BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

THEODORE ROTH,	:	
Claimant,	:	File No. 1657652.01
vs.	:	
GENERAL MILLS, INC.,	:	ARBITRATION DECISION
Employer,	:	
and	:	
OLD REPUBLIC INSURANCE CO.,	:	
Insurance Carrier, Defendants.	:	Headnote Nos: 1400; 1402.40; 1800; 1803; 1803.1; 2500; 2503; 2700

STATEMENT OF THE CASE

The claimant, Theodore Roth, filed a petition for arbitration seeking workers' compensation benefits from employer General Mills, Inc. ("General Mills"), and their insurer, Old Republic Insurance Company. Joanie Grife appeared on behalf of the claimant. Peter Thill appeared on behalf of the defendants.

The matter came on for hearing on August 22, 2023, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner, the hearing occurred electronically via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-9, Claimant's Exhibits 1-6, and Defendants' Exhibits A-G. The exhibits were received and admitted into the record with no objections.

The claimant testified on his own behalf. Aaron Ford, testified on behalf of the defendants. Tracy Hamm was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the close of the hearing, and the matter was considered fully submitted following briefing by the parties on October 20, 2023.

STIPULATIONS

Through the hearing report, as reviewed at the commencement of the hearing, the parties stipulated and/or established the following:

1. There was an employer-employee relationship at the time of the alleged injury.

2. That the claimant sustained an injury, which arose out of, and in the course of employment on August 18, 2017.

3. That the alleged injury was a cause of temporary disability during a period of recovery.

4. That the alleged injury was a cause of permanent disability.

5. That the commencement date for permanent partial disability benefits, if any are awarded, is May 10, 2019.

6. That, at the time of the alleged injury, the claimant's gross earnings were one thousand four hundred five and 86/100 dollars ($1,405.86) per week, and that he was married and entitled to two exemptions. As a result, the parties believe the weekly rate to be eight hundred sixty-three and 18/100 dollars ($863.18).

7. That, with regard to disputed medical expenses, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses, and the defendants would not offer contrary evidence as to this issue.

8. That the costs have been paid.

The defendants waived their affirmative defenses. Entitlement to temporary disability benefits is no longer in dispute. Credits against any award are no longer in dispute.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

1. The extent of permanent disability benefits, if any are awarded.

2. Whether the permanent disability is a scheduled member disability to the left shoulder or an industrial disability.

3. Whether the claimant is entitled to payment for certain medical expenses.

4. With regard to the disputed medical expenses:

    a. Whether the fees or prices charged by the providers were fair and reasonable.

b. Whether the treatment was reasonable and necessary.
c. Whether the listed expenses were causally connected to the work injury.
d. Whether the listed expenses were at least causally connected to the medical conditions upon which the claim of injury is based.
e. Whether the requested expenses were authorized by the defendants.

5. Whether the claimant is entitled to reimbursement for an independent medical examination ("IME") pursuant to Iowa Code section 85.39.

6. Whether the claimant is entitled to a specific taxation of costs, and the amount of those costs.

FINDINGS OF FACT

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

Theodore Roth, the claimant, was 64 years old at the time of the hearing. (Testimony). He resides in Cedar Rapids, Iowa, with his wife of 12 years. (Testimony). He graduated from high school in 1977, with average grades. (Testimony). He attended a three-week training course at Texas A&M University while he was a USDA meat inspector. (Testimony). He received a certificate of completion after the conclusion of the course. (Testimony).

Mr. Roth worked for the United States Department of Agriculture ("USDA") as a meat inspector for about 15 years. (Testimony). He started working in a poultry plant in California by inspecting chickens and turkeys on the production line. (Testimony). He then moved to Iowa and was stationed at a pork sausage plant inspecting the offal of the pigs for various diseases. (Testimony). He was then promoted to working at meat processing plants where he observed production of bacon, hot dogs, and bologna. (Testimony). The jobs required walking, climbing ladders, and observation. (Testimony). He left his job because he wanted to be closer to his daughter following a divorce. (Testimony).

For a short time, he worked at a metal press factory in Belle Plaine, Iowa. (Testimony). He worked in this role for less than one year. (Testimony). He left this job to perform quality assurance at a meat packing plant in Tama, Iowa. (Testimony). He managed quality assurance employees, performed sanitation reports, and insured that the facility met company guidelines for quality control. (Testimony).

In 2001, Mr. Roth began working at Pillsbury as a lab technician. (Testimony). He sampled flour batches and checked for sanitation issues. (Testimony). Pillsbury later became General Mills, and employees were given the opportunity to apply for work in a different plant. (Testimony). Mr. Roth applied, and was hired to the Fruit Roll-Ups division at the General Mills facility. (Testimony). Mr. Roth placed plastic rolls onto a spindle, onto which slurry would be piped. (Testimony). He would also have to re-load

these rolls, and the rolls that would eventually be the wrapping for the Fruit Roll-Up. (Testimony).

He worked in this position for 12 years before moving to be a full-time production laborer in the processing department. (Testimony). He worked from 3:00 p.m. to 11:00 p.m., but at times also worked a 12-hour shift. (Testimony). He worked a "19 and 2" which meant nineteen days on followed by two days off. (Testimony). He was not working under any restrictions, and had no health issues that affected his work. (Testimony). Mr. Roth weighed ingredients, mixed ingredients in kettles, and moved products off of pallets. (Testimony). Some of the bags that he lifted weighed more than 50 pounds. (Testimony).

In August of 2017, Mr. Roth was working and using a walk-behind pallet jack in order to move a pallet of sugar into position for a lift. (Testimony). Suddenly, the handle of the pallet jack jerked "really hard to the right," pulling his left hand, arm, and shoulder across his body. (Testimony). This resulted in sharp, severe pain radiating from his shoulder down his arm. (Testimony). He wrote down the injury and reported it to his team leader. (Testimony). He then returned to working. (Testimony).

The next day, Mr. Roth discussed his injury with a safety lead in his department. (Testimony). His shoulder continued to hurt. (Testimony). After reporting his injury, he returned to work. (Testimony). General Mills did not send him to a physician, despite several complaints. (Testimony). Instead, he was seen by a "physical therapist gal" who talked to him about his injury and provided him with stretching exercises to perform. (Testimony). He performed these stretching exercises at home, though they did not provide any improvement to his shoulder pain. (Testimony).

