost of the related IME expense of three thousand three hundred nineteen and 20/100 dollars ($3,319.20).

Defendant employer shall pay costs in the sum of six hundred ninety-five and 71/100 dollars ($695.71).

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

Signed and filed this 28th day of February, 2018.

TOBY J. GORDON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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TJG/srs

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.