BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

PATRICIA FORTIN-ANDINO, Claimant, vs. ALPLA INC., SMB DIVISION, Employer, and SENTRY INSURANCE, Insurance Carrier, Defendants.	:	File No. 5064562 A R B I T R A T I O N D E C I S I O N Head Note No.: 1402.30, 1802, 1803, 2209, 2501, 2907

STATEMENT OF THE CASE

Claimant, Patricia Fortin-Andino, filed a petition in arbitration for workers' compensation benefits against ALPLA, Incorporated, SMB Division, as employer, and Sentry Insurance, as insurance carrier. The undersigned heard this case on July 10, 2019, in Des Moines, Iowa.

The parties filed a hearing report at the commencement of the hearing. On the hearing report, the parties entered into numerous stipulations. Those stipulations were accepted and no factual or legal issues relative to the parties' stipulations will be made or discussed. The parties are now bound by their stipulations.

The evidentiary record includes Joint Exhibits 1 through 6, Claimant's Exhibits 1 through 12, and Defendants' Exhibits A through G. Claimant testified on her own behalf. Defendants called no witnesses. The evidentiary record closed at the conclusion of the arbitration hearing.

Counsel for the parties declined the opportunity to file post-hearing briefs. The case was deemed fully submitted to the undersigned on July 10, 2019.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant sustained an injury arising out of and in the course of employment on July 31, 2017;

2. Whether the alleged injury caused temporary disability and, if so, the extent of claimant's entitlement to temporary disability benefits, if any;

3. Whether the alleged injury caused permanent disability and, if so, the extent of claimant's entitlement to permanent disability benefits, if any;

4. The nature and extent of disability;

5. Whether claimant is entitled to an award of medical expenses;

6. Whether claimant is entitled to reimbursement for an independent medical examination (IME) under Iowa Code section 85.39;

7. Whether claimant is entitled to alternate care under Iowa Code section 85.27; and

8. Whether costs should be assessed against either party and, if so, in what amount.

FINDINGS OF FACT

Patricia Suyapa Fortin-Andino was born on October 25, 1959, making her 59 years old at the time of the evidentiary hearing. (Hearing Transcript, page 11). She resides in Iowa City, Iowa. (Id.). She completed 12 years of basic education in Honduras, followed by four years at a university to become an educator. (Exhibit 12, Deposition pp. 7-8).

Claimant started working as a packaging operator for the defendant employer on April 4, 2004. (Hr. Tr. p. 11). A description of claimant's job duties was entered into evidence as Exhibit 9. The job description was drafted by claimant's counsel. (Hr. Tr., p. 12). According to Exhibit 9, claimant worked 12-hour shifts on a rotating schedule. Her work schedule alternated every other week. One week she would work two, twelve-hour shifts; the next week she would work five, twelve-hour shifts. (Ex. 9, p. 30).

Claimant began each shift by checking the three designated machines she was assigned to manage. She would then assume her role on the production line. On each line, bottles were placed on trays by a machine. Once each tray was full, the tray would be processed and placed onto a pallet. The trays were replenished approximately every two minutes. If the bottles on a tray fell over, or a tray registered as incomplete, the machine would jam and eject the tray and bottles. The bottles would then be dumped into a large, gray bin. (Ex. 9, p. 30).

As a packaging operator, claimant was required to manually correct the errors made throughout the packaging process by each of her designated machines. When an error occurred, claimant was required to bend over, pick up the bottles from the gray bin, and place them back in the tray. Claimant would then manually remove the tray from the machine, fix whatever bottles were causing issues, place additional bottles in

the tray, and then manually reinsert the tray into the machine. Claimant asserts an error, or jam, would occur every five minutes. (Id.).

Once the machine was done with the pallets, claimant would use a pallet jack to withdraw up to 12 pallets from the machine and move them to a palletizer where they would be wrapped. (Id.). Claimant asserts the palletizer/wrapper job duty was added to her list of responsibilities around the time her symptoms noticeably worsened. At her deposition, claimant testified,

> There lately they were wanting us to do that all the time, that the packers would pull the pallets and take them to the wrapper.

(Ex. 12, Depo. p. 20). Claimant further testified she and the other packaging operators would rotate taking the pallets to the wrapper once said pallet was full. She testified the package operators would have to pull pallets full of trays to the wrapper every five to thirty minutes, depending on the size of the bottles they were working with. (Ex. 12, Depo. pp. 20-21).