Sometime later, the claimant was working on a mezzanine stand where a dry blender was located. (Testimony). He pulled a bag of ingredients from a pallet, transferred it to a table, opened it, and lifted it in order to dump it into a machine. (Testimony). As he pulled the bag, he felt a sharp pain in his shoulder that radiated into his left arm. (Testimony). He reported the shoulder pain to his team leader, and again asked to see a doctor. (Testimony). However, no one from General Mills ever sent him to a doctor. (Testimony).

It was not until about one year later, on July 18, 2018, that he received care during a visit to his family physician for his annual physical. (Testimony; Joint Exhibit 1:1-6). He requested Anshul Jain, M.D., examine him for low testosterone, and also for a work injury to his left shoulder "a couple months ago…" (JE 1:1). He continued to have pain in his left shoulder, and noted that his work "only recommended massage therapy." (JE 1:1). Dr. Jain ordered an x-ray and sent Mr. Roth to an orthopedic physician. (Testimony; JE 1:6). The x-ray was normal, according to the interpreting radiologist. (JE 2:40).

On August 13, 2018, Brendan Leiran, PA-C, examined Mr. Roth for left shoulder pain upon the referral of Dr. Jain. (JE 3:41-44). Mr. Roth recounted hurting his shoulder "8-9 months ago…at work while pulling 50 pound bags off of a pallet overhead." (JE 3:41). Mr. Roth described a sharp pain in his left shoulder. (JE 3:41). Despite performing stretching exercises, his left shoulder pain never dissipated. (JE

3:41). Mr. Roth recounted pain, weakness, loss of motion, and catching or popping in his left shoulder. (JE 3:41). He also told Mr. Leiran that he had pain radiating down the lateral portion of his left arm. (JE 3:41). He rated his pain 5 out of 10. (JE 3:41). Upon examining Mr. Roth, Mr. Leiran noted no tenderness, or instability in the left shoulder. (JE 3:43). Mr. Roth also displayed no signs of impingement, but did have a positive Neer test. (JE 3:43). Mr. Leiran reviewed the x-rays performed in July and found them to have well-preserved acromiohumeral distance, and a well-preserved glenohumeral joint. (JE 3:43). The x-rays did show mild spurring, but Mr. Leiran opined that this was normal for Mr. Roth's age. (JE 3:43). Mr. Leiran diagnosed the claimant with a partial rotator cuff tear to the left shoulder and possible impingement syndrome to the same. (JE 3:43). He recommended an MRI of the left shoulder for additional diagnostic purposes. (JE 3:44).

Following his visit with Mr. Leiran, Mr. Roth told his supervisor that a provider recommended that he have an MRI and his supervisor told him that he needed to see a General Mills provided doctor. (Testimony). Mr. Roth recalled telling his supervisor that he had been trying to see a doctor but that General Mills would not refer him to one for treatment. (Testimony).

Jeffrey Westpheling, M.D., examined Mr. Roth on August 16, 2018, for a left shoulder injury "which occurred at work in December 2017." (JE 4:75). Mr. Roth continued to report pain in his left shoulder, which worsened at night. (JE 4:75). Dr. Westpheling recounted Dr. Hart's recommendation for a left shoulder MRI. (JE 4:75). The doctor found no tenderness with palpation on the left shoulder, along with full range of motion in the left shoulder. (JE 4:75). Dr. Westpheling found weakly positive impingement signs. (JE 4:75). He diagnosed Mr. Roth with a left shoulder strain, and recommended a left shoulder MRI. (JE 4:75). He provided the claimant with no restrictions. (JE 4:75).

On September 19, 2018, Mr. Roth had an MRI of his left shoulder. (JE 5:77-78). The MRI showed an intact rotator cuff. (JE 5:78). However, there was a mild thickening and abnormal signal of the intra-articular long head of the biceps tendon, which the radiologist felt indicated mild tendinosis. (JE 5:78). The radiologist also found a suggestion of a labral tear. (JE 5:78).

Mr. Roth followed up with Dr. Westpheling on September 20, 2018, to review the results of a recent MRI examination of the left shoulder. (JE 4:76). The MRI indicated that Mr. Roth had a possible labral tear. (JE 4:76). Mr. Roth continued to report aching in the left shoulder, "exacerbated by forward reaching." (JE 4:76). Mr. Roth also told Dr. Westpheling that his pain radiated down his left arm when he reaches. (JE 4:76). Dr. Westpheling again observed that Mr. Roth had full range of motion and intact strength in the left shoulder. (JE 4:76). He continued to diagnose Mr. Roth with a left shoulder strain, and recommended a referral to an orthopedic doctor. (JE 4:76). Dr. Westpheling offered no work restrictions. (JE 4:76).

On October 17, 2018, Mr. Roth returned to Dr. Jain's office. (JE 1:7-10). He continued to have discomfort in his left shoulder, for which Dr. Jain recommended he follow up with an orthopedic physician. (JE 1:7). Dr. Jain examined the claimant's left

shoulder and found him to have pain with movement, but normal range of motion. (JE 1:8).

David Hart, M.D., examined Mr. Roth at Physicians' Clinic of Iowa, P.C., on October 26, 2018. (JE 3:45-47). Dr. Hart is a board certified orthopedic surgeon. (Defendants' Exhibit G:51). Mr. Roth recounted a 10-month history of left shoulder pain following a work-related injury. (JE 3:45). The pain was localized to the scapula and lateral proximal arm and radiated into the forearm. (JE 3:45). Mr. Roth described the pain as constantly dull and achy. (JE 3:45). Mr. Roth was tiring of the pain and noted he worked without restrictions. (JE 3:45). Dr. Hart reviewed the findings of the MRI with Mr. Roth, which included an intact rotator cuff with other subtle findings. (JE 3:45). Dr. Hart noted several cystic small fluid collections near the anteroinferior labrum which he felt were suggestive of paralytic labral cysts. (JE 3:45). Upon examination, Dr. Hart found no atrophy of the muscles, nor scapular winging, nor swelling. (JE 3:45). Dr. Hart observed no tenderness to the "ACJ." (JE 3:45). Dr. Hart diagnosed Mr. Roth with a superior labrum anterior-to-posterior ("SLAP") tear of the left shoulder, though he provided a caveat of "I'm not 100% certain of the diagnosis. I explained to him that in patients of his age degenerative arthritis can mimic labral tears. He may have some biceps tendon pathology, will certainly take a close look at that and a biceps tenodesis may be necessary." (JE 3:46-47). Dr. Hart recommended an arthroscopic subacromial decompression of the left shoulder. (JE 3:47).

Mr. Roth had a pre-operative physical on November 13, 2018, with Dr. Jain at the request of Dr. Hart for his upcoming left shoulder surgery. (JE 1:11-16). Mr. Roth had left shoulder pain for the previous seven months following an injury at work. (JE 1:11). He continued to have "a lot of discomfort in the left shoulder." (JE 1:11). At the time of the examination, Mr. Roth had excellent functional capacity. (JE 1:14). Mr. Roth displayed pain with movement and overhead movement in the left shoulder. (JE 1:15). Dr. Jain found no contraindications for surgery, and cleared Mr. Roth. (JE 1:16).

Mr. Roth found that his position became more difficult and caused more problems with his shoulder. (Testimony). Thus, Mr. Roth eventually bid for a different job in the desserts department because it involved less heavy lifting. (Testimony). Since Mr. Roth had appropriate seniority, he moved to this position two weeks prior to his surgery. (Testimony).

On December 5, 2018, Mr. Roth reported to the Surgery Center of Cedar Rapids. (JE 3:50-51). There, Dr. Hart performed the following procedures to the claimant's left shoulder: an arthroscopic biceps tenodesis, an extensive debridement of a torn labrum, and an arthroscopic subacromial decompression. (JE 3:50). Following the surgery, Dr. Hart diagnosed the claimant with a type IV SLAP tear of the left shoulder with biceps anchor involvement. (JE 3:50).

Ann Camblin, at Physicians' Clinic of Iowa, P.C., conducted a physical therapy evaluation of the claimant on December 12, 2018. (JE 6:79-80). Mr. Roth wore his immobilizer as directed. (JE 6:79). He showed some swelling and pain in the shoulder. (JE 6:79). Ms. Camblin performed therapy on the claimant. (JE 6:79-80).

On December 21, 2018, Mr. Roth had another physical therapy appointment with Ms. Camblin. (JE 6:81-82). He showed improved tolerance to various modalities. (JE 6:81). He also expressed increased pain during some exercises. (JE 6:81).

Mr. Roth continued his therapy on January 9, 2019. (JE 6:83-84). He noted that he only took pain medications before his physical therapy appointments. (JE 6:83). He progressed certain exercises as tolerated and demonstrated increased range of motion. (JE 6:83).

On January 11, 2019, Mr. Roth saw Ms. Camblin again for physical therapy. (JE 6:85-86). During this visit, he denied significant pain. (JE 6:85). He progressed his range of motion, and performed various exercises. (JE 6:85).

Mr. Roth had another physical therapy appointment on January 16, 2019. (JE 6:87-88). He noted that he was going to stop taking prescription pain medications, as he felt his pain was improving. (JE 6:87). He continued to progress with range of motion, and the therapist was attempting to progress him to a home exercise plan. (JE 6:87).

On January 18, 2019, Mr. Roth continued his physical therapy visits. (JE 6:89-90). He noted consistency with completing his home exercise program, and increased his range of motion. (JE 6:89). He also experienced increased pain during therapy. (JE 6:89).

Additional therapy was performed with Mr. Roth on January 23, 2019. (JE 6:91-92). Mr. Roth was sore after performing some light shoveling at home. (JE 6:91). The therapist cautioned Mr. Roth against shoveling at this point in his recovery. (JE 6:91). He continued to progress his range of motion. (JE 6:91).

On January 25, 2019, Mr. Roth had another physical therapy visit. (JE 6:93-94). He denied significant pain. (JE 6:93). The therapist progressed his physical therapy treatment. (JE 6:93).

Mr. Roth had more physical therapy on January 30, 2019. (JE 6:95-96). Mr. Roth reported that his doctor was pleased with his progress, and that he would return to light duty work the next week with lifting restrictions. (JE 6:95). The therapist progressed some light biceps strengthening, and increased the claimant's range of motion. (JE 6:95).

On February 1, 2019, Mr. Roth returned for physical therapy. (JE 6:97-98). He planned on returning to light duty work the next week. (JE 6:97).

Mr. Roth visited the physical therapist again on February 5, 2019. (JE 6:99-100). He reported that he returned to light duty work. (JE 6:99). He progressed during this visit. (JE 6:99).

On February 7, 2019, Mr. Roth reported mild soreness since returning to work during his physical therapy visit. (JE 6:101-102). He rated his pain 2 to 3 out of 10. (JE 6:101). He progressed his range of motion, and showed fatigue with mild lateral deltoid

soreness. (JE 6:101). The therapist opined that this was "typical with strengthening exercises." (JE 6:101).

Mr. Roth continued to perform light duty activities at work as of his February 12, 2019, physical therapy visit. (JE 6:103-104). He rated his pain 2 to 3 out of 10. (JE 6:103).

On February 19, 2019, Mr. Roth reported compliance with his home exercise plan during a therapy visit. (JE 6:105). His range of motion continued to improve, and he progressed "as tolerated." (JE 6:105). The therapist noted that Mr. Roth fatigued without pain. (JE 6:105).

Mr. Roth followed-up with Dr. Hart on March 13, 2019. (JE 3:52-53). Mr. Roth reported he was doing well with no complaints. (JE 3:52). Mr. Roth was improving steadily and lifting up to 10 pounds in therapy. (JE 3:52). He expressed an interest in work hardening. (JE 3:52). Dr. Hart ordered additional physical therapy. (JE 3:53).

Dr. Hart wrote a letter on May 10, 2019, opining that Mr. Roth achieved maximum medical improvement ("MMI") on the same date. (JE 3:54). Based upon his examination, and the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Hart provided an impairment rating. (JE 3:54). Dr. Hart used the range of motion impairment rating method, and found the claimant to have a 3 percent impairment. (JE 3:54). Dr. Hart then used Table 16-35 to provide an impairment rating of an additional 2 percent for weakness detected on manual motor testing. (JE 3:54). The result is a 5 percent left upper extremity impairment rating, which Dr. Hart noted was a 3 percent whole person impairment. (JE 3:54).

For a time, Mr. Roth worked light duty performing computer work. (Testimony). He was then put into the supply room. (Testimony). He positioned lightweight items, and organized items in drawers. (Testimony).

Despite his release to work, Mr. Roth continued to have aches in his shoulder and arm. (Testimony). His issues worsened after repetitive motion and work tasks. (Testimony). Upon returning home on these days, he would ice his shoulder and take Tylenol. (Testimony).

On July 22, 2019, Dr. Jain examined Mr. Roth again for an annual physical examination. (JE 1:17-22). Mr. Roth complained of long-term right wrist pain, and requested to see a specialist for the same. (JE 1:17). He was provided with a referral to a hand surgeon. (JE 1:21). There was no substantive mention of the claimant's shoulder during this visit. (JE 1:17-22).