In addition to the above job duties, claimant was in charge of watching bottles in the assembly line and making sure the bottles were upright and stable. She was required to lift and inspect every third bottle on the line to make sure it was up to standards and then place it back on the line. Claimant would manipulate the bottles to inspect them from top to bottom. Claimant maintains that due to her stature, the line was at chest level, requiring her to extend her arms to perform each task. (Ex. 9, p. 31).

Claimant asserts that around the time her wrists started to hurt, she received a new task wherein she had to inspect bottles on the line which were placed on their side. With both hands, she would turn the bottles over on the opposite side to inspect them. She was also required to sweep and mop various areas of the factory. (Id.).

The defendant-employer's official job description is in the record. (JE2, p. 22). Joint Exhibit 2 contains a 2009 and 2016 functional job description. (JE2, pp. 17, 22). The official job descriptions are much more broad when compared to Exhibit 9. The critical demands section of the more recent 2016 job description provides packaging operators must have the ability to "perform horizontal reach of 5-15 inches frequently," to "perform fine manipulation frequently," and to "perform bilateral grasping/handling constantly." (JE2, p. 17). The job description goes on to discuss the aforementioned critical demands in more detail. For example, the job description provides, "Constant: Handling/grasping includes handling boxes, end caps, end posts, pallet jacks, pallets and trays." (JE2, p. 18). The 2009 edition provides employees are frequently required to use their hands to finger, handle, or feel. (JE2, p. 23). The 2016 essential function profile was prepared by physical therapist Adam Calonder following an on-site assessment that included employee interviews. (JE2, p. 17). The essential function profile was found to be an accurate representation of the physical demands required to perform the packaging operator position by Julie Underwood, ALPLA's human resources manager. (Id.; See JE2, p. 16).

Fortin-Andino first presented to her primary care physician, Maureen Connolly, M.D. on August 16, 2017, reporting neck pain, bilateral lower arm pain, and numbness in both hands for the past several months. She reported she could barely hold a coffee cup due to the constant numbness in her hands. Dr. Connolly's notes provide Fortin-Andino had recently transitioned into a new, heavier duty position at her place of employment. According to Fortin-Andino, the switch caused a significant worsening of her condition. Dr. Connolly diagnosed Fortin-Andino with bilateral carpel tunnel syndrome and referred her on for an orthopedic evaluation. (JE1, pp. 1-2). Dr. Connolly provided Fortin-Andino with a work note recommending she no longer be required to perform the heavier, wrapping job duty. (Ex. 4, p. 14).

In an August 16, 2017, correspondence, Dr. Connolly provided her opinions with respect to causation. (Ex. 4, p. 14). Dr. Connolly opined claimant developed bilateral carpal tunnel as a result of chronic overuse of the hands and arms at work. Dr. Connolly tethered claimant's complaints to her new, "heavier work," that involved wrapping. (Id.).

The recommended orthopedic evaluation occurred on August 18, 2017, at Steindler Orthopedic Clinic. (JE3, p. 31). Scott Frisbie, PA-C fitted Fortin-Andino for cock-up wrist splints, provided light duty restrictions, and referred her on to hand and wrist specialist Brian Wills, M.D. (JE3, p. 32).

Fortin-Andino presented to Ernest Perea, M.D. on August 22, 2017, at the direction of ALPLA. (JE2, p. 6). Prior to Dr. Perea's examination, Fortin-Andino completed a health history questionnaire. One of the questions asked Fortin-Andino to provide whether she believed her accident, illness, or injury was work-related. Fortin-Andino answered in the affirmative. (JE2, p. 3).

Dr. Perea reviewed medical records from Dr. Connolly and Mr. Frisbie prior to conducting his examination. According to Dr. Perea's notes, Fortin-Andino did not have any pain, numbness, or tingling at the time of her visit. Dr. Perea opined Fortin-Andino likely had carpal tunnel syndrome (CTS), bilaterally, but it was also possible she had an abnormality in her cervical spine. He referred Fortin-Andino on for a nerve conduction study and recommended she use her wrist splints at work and while sleeping. In closing, Dr. Perea expressed his opinion that carpal tunnel syndrome has a "huge" genetic predisposition and is not necessarily related to work if specific ergonomic risk factors are not present in the workplace. (JE2, p. 8).

It is somewhat concerning to the undersigned that Dr. Perea was immediately critical and dismissive of Dr. Connolly and Mr. Frisbie's CTS diagnosis. It is also concerning Dr. Perea's initial reaction was to explain how unlikely it was claimant's diagnosis was work -related prior to conducting a job-site analysis, discussing claimant's job duties with claimant, or running diagnostic exams. There is a difference between reserving judgment as to causation and immediately attempting to disprove causation.

Dr. Perea requested Mike Lanaghan of Care Advantage Physical Therapy to conduct a worksite visit to assess Fortin-Andino's work station for risk factors associated with carpal tunnel. (JE2, p. 13). Lanaghan conducted a jobsite analysis on September 15, 2017. (JE2, p. 20). Lanaghan did not observe Fortin-Andino performing the various job duties. He did not interview Fortin-Andino. (JE2, p. 21) Instead, a human resources manager and a shift supervisor walked Lanaghan through the job duties of a packaging operator. Lanaghan concluded the packaging operator position would have a low risk of causing carpel tunnel syndrome as there is no exposure to vibration, it does not require awkward or flexed wrist positions, and the gripping is light and occasional. (JE2, p. 20).

An EMG, dated October 17, 2017, returned positive for severe bilateral carpal tunnel syndrome. The results of the EMG demonstrated bilateral APB denervation. (JE4, pp. 77-78).

On or about February 1, 2018, Dr. Perea reviewed Lanaghan's job analysis.

Fortin-Andino returned to Dr. Perea's office on February 1, 2018. (JE2, p. 26). According to Dr. Perea's notes, Fortin-Andino reported pain with movement of her thumbs and some numbness, tingling, and pain at bedtime in her thumbs only. Dr. Perea's notes further reflect the other digits of the right and left hands did not have any numbness, tingling, or pain. (Id.).

Following his examination, Dr. Perea discharged Fortin-Andino, placed her at MMI, and provided an impairment rating of zero percent. (JE2, p. 27). Dr. Perea could not opine with reasonable medical certainty that Fortin-Andino's carpal tunnel diagnosis was work-related. (Id.). Instead, Dr. Perea opined claimant's CTS "could be due to arthritis, to multiple factors such as gender, such as non-work-related causative factors." (Id.). In the preceding paragraph, Dr. Perea opined claimant did not show signs of any gross arthritis. Dr. Perea also offered claimant's elevated hemoglobin A1c could account for bilateral hand and thumb pain, numbness, and tingling. (Id.). Dr. Perea did not discuss any non-work related causative factors relevant to claimant. (Id.).

Dr. Perea was asked to respond to a number of questions from the defendant insurer. (Ex. A). In his February 1, 2018, report, Dr. Perea reiterated that he could not say within a reasonable degree of medical certainty that Fortin-Andino's complaints were related to her work activities. Dr. Perea cited Mr. Lanaghan's ergonomic evaluation as supporting evidence. However, Dr. Perea opined it is possible that work activities as well as non-work related activities could light up underlying CTS. (Id.).

Based on Dr. Perea's February 1, 2018, treatment note, defendants notified claimant they were denying liability for her claim. (Ex. D, p. 8).

Following her release from Dr. Perea, Fortin-Andino returned to Steindler Orthopedics to established care with Dr. Wills. (JE3, p. 34). She reported a several month history of increasing numbness and tingling into her hands and fingers. Dr. Wills

diagnosed bilateral carpal tunnel and recommended surgical intervention. Fortin-Andino desired to proceed with the left wrist, first, followed by the right two weeks thereafter. (JE3, p. 36).

Dr. Wills performed Fortin-Andino's left carpal tunnel release on February 16, 2018. (See JE3, p. 30). He performed the right carpal tunnel release on March 7, 2018. (See JE3, p. 40). Fortin-Andino reported improvement following both surgeries. (JE3, p. 41).

Formal occupational therapy was initiated on April 23, 2018, with the goal of reducing Fortin-Andino's pain, as well as improving her range of motion, strength, and function. (JE3, p. 43). At her initial appointment, Fortin-Andino reported she had severe difficulty completing even light level activities of daily living. (Id.). Brad Michelson, OTRIL felt Fortin-Andino had achieved all of her goals by her discharge date of May 24, 2018. (JE3, p. 67). She exhibited excellent objective improvement in range of motion and grip/pinch strength. (Id.). Fortin-Andino nevertheless continued to complain of subjective pain. Mr. Michelson noted he did not observe any objective limitations in clinic. (Id.).