After completion of his work hardening physical therapy, Dr. Hart returned the claimant to full duty work. (Testimony). Mr. Roth worked in the desserts department at General Mills. (Testimony). Initially, he observed other employees completing various tasks in training. (Testimony). As a worker in the desserts department, he reached high overhead to open up pallets of tubs. (Testimony). He also had to dump boxes of lids weighing 10 to 12 pounds. (Testimony). Mr. Roth indicated that he modified the way that he performed this role because it hurt his shoulder to perform the normal

functions of the job. (Testimony). He found that the work in the desserts department was not as taxing because it required less heavy lifting. (Testimony). The job required no crawling or dragging of 50 pound sacks. (Testimony).

Mr. Roth described an incident where he was called into work early in order to learn how to disassemble a frosting tub in September of 2019. (Testimony). The trainers left, and he was left alone to reassemble the cleaned equipment; however, he testified that he was never trained on this task. (Testimony). He leaned inside of the equipment while reassembling it, and hurt his shoulder again. (Testimony). He testified that he told his team leader about his injury, which he described as a "deep aching pain in [his] shoulder going from [his] shoulder down towards [his] elbow and into [his] forearm." (Testimony). Again, Mr. Roth was not sent to a doctor. (Testimony). He returned to work after the weekend, and was asked how his shoulder felt, to which he responded that it was achy, but better. (Testimony). It took another four to six months for General Mills to send him to a doctor. (Testimony).

Mr. Roth returned to Dr. Jain's office on December 17, 2019, for a pre-operative examination ahead of a scheduled right wrist surgery in late December. (JE 1:23-25). There was no mention of his shoulder issue. (JE 1:23-25). He was approved for surgery. (JE 1:25).

Mr. Roth saw Dr. Hart again on March 4, 2020. (JE 3:55-58). Mr. Roth noted he did well until late September of 2019, when he was working on pipes in a machine and experienced sudden pain in his left shoulder. (JE 3:55). Since then, his pain was constantly achy near the lateral proximal arm. (JE 3:55). X-rays were normal. (JE 3:56). Left shoulder examination showed a full range of motion and no tenderness to palpation. (JE 3:56). Dr. Hart diagnosed the claimant with a strain of the left rotator cuff capsule. (JE 3:57). Dr. Hart recommended no work restrictions, and recommended that Mr. Roth try meloxicam and physical therapy. (JE 3:57).

Nicholas Bingham, M.D., began to see the claimant on March 11, 2020. (JE 7:107-109). Dr. Bingham recounted the claimant's medical history to date. (JE 7:107). His current pain following the September incident was recurrent and related to his activity. (JE 7:107). At the time of the appointment, Mr. Roth was off work due to his hand issue. (JE 7:107). Dr. Bingham found the claimant to have age appropriate range of motion in his left shoulder. (JE 7:108). Dr. Bingham also noted that Mr. Roth had negative Yocum's and empty can signs. (JE 7:108). Dr. Bingham noted, "I reassured the patient that, like Dr. Hart, I am not getting strong signs of a serious reinjury to the shoulder." (JE 7:108). Dr. Bingham diagnosed the claimant with a left shoulder strain, and recommended that the claimant resume physical therapy. (JE 7:108-109). He provided no restrictions, except for those provided by the hand surgeon. (JE 7:108).

On April 22, 2020, Dr. Bingham issued another report to the employer wherein he recommended continued physical therapy. (JE 7:110). Dr. Bingham provided work restrictions applicable until the next office visit. (JE 7:110). These restrictions were lifting of 0 to 15 pounds, occasional above shoulder reaching, full shoulder reaching as tolerated, no climbing, pushing or pulling as tolerated, and lifting as tolerated. (JE

7:110). Dr. Bingham also recommended that Mr. Roth minimally work above chest level. (JE 7:110).

Dr. Hart examined Mr. Roth for continued follow-up care on May 7, 2020. (JE 3:59-60). Mr. Roth told Dr. Hart that General Mills "insisted" that he see Dr. Bingham, who then amended his work restrictions. (JE 3:59). Mr. Roth continued to experience aches, and expressed a desire to know "…what is going on…" with his shoulder. (JE 3:59). Dr. Hart continued to diagnose the claimant with a strain of the left rotator cuff capsule, and recommended that the claimant have an MRI. (JE 3:60). Dr. Hart allowed the claimant to return to work with the same restrictions as outlined by Dr. Bingham. (JE 3:60).

Upon the order of Dr. Hart, Mr. Roth had another MRI with a contrast injection on May 11, 2020. (JE 8:132-133). The MRI showed mild tendinopathy and minimal articular sided fraying of the insertion of the supraspinatus tendon; however, there was no evidence of a rotator cuff tendon tear. (JE 8:132). The radiologist observed a full-thickness anterior labral tear which measured "at least 3.0 cm in overall length." (JE 8:132). Finally, the radiologist observed superior labral tearing and degeneration. (JE 8:132).

On May 27, 2020, Mr. Roth saw Dr. Hart again. (JE 3:62-63). Dr. Hart reviewed the results of a recent MRI with Mr. Roth. (JE 3:62). The MRI showed no evidence of a high-grade or full-thickness tendon tear. (JE 3:62). Dr. Hart observed significant postoperative changes, and insignificant labral changes. (JE 3:62). Dr. Hart provided the claimant with a left shoulder injection for the strained rotator cuff and recommended no additional treatment. (JE 3:63). He deferred to Dr. Bingham with regard to any work restrictions. (JE 3:63).

Mr. Roth saw Dr. Bingham again on June 1, 2020, as a follow-up on his left shoulder pain. (JE 7:111-113). Dr. Bingham noted the MRI, which showed a labral tear with no acute cuff tears. (JE 7:111). He recounted the injection from Dr. Hart, which Mr. Roth opined helped alleviate his pain. (JE 7:111). Mr. Roth worked under restrictions for two days which caused discomfort. (JE 7:111). At the time of the appointment, he rated his pain 3 out of 10. (JE 7:111). Upon examination, Dr. Bingham found the claimant to have decreased range of motion with pain in the left shoulder. (JE 7:112). Dr. Bingham recommended that the claimant restart physical therapy with a graded return to full activity. (JE 7:112). Mr. Roth could return to work under lessened restrictions. (JE 7:112). Dr. Bingham provided restrictions of lifting 0 to 30 pounds, only occasional above shoulder reaching, full shoulder reaching as tolerated, pushing or pulling as tolerated, and lifting as tolerated. (JE 7:113). Dr. Bingham also restricted the claimant from lifting 20 pounds above chest level. (JE 7:113).