Fortin-Andino continued to complain of pain in her bilateral wrists at her follow-up appointment with Dr. Wills on May 31, 2018. (JE3, p. 71). She explained her numbness and tingling had resolved with the carpal tunnel releases; however, she still experienced pain in her wrist and fingers. (Id.). She did not feel comfortable returning to work as she did not believe there were any tasks she could handle. Dr. Wills explained to Fortin-Andino that the biggest factors in her continued improvement would be time and diligent performance of her home exercise program. (Id.).

On June 5, 2018, Fortin-Andino presented to Anke Bellinger, M.D. for pain management. (JE3, p. 73). She reported pain in the palm of her left hand, and a heaviness and pain in her left upper extremity. In response, Dr. Bellinger ordered a cervical MRI to check for any nerve compression, and prescribed gabapentin. (JE3, p. 75).

The June 7, 2018, cervical MRI revealed small central disc bulges at C4-C5 and C5-C6, and possible mild right foraminal narrowing at C5-C6 on the right. (JE3, p. 76).

The defendant employer terminated Fortin-Andino on June 16, 2018. (Ex. 7, p. 21).

Aside from an independent medical examination, Fortin-Andino did not present for, or receive any medical treatment for her bilateral upper extremities between June 5, 2018 and the date of hearing. (Hr. Tr., p. 21). As of the date of hearing, claimant was not operating under any restrictions. No physician had prescribed any pain medication for her alleged symptoms. (Hr. Tr., p. 22). Likewise, claimant was not taking any over-the-counter medications for her alleged symptoms. (Id.).

In an August 6, 2018, correspondence from claimant's counsel, Dr. Wills was asked to review a number of documents and sign off on a number of pre-written opinions. (Ex. 5, pp. 15-18). Dr. Wills was asked to review claimant's job description according to claimant, defendant employer's 2016 functional job description, Mr. Lanaghan's job site evaluation, and medical records. (Ex. 5, p. 15). Dr. Wills agreed Fortin-Andino sustained an injury to her bilateral upper extremities as a result of her work activities on or about July 31, 2017. Dr. Wills added that claimant's injury was cumulative in nature as opposed to the result of an acute event. (Id.). Dr. Wills further agreed that Fortin-Andino substantially aggravated, exacerbated, lit up, or worsened pre-existing conditions in her bilateral upper extremities as a result of her work activities. (Id.). Lastly, Dr. Wills agreed the medical care claimant received was reasonable and necessary to address the work-related injury. (Ex. 5, p. 18).

After conducting a conference call with Dr. Wills, defense counsel sent a letter asking Dr. Wills to confirm the opinion he expressed during said conference call. Dr. Wills responded on September 22, 2018. Dr. Wills agreed that he believed Fortin-Andino's carpal tunnel condition was a work-related condition based upon his discussions with Fortin-Andino that included a discussion on the number of hours she worked, as well as her reports indicating she handled repetitive, forceful gripping with repeated and repetitive use of her bilateral hands. (Ex. 6, pp. 19-20).

Defendants did not obtain a permanent impairment rating for claimant's alleged injuries. Instead, defendants elected to defend this case on causation grounds.

Fortin-Andino sought an independent medical examination performed by Sunil Bansal, M.D. on May 17, 2019. (Ex. 2). Dr. Bansal is an occupational medicine physician. Dr. Bansal opined Fortin-Andino developed bilateral carpal tunnel as a result of her cumulative job tasks at the defendant employer. (Ex. 2, p. 9). He placed her at maximum medical improvement and recommended permanent restrictions of no lifting greater than 10 pounds with either hand, and no frequent gripping with either hand. (JE2, p. 10). Dr. Bansal assigned 4 percent impairment to each upper extremity for a combined impairment rating of 8 percent. (Ex. 2, pp. 10-11).

When I compare the competing causation opinions of Dr. Connolly, Dr. Wills, Dr. Perea, and Dr. Bansal, I note the respective credentials of the physicians, as well as the thoroughness of their evaluation of the causation issue.