Dr. Bingham visited with Mr. Roth again following about three weeks of physical therapy. (JE 7:115-117). Mr. Roth did not feel like therapy was terribly helpful, as he continued to have a low level of discomfort. (JE 7:115). Mr. Roth worked "basically his regular job," and asked Dr. Bingham to remove his restrictions. (JE 7:115). Mr. Roth also reported difficulty making physical therapy appointments due to his work schedule. (JE 7:115). Dr. Bingham found Mr. Roth to have age-appropriate range of motion with

only complaints of mild discomfort at the extremes. (JE 7:116). Mr. Roth denied feelings of instability in his shoulder. (JE 7:116). Dr. Bingham allowed Mr. Roth to return to work without restrictions, and asked him to do his best to make his physical therapy appointments. (JE 7:116).

Mr. Roth returned to Dr. Bingham's office again on July 20, 2020, for continued left shoulder complaints. (JE 7:118-120). Mr. Roth rated his pain 0 out of 10, though during the previous week he worked a job that was "very fast-paced and repetitive" which increased his pain. (JE 7:118). He found that he finally felt benefits from physical therapy. (JE 7:118). The range of motion in his left shoulder continued to be age appropriate. (JE 7:119). Dr. Bingham explained to Mr. Roth that increased periods of stress will be inevitable, but that adding these to his restrictions would not be necessary. (JE 7:119). Dr. Bingham opined that Mr. Roth could return to work with no restrictions. (JE 7:119-120).

Dr. Bingham examined Mr. Roth again on August 10, 2020. (JE 7:121-124). Mr. Roth felt worse after being busy at work and working 10 hours per day for one week. (JE 7:121). This was difficult for his shoulder and made it difficult for him to attend physical therapy. (JE 7:121). He complained of pain from the posterior superior aspect of the left shoulder radiating into the deltoid region. (JE 7:122). He rated his pain 7 out of 10. (JE 7:121). Dr. Bingham observed that the claimant had decreased range of motion in the left shoulder. (JE 7:121). Mr. Roth experienced difficulty at work due to a new supplier. (JE 7:123). Dr. Bingham restricted the claimant to 8-hour shifts. (JE 7:124).

Mr. Roth had additional physical therapy for his left shoulder on August 13, 2020. (JE 9:134-135). Mr. Roth felt that he backtracked "quite a bit" with his shoulder pain, as he was working mandatory 12-hour shifts. (JE 9:134). At the time of the therapy appointment, he had tightness, pain, and a deep ache in his left shoulder. (JE 9:134). He noted an inability to attend therapy due to his work schedule. (JE 9:134). He rated his pain 3 out of 10. (JE 9:134).

On August 17, 2020, Mr. Roth visited Dr. Jain again for a mallet deformity of the left ring finger. (JE 1:26). He recounted cleaning up after a storm when he noticed a deformity in his left ring finger. (JE 1:26). He had no pain or swelling upon noticing the issue. (JE 1:26). Dr. Jain diagnosed the claimant with a mallet deformity of the left ring finger, and recommended wearing a splint. (JE 1:26). Dr. Jain referred Mr. Roth to a hand surgeon. (JE 1:26). Mr. Roth had additional therapy on August 17, 2020. (JE 9:136-137). He continued to have an ache in his left shoulder, but since his previous therapy visit, he felt "quite a bit better." (JE 9:136).

On August 20, 2020, Mr. Roth attended another physical therapy visit. (JE 9:138-139). Mr. Roth felt that he was back to where he was prior to working a 12-hour shift. (JE 9:138). Mr. Roth reported no ache in his left shoulder, though he did have "slight pain that goes from his shoulder down his arm." (JE 9:138). He noted that he was working on removing tree debris and was feeling good. (JE 9:138).

Dr. Bingham saw Mr. Roth on August 24, 2020, for continued follow-up care. (JE 7:125-127). Mr. Roth felt great improvement after physical therapy. (JE 7:125). He

also attributed his improvement to working an 8-hour shift. (JE 7:125). He rated his pain 3 out of 10. (JE 7:125). Dr. Bingham observed improvement in the claimant's range of motion in the left shoulder. (JE 7:126). Dr. Bingham allowed the claimant to return to work with 8-hour shift restrictions. (JE 7:126-127).

Mr. Roth attended another physical therapy visit on August 26, 2020. (JE 9:140-141). He continued to improve, and had not used his shoulder as much over the previous three days. (JE 9:140). Mr. Roth told the therapist that he was "feeling the closest to normal . . . since the pain started." (JE 9:140). He could move his shoulder with less pain and tightness. (JE 9:140).

Physical therapy continued on August 31, 2020, with the claimant complaining of minor aches upon waking in the morning. (JE 9:142-143). As he moved, the aches in his shoulder dissipated. (JE 9:142). The therapist opined that Mr. Roth showed improvement. (JE 9:142).

Mr. Roth had another visit with the physical therapist on September 3, 2020. (JE 9:144-145). He noted stiffness in the morning, but that he improved as he moved his shoulder. (JE 9:144). Despite his continued aches, he was getting better. (JE 9:144). He tolerated therapy well, and the therapist again opined that Mr. Roth showed improvement. (JE 9:144).

On September 9, 2020, Mr. Roth returned to physical therapy. (JE 9:146-147). He again expressed that therapy made his shoulder feel better. (JE 9:146). He felt less aches down his arm. (JE 9:146). The therapist found Mr. Roth to tolerate therapy well, but displayed stiffness at the end range of movement. (JE 9:146).

On September 14, 2020, Mr. Roth returned to Dr. Bingham's office for another visit. (JE 7:128-130). He was "doing better," but had an increase in pain over the previous two days. (JE 7:128). He was off of work at the time due to his finger issue. (JE 7:128). Dr. Bingham observed that Mr. Roth had limited range of motion in the left shoulder, and that Mr. Roth complained of pain and weakness with activities above shoulder height. (JE 7:129). Dr. Bingham recommended that the claimant continue physical therapy. (JE 7:129). He expressed doubts as to whether or not Mr. Roth was reaching MMI. (JE 7:129). Mr. Roth told Dr. Bingham that he was nearly pain free after his surgery until the incident in September of 2019. (JE 7:129). Dr. Bingham suggested a second opinion or a functional capacity evaluation ("FCE"). (JE 7:129). Dr. Bingham returned Mr. Roth to work with a restriction of working 8 hours. (JE 7:130).