I afford significant weight to the opinions of Dr. Wills. Dr. Wills is a fellowship-trained hand and upper extremity surgeon. He is undoubtedly more well-versed in the mechanics and biology of the hand, wrist, and upper extremity when compared to any other physician in the evidentiary record.

I likewise afford significant weight to the opinions of Dr. Bansal. Dr. Bansal has extensive experience in assessing causation with respect to occupationally related injuries. His opinions are supported by Dr. Wills.

When I review the explanations and analyses of Dr. Wills, Dr. Bansal, and Dr. Perea, I find Dr. Bansal's opinion to be the most thorough and convincing in this case. Dr. Bansal's causation opinions are well explained and reasonable. Dr. Bansal cites to specific studies and authoritative entities in support of his causation opinion. I find Dr. Bansal's opinions to be credible, particularly as they are supported by the opinions of Dr. Wills.

In this instance, I give little weight to the opinion of Dr. Connolly as it does not appear she reviewed claimant's updated medical records, the various job descriptions, or Mr. Lanaghan's job site analysis prior to opining on causation.

I am not convinced Dr. Perea has a firm understanding of claimant's job duties. Dr. Perea did not visit the Iowa City plant where claimant worked. His understanding of claimant's job duties is limited to the job site analysis conducted by Mr. Lanaghan. As will be discussed herein, there are noted deficiencies in Mr. Lanaghan's report. While it is clear Dr. Perea was provided copies of the 2009 and 2016 job descriptions, it is not clear he considered the same when reaching his causation opinion. There is no evidence he was privy to Exhibit 9, nor is there evidence he gave claimant an opportunity to describe her job duties or to refute the report of Mr. Lanaghan.

Mr. Lanaghan's job site analysis is cursory at best. The one-page report explains ALPLA's human resources manager and a shift manager showed Mr. Lanaghan the job duties of a packaging operator. Outside of a discussion that occurred with one individual handling the palletizer job duties, it is unclear whether Mr. Lanaghan observed any actual packaging operators in action. It is also unclear how long Mr. Lanaghan was actually on-site. Mr. Lanaghan did not observe Fortin-Andino performing her job duties. He did conduct an interview with Fortin-Andino to discuss which job duties specifically aggravated her hands. (JE2, p. 21). Unlike the physical therapist that conducted a job-site analysis for the defendant employer in 2016, it does not appear as though Mr. Lanaghan interviewed any packaging operators for purposes of his evaluation.

Interestingly, Mr. Lanaghan provided, "the only task that may involve frequent gripping is inspecting trays . . ." (JE2, p. 20) which is the exact job duty claimant was completing when she first experienced an increase in pain. (Ex. 12, Depo. p. 18). Claimant's job duties are not described in significant detail, nor does Mr. Lanaghan's report include all job duties discussed in Exhibit 9. Moreover, the official job descriptions provided by the defendant employer to Dr. Perea specifically provide the packaging operator position requires the ability to perform bilateral grasping/handling, constantly, and fine manipulation, frequently. (JE2, pp. 17-18). Such requirements directly conflict with Mr. Lanaghan's report.

Both parties put forth legitimate and strong evidence in this case. Ultimately, however, I find the opinions of Dr. Bansal and Dr. Wills most convincing. Therefore, I find that claimant has proven she sustained a cumulative injury to her bilateral upper extremities as a result of her work activities for the defendant employer.

As previously noted, Dr. Bansal is the only physician to render a permanent impairment rating. He opined claimant sustained a four percent permanent impairment of the right upper extremity as a result of right carpal tunnel syndrome symptoms. (Ex. 2, p. 10) Dr. Bansal similarly assigned a four percent permanent impairment of the left upper extremity as a result of left carpal tunnel syndrome symptoms. (Id.). When combined, these impairment ratings produce a whole person impairment rating of 5 percent. (Ex. 2, p. 11).

Given that defendants did not produce a competing impairment rating; I accept Dr. Bansal's permanent impairment rating as accurate. Claimant's functional impairment is determined solely by utilizing the AMA Guides. I find claimant has sustained 5 percent impairment of the whole person as a result of her injuries. Neither party presented evidence to establish what, if any, portion of claimant's current impairment is attributable to pre-existing injuries or conditions.

Having found in favor of claimant on the issue of causation, I further find the medical treatment claimant received was reasonable and necessary to treat her work-related condition. I similarly find that the associated medical expenses are causally related to the July 31, 2017, work injury and represent reasonable charges for the reasonable and necessary medical treatment.

As a result of the work related injury, claimant underwent surgery on February 16, 2018, and March 7, 2018. Claimant was off work in a period of recovery between February 16, 2018, and June 5, 2018. Claimant is entitled to temporary benefits for this period of time. It is determined that claimant has proven by a preponderance of the evidence that the work injury of July 31, 2017, is a cause of temporary disability during a period of recovery.

Because the defendant employer did not subject claimant to an evaluation for permanent impairment prior to Dr. Bansal's examination, I find claimant is not entitled to reimbursement of Dr. Bansal's IME fees. I do, however, find the fees associated with Dr. Bansal's report are taxable to defendants as a cost.

CONCLUSIONS OF LAW

The first issue for determination is whether Fortin-Andino sustained an injury which arose out of and in the course of her employment.

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.

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).

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).

In the instant case, claimant has worked as a packaging operator for over 14 years. According to claimant's testimony and the official job description of the defendant employer, claimant's job required constant use of her hands, wrists, and arms, as well as frequent fine manipulation. Claimant credibly testified she first experienced an increase in pain while performing job duties for the defendant employer. Three of four medical experts found claimant sustained a cumulative injury as a result of her work activities for the defendant employer.

Following my review of the entirety of the evidentiary record and after giving significant consideration to the medical opinions in evidence, I determined claimant sustained a cumulative injury arising out of and in the course of her employment with the defendant employer with a manifestation date of July 31, 2017.

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).

In this case, I found the causation opinions offered by Dr. Wills and Dr. Bansal to be most convincing. Relying on those opinions, I found claimant proved by a preponderance of the evidence that she sustained a cumulative injury as a result of her work activities for the defendant employer. I found claimant's cumulative work injury

manifested on July 31, 2017. Therefore, I conclude that claimant has proven she sustained bilateral carpal tunnel syndrome arising out of and in the course of her employment with the defendant employer on or about July 31, 2017.

Fortin-Andino asserts a claim for healing period benefits from February 16, 2018, through June 5, 2018. Defendants stipulate claimant was off work during this period of time. Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery.

I found that claimant was not capable of substantially similar employment and not yet at maximum medical improvement from February 16, 2018, through June 5, 2018. Claimant was in a period of recovery during this time. Therefore, I conclude that claimant is entitled to an award of healing period benefits from February 16, 2018, through June 5, 2018.

Fortin-Andino is seeking permanent disability benefits for her bilateral upper extremity injury. Having found that claimant proved she sustained permanent disability as a result of her injuries, I will now address her entitlement to permanent disability benefits.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998).

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

Having weighed the competing medical evidence, I found Fortin-Andino proved a functional loss equivalent to 5 percent of the whole person as a result of the injuries to her bilateral upper extremities. Pursuant to Iowa Code section 85.34(2)(s), claimant is entitled to a proportional award equivalent to 5 percent of 500 weeks. Iowa Code section 85.34(2)(v). Therefore, I conclude claimant is entitled to an award of 25 weeks of permanent partial disability benefits commencing on June 18, 2018, as stipulated by the parties.

Having concluded Fortin-Andino has proven a cumulative injury to her bilateral upper extremities, I similarly conclude she has established entitlement to past medical expenses.

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 parties stipulated that the claimed medical expenses were all related to the disputed medical condition underlying this injury. Having found that the claimant established a compensable injury, I find the expenses are causally connected to the work injury, the fees are fair and reasonable, and the treatment was both reasonable and necessary. Accordingly, defendants are found responsible for all medical expenses causally related to the July 31, 2017, work injury. I conclude that the past medical expenses claimed should be reimbursed to claimant or paid to the medical providers; claimant should be held harmless by defendants for those expenses in either event.

The parties stipulate that defendants are entitled to a credit under Iowa Code section 85.38(2) for payment of sick pay/disability income in the amount of $4,626.33.

On the hearing report, Fortin-Andino asserted a claim for alternate medical care; however, the claim for alternate medical care was not well-defined at hearing and the parties declined the opportunity to file post-hearing briefs. In similar situations, the claimant typically desires future causally related medical treatment. Pursuant to Iowa Code section 85.27, claimant is entitled to any future or ongoing medical treatment that is causally related to the July 31, 2017, work injury. A specific order for alternate medical care will not be entered as no such claim has been argued or proven.