Mr. Roth continued physical therapy on September 17, 2020. (JE 9:148-149). Mr. Roth again reported feeling good with aches in the morning that resolved once he moved around. (JE 9:148-149). Mr. Roth could perform more exercises at a higher intensity level during the visit. (JE 9:148). Upon completion of therapy, he was fatigued, but reported no pain. (JE 9:148).

On September 21, 2020, Mr. Roth had another visit for physical therapy. (JE 9:150-151). He felt great over the weekend, but had a slight ache that lasted all day on Sunday. (JE 9:150). He tolerated physical therapy and had no soreness at the end of the visit. (JE 9:150).

Mr. Roth returned for physical therapy on September 24, 2020. (JE 9:152-153). He felt good since his last visit, and lacked any increased soreness. (JE 9:152). He told the therapist that when he has aches they come and go. (JE 9:152).

On September 28, 2020, Mr. Roth continued his physical therapy. (JE 9:154-155). He noted "very little ache over the weekend," and only had aches after riding his motorcycle. (JE 9:154). The therapist opined that Mr. Roth continued to "show good improvements with therapy." (JE 9:154).

Mr. Roth had his twenty-second visit of physical therapy on October 12, 2020. (JE 9:156-157). He continued to report doing very well without much ache in his shoulder. (JE 9:156). When he experienced an ache, he found that it dissipated quickly with a little movement. (JE 9:156). Mr. Roth was lifting weights at home. (JE 9:156). At the time, he was out of work due to his finger being injured. (JE 9:156).

On October 15, 2020, Mr. Roth had another physical therapy visit. (JE 9:158-159). Mr. Roth reported performing manual labor in his yard, which included moving bricks and rocks. (JE 9:158). Following this, he had a slight ache in his shoulder, but "not as bad as it has been in the past." (JE 9:158). The therapist found that Mr. Roth tolerated treatment well, and that his shoulder felt better after moving it. (JE 9:158).

Dr. Jain examined Mr. Roth again on December 17, 2020, for an annual physical examination. (JE 1:27-29). Mr. Roth reported no problems to Dr. Jain. (JE 1:27). He told Dr. Jain that he was "doing well" and was "very active." (JE 1:29).

On January 22, 2021, Dr. Hart examined Mr. Roth for an impairment rating examination for the left shoulder. (JE 3:66-67). Mr. Roth told Dr. Hart that he continued to have intermittent pain in his left shoulder with overhead work, and that he felt "something is wrong" with his left shoulder. (JE 3:66). Dr. Hart found Mr. Roth to have active forward elevation to 150 degrees, active abduction to 150 degrees, external rotation to 90 degrees, and internal rotation to 80 degrees. (JE 3:66). Dr. Hart reiterated his impairment rating as previously provided. (JE 3:66-67). Dr. Hart expressed doubt as to whether an exploratory diagnostic arthroscopy or repeat MRI would provide any answers. (JE 3:67). He placed Mr. Roth at MMI as of the date of the examination. (JE 3:67).

Dr. Hart issued another letter on February 5, 2021. (JE 3:65). He opined that there was no change in impairment rating, and that the claimant achieved MMI from his second injury. (JE 3:65; Defendants' Exhibit A:1).

Mr. Roth voluntarily terminated his employment with General Mills in March of 2021. (Testimony). In order to receive his pension payouts, he voluntarily retired. (Testimony). He testified that he left General Mills because of problems with his left shoulder, and that "the company showed [him] that they really didn't care." (Testimony). Mr. Roth desired to continue working at General Mills, testified that he greatly enjoyed working there, and would likely still be working there but for his injury. (Testimony).

Subsequent to his departure from General Mills, Mr. Roth started a rock hauling business. (Testimony). He hauled landscaping rock to houses and individuals in the

Cedar Rapids, Iowa, and Iowa City, Iowa, areas, using a dump trailer towed by his pickup truck. (Testimony).

At the arrangement of claimant's counsel, Mr. Roth had an independent medical examination ("IME") conducted by John Kuhnlein, D.O., M.P.H., F.A.C.P.M., F.A.C.O.E.M., on August 20, 2021. (Claimant's Exhibit 1:1-17). Dr. Kuhnlein is board certified in preventive medicine, and is a certified independent medical examiner. (CE 2:36). Following the IME, Dr. Kuhnlein issued a report outlining his findings. (CE 1:1-17). The report is dated September 1, 2021. (CE 1:1-17).

Dr. Kuhnlein began his report by outlining Mr. Roth's job responsibilities at General Mills. (CE 1:1). Mr. Roth told Dr. Kuhnlein that he lifted items ranging between 5 and 100 pounds. (CE 1:1). He also told Dr. Kuhnlein that he frequently stood, walked, and bent at the waist. (CE 1:1). Mr. Roth recounted the incident that initially caused his shoulder injury, and then recounted his medical care to date. (CE 1:2-4). He then noted the intervening issue in September of 2019, and subsequent medical care. (CE 1:4-6). At the time of the IME, Mr. Roth took three or four Tylenol on about three days per week. (CE 1:6). Mr. Roth also had his wife massage his shoulder. (CE 1:6). Mr. Roth told Dr. Kuhnlein that he modified his activities at home due to his left shoulder and that his "left shoulder condition has made a significant difference in his home life." (CE 1:7).

At the time of the evaluation, Mr. Roth told Dr. Kuhnlein that he had stiffness with waxing and waning pain from the left side of his neck through the trapezius into his shoulder and then his left elbow. (CE 1:7). He also had occasional pain that extends below his left elbow. (CE 1:7). Mr. Roth also told Dr. Kuhnlein that he retired from General Mills, and had been working for himself hauling rock in the Cedar Rapids, Iowa, area. (CE 1:7). At times, he experienced difficulties sleeping due to his shoulder pain. (CE 1:8).

Dr. Kuhnlein's report next outlines the physical examination which he performed on Mr. Roth. (CE 1:8). During the examination, Dr. Kuhnlein documented certain range of motion measurements of the cervical spine, bilateral shoulders, and bilateral elbows. (CE 1:8). Dr. Kuhnlein found the following range of motion in the cervical spine: flexion: 60 degrees; extension: 55 degrees; right sided bending: 45 degrees; left sided bending: 45 degrees; right rotation: 75 degrees; and, left rotation: 75 degrees. (CE 1:8). Dr. Kuhnlein found the claimant's right shoulder to have the following range of motion: flexion: 145 degrees; extension: 80 degrees; abduction: 160 degrees; adduction: 30 degrees; internal rotation: 70 degrees; and, external rotation: 85 degrees. (CE 1:8). Dr. Kuhnlein measured the following range of motion in the claimant's left shoulder: flexion: 125 degrees; extension: 60 degrees; abduction: 125 degrees; adduction: 30 degrees; internal rotation: 80 degrees; and, external rotation: 75 degrees. (CE 1:8). Finally, Dr. Kuhnlein documented the following range of motion measurements in the claimant's elbow: right elbow flexion: 140 degrees; left elbow flexion: 145 degrees; extension: 0 degrees on both the left and right; pronation: 90 degrees on both the left and right; and, supination: 90 degrees on both the left and right. (CE 1:8). Dr. Kuhnlein found Mr. Roth to have "grade 5-" flexion strength in the left shoulder. (CE 1:9). Otherwise, Mr. Roth displayed normal motor strength in both upper

extremities. (CE 1:9). Mr. Roth also complained of posterior and anterior left glenohumeral joint tenderness. (CE 1:9).

Based upon his examination, Dr. Kuhnlein diagnosed the claimant with a type IV SLAP tear with biceps anchor involvement with December 5, 2018, arthroscopic biceps tenodesis, labral debridement, and arthroscopic subacromial decompression, and compensatory left trapezius muscle tenderness. (CE 1:9). Dr. Kuhnlein opined that the claimant had "clinically asymptomatic impingement syndrome that was 'lit up'" by the August of 2017, work injury. (CE 1:9-10). On September 20, 2019, Mr. Roth had an "intervening left shoulder strain" according to Dr. Kuhnlein. (CE 1:10). This represents a material aggravation according to the doctor. (CE 1:10). Dr. Kuhnlein bases this assertion on the fact that Mr. Roth was "nearly pain-free" on September 14, 2020, and then continued to have pain in the left shoulder into January of 2021. (CE 1:10).

The report continues with an anatomy lesson from Dr. Kuhnlein. (CE 1:10-13). Dr. Kuhnlein believes that "[t]he shoulder joint itself is the glenohumeral joint, the space between the glenoid fossa of the scapula (on the proximal or torso side of the joint) and the humeral head (on the arm side of the joint)." (CE 1:11). He further opines that "[t]he acromion is a part of the scapula on the shoulder joint's torso side extending to articulate with the clavicle's distal end, forming the acromioclavicular joint." (CE 1:11). Dr. Kuhnlein continued by noting that the long head of the biceps tendon originates in the glenoid's superior aspect at the glenoid fossa of the scapula. (CE 1:13). Dr. Kuhnlein clarified that the labrum works "in intricate concert with the overlying muscles . . ." (CE 1:13). Dr. Kuhnlein provided photos showing the locations operated on during Mr. Roth's surgery. (CE 1:13).

Dr. Kuhnlein placed Mr. Roth at MMI as of January 22, 2021. (CE 1:14). He recommended that Mr. Roth continue using a TheraBand for exercises. (CE 1:14). He also noted that the TheraBand may need to be replaced periodically. (CE 1:14). Dr. Kuhnlein then endeavored to provide an impairment rating based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, based upon his examination and observations of Mr. Roth. (CE 1:14). Dr. Kuhnlein found that Mr. Roth experienced centrally mediated pain that "he did not have before the injury and later aggravation," along with functional limitations. (CE 1:14). The doctor used Figures 16-40, 16-43, and 16-46 of the Guides and compared the range of motion in the left shoulder to the range of motion in the right shoulder. (CE 1:14). Based upon these differences, Dr. Kuhnlein assigned a 5 percent left upper extremity impairment. (CE 1:14). Dr. Kuhnlein also provided a 1 percent left upper extremity impairment for motor deficits. (CE 1:14). Dr. Kuhnlein combined these ratings to arrive at a 6 percent left upper extremity impairment and converted this to a 4 percent whole person impairment. (CE 1:14). Finally, Dr. Kuhnlein assigned a 1 percent whole person impairment based upon Chapter 18 of the Guides for the claimant's pain. (CE 1:14). The doctor combined the whole person impairments to arrive at a 5 percent whole person impairment. (CE 1:14).

The doctor concludes his report by providing proposed permanent restrictions based upon "ongoing functional problems with particular activities." (CE 1:14-15). Dr. Kuhnlein proposed that Mr. Roth only lift 40 pounds occasionally from the floor to the waist, 40 pounds occasionally from the waist to the shoulder, and 20 pounds

occasionally over the shoulder. (CE 1:14). Dr. Kuhnlein allowed the claimant to frequently crawl, stoop, kneel, squat, or bend at the waist. (CE 1:14). He allowed Mr. Roth to occasionally work at or above shoulder height. (CE 1:14). Mr. Roth had no restriction on sitting, standing, walking, gripping, or grasping. (CE 1:14-15).

On December 20, 2021, Dr. Jain saw Mr. Roth for a repeat annual physical examination. (JE 1:30-33). Mr. Roth complained of continued problems with his left shoulder. (JE 1:30). He requested a referral to a specialist. (JE 1:30). Dr. Jain diagnosed the claimant with left shoulder pain of unspecified chronicity. (JE 1:32). Dr. Jain referred the claimant to an orthopedic doctor at the University of Iowa. (JE 1:32).

Dr. Hart wrote a letter to claimant's counsel dated April 18, 2022. (JE 3:68). He noted reviewing Dr. Kuhnlein's report. (JE 3:68). In light of Dr. Kuhnlein's opinions, Dr. Hart reiterated his previously issued impairment rating. (JE 3:68). He agreed with Dr. Kuhnlein's work restrictions of only occasionally lifting 40 pounds from the floor to the waist, only occasionally lifting 40 pounds from the waist to the shoulder, and only occasionally lifting 20 pounds over the shoulder. (JE 3:68). Dr. Hart also reiterated that Mr. Roth's condition warranted no further medical treatment. (JE 3:68).