Fortin-Andino seeks reimbursement for Dr. Bansal’s IME charges under Iowa Code section 85.39. Iowa Code 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.

In this case, defendants did not obtain a permanent impairment rating for claimant's condition. Instead, they challenged this claim on whether it was causally related to claimant's employment and whether the injury arose out of and in the course of claimant's employment. Unless a claimant can establish the prerequisites of Iowa Code section 85.39, the defendants are not obligated to pay for the claimant's evaluation. Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839, 843-844 (Iowa 2015) (DART).

An employee can obtain an IME at the employer's expense only if an evaluation of permanent disability has been made by an employer-retained physician. The record in this case shows there was no impairment rating from any physician chosen by

defendant. It cannot be said Dr. Perea conducted an evaluation of permanent disability. Rather, Dr. Perea's evaluation was to determine causation. To qualify Dr. Perea's zero percent impairment rating as a legitimate evaluation of permanent disability would completely ignore the substance of his causation opinion. The zero percent impairment rating is based on a lack of causation, not claimant's carpal tunnel diagnosis.

However, I find the cost of Dr. Bansal's IME report is recoverable from defendant as a taxable cost. The DART decision holds that only the cost associated with the preparation of a written report of a claimant's IME can be reimbursed as a cost at hearing. DART v. Young, 867 N.W.2d 839, 847 (Iowa 2015). Dr. Bansal's invoice breaks down how much was charged to examine claimant and how much was charged to write his report.

Exhibit G is a copy of examination fees charged by Medix Occupational Health Services. Presumably, defendants included this exhibit to dispute the reasonableness of Dr. Bansal's IME fees under Iowa Code section 85.39(2). Having found claimant is not entitled to reimbursement for Dr. Bansal's IME under Iowa Code section 85.39, no finding as to the reasonableness of Dr. Bansal's fee is necessary. The language used in Iowa Code section 85.39(2) limits the reasonableness argument to examinations made pursuant to 85.39. Rule 876-4.33 is silent as to the reasonableness of IME fees.

As such, claimant can recover the fee associated with Dr. Bansal's report, or $1,988.00. For what it is worth, had I found Dr. Bansal's IME could be reimbursed under 85.39, $1,988.00 is approximately the amount claimant would have been reimbursed after factoring in the fees charged by local provider Medix.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Costs are to be assessed at the discretion of the deputy commissioner or workers' compensation commissioner hearing the case. 876 IAC 4.33.

Claimant requests taxation of the cost of the filing fee ($100.00), and deposition transcript ($64.75). An assessment of costs is a discretionary function of this agency. Claimant was generally successful in her claim. An assessment of costs is appropriate. The cost of the filing fee and deposition transcript are allowable costs and are taxed to defendants.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant healing period benefits from February 16, 2018 through June 5, 2018.

Defendants shall pay unto claimant twenty-five (25) weeks of permanent partial disability benefits commencing on June 6, 2018, at the weekly rate of three hundred fifty-seven and 26/100 dollars ($357.26).

Defendants shall pay all accrued benefits in a lump sum.

Defendants shall pay accrued weekly benefits in a lump sum together with interest at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent.

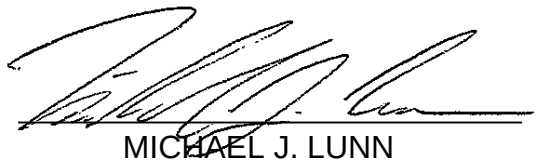
Defendants shall reimburse claimant for any past medical expenses paid directly by claimant to medical providers, shall either pay to claimant or directly to the medical providers any outstanding past medical expenses, and shall hold claimant harmless for any medical expenses causally related to the July 31, 2017, work injury.

Defendants shall provide claimant future medical care for all treatment causally related to her bilateral upper extremity injuries pursuant to Iowa Code section 85.27.

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.

Costs are taxed to defendants pursuant to 876 IAC 4.33 as set forth in the decision.

Signed and filed this 10th day of January, 2020.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Andrew Bribriesco (via WCES)

Michael S. Roling (via WCES)

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.