Dr. Kuhnlein issued an amendment to his IME report on August 15, 2022. (CE 1:18-33). There is no indication from Dr. Kuhnlein as to why he felt this addendum was necessary. (CE 1:18-33). Nevertheless, Dr. Kuhnlein noted that Dr. Hart's December 5, 2018, surgery "moved the long head of the biceps tendon origin from the shoulder as it is currently defined to the arm, where the stump of the long head of the biceps tendon was implanted into the humerus." (CE 1:31). With this anatomic change, Dr. Kuhnlein felt that "the biceps is no longer anatomically connected to the shoulder as currently defined and is not essential to the function of the shoulder." (CE 1:31). The doctor then applied page 20, Section 2.5g of the Guides to this case, insofar as it "adjusts for the effects of treatment." (CE 1:31). Dr. Kuhnlein notes, "[i]n this particular case, Mr. Roth's biceps function would not be normal but for the biceps tenodesis, as he had arthroscopic extensive debridement of his labral tear." (CE 1:31-32). Based upon this, Dr. Kuhnlein assigned another 2 percent impairment to the left upper extremity. (CE 1:32). He converted this to a 1 percent whole person impairment, and then combined this with his previous whole person impairment to arrive at a 6 percent whole person impairment. (CE 1:32).

On November 16, 2022, Dr. Hart wrote a letter to defendants' counsel addressing two questions apparently posed in a previous letter. (JE 3:69; DE A:4). Dr. Hart provided comments on Dr. Kuhnlein's use of Section 2.5g on page 20 of the Guides in order to add an additional 2 percent impairment to the previously provided left upper extremity impairment rating. (JE 3:69; DE A:4). Dr. Hart cites to the Guides in stating, "in certain instances, the treatment of an illness may result in apparently total remission of the persons. [*sic*] signs and symptoms . . ." and that a " . . . patient may decline therapeutic treatment of an impairment." (JE 3:69; DE A:4). Dr. Hart opined that neither of these arguments apply to Mr. Roth, as he received the necessary treatment to his left shoulder. (JE 3:69; DE A:4). Therefore, according to Dr. Hart, the additional 2 percent impairment is unwarranted. (JE 3:69; DE A:4). Dr. Hart used the remainder of the letter to further clarify his impairment rating of 5 percent to the left upper extremity.

(JE 3:69; DE A:4). He noted that this was because Mr. Roth demonstrated active forward flexion of 150 degrees, active abduction of 150 degrees, and no range of motion deficit to the left shoulder. (JE 3:69; DE A:4). Dr. Hart based his opinion on Figure 16-40 and 16-43 of the Guides to thus arrive at a 3 percent left upper extremity impairment. (JE 3:69; DE A:4). He then used Table 16-35 of the Guides as a reference and noted that the claimant had a strength deficit in his left shoulder involving external rotation, which he opined allowed for the 2 percent impairment. (JE 3:69; DE A:4). Dr. Hart reiterated that his 5 percent left upper extremity impairment is appropriate for the claimant's left shoulder issue. (JE 3:69; DE A:4).

Dr. Jain visited with Mr. Roth for an annual physical examination on December 21, 2022. (JE 1:34-39). His left shoulder pain continued to not improve. (JE 1:34). Dr. Jain noted that an orthopedic office at the University of Iowa called Mr. Roth and told him they would call him back with an appointment, but never called him back. (JE 1:34). Mr. Roth again requested a referral to a specialist, but requested that it not be an orthopedic physician at "PCI Ortho." (JE 1:34). Dr. Jain found Mr. Roth to have pain in his left shoulder with movement, and decreased range of motion. (JE 1:37).

On March 1, 2023, Mr. Roth returned to Physicians' Clinic of Iowa, P.C., where James Pape, M.D., examined him for left shoulder complaints. (JE 3:70-72). Mr. Roth achieved MMI "a few years ago," but had ongoing discomfort in his shoulder, cervical trapezius, and neck. (JE 3:70). Increased activity worsened his pain. (JE 3:70). Mr. Roth located the pain to the anterior aspect of his left shoulder and areas of the posterior shoulder in the cervical trapezius. (JE 3:70). Dr. Pape reviewed the previous MRI studies. (JE 3:70). Upon physical examination, Dr. Pape observed that the claimant had slight stiffness at the end range of motion with mild tenderness on impingement testing of the left shoulder. (JE 3:70). Dr. Pape ordered x-rays, which showed no acute bony abnormalities and minimal degenerative changes to the glenohumeral joint. (JE 3:71). Dr. Pape also ordered cervical spine x-rays, which showed significant degenerative changes at C3-4 and at the C3-5 disc spaces. (JE 3:71). Dr. Pape opined that Mr. Roth's complaints were consistent with mild rotator cuff tendinitis, and that his new complaints may be related to the neck. (JE 3:71). Dr. Pape recommended a subacromial injection, which Mr. Roth accepted. (JE 3:71).

A job demand or task analysis was included in the defendants' exhibits. (DE D:7). The job required the following lifting from the floor to the waist:

> Up to 20 pounds – continuously
>
> 21 to 50 pounds – occasionally
>
> 51 to 75 pounds – continuously – however it notes that this was dumping only and not lifting.
>
> 76 or more pounds – never

(DE D:7). The job required sometimes lifting 29 pound from the waist to the shoulder. (DE D:7). The job also required continuously carrying up to 10 pounds at waist level, sometimes carrying 11 to 25 pounds at waist level, and occasionally carrying 26 to 50

pounds at waist level. (DE D:7). The claimant also occasionally stooped or bent below the knees, sat with light tasks, and climbed ladders. (DE D:7). He frequently climbed stairs, pushed, pulled, reached above shoulder level, and worked with a keyboard. (DE D:7). He continuously stood, walked, and performed repetitive work with his hand or wrist. (DE D:7).

Prior to this work incident, Mr. Roth had not received any treatment to his left shoulder. (Testimony). About 10 years before the incident, he may have experienced a shoulder strain. (Testimony). Subsequent to the work incident, Mr. Roth had a personal medical issue to his right wrist, and then to the fingers on his right hand. (Testimony).

Mr. Roth testified that he had no issues reading or writing the English language. (Testimony). At the time of the hearing, he testified that he could perform word processing, use Microsoft Excel, edit photos, and peruse the internet. (Testimony). He also was able to use a smart phone to do various things, such as sending e-mail and browsing the internet. (Testimony).

Mr. Roth used to swim and ride a motorcycle. (Testimony). He is now considering selling his motorcycle because he can no longer ride it. (Testimony). He continues to perform light exercises and weight lifting at home in line with his home exercise plan. (Testimony). Mr. Roth also testified that he enjoyed golfing, but that continued golfing is taxing on his shoulder. (Testimony). He also was “big into home improvements,” and repaired a number of rental properties. (Testimony). He also experienced pain after mowing the lawn. (Testimony). He experienced difficulties with sleeping due to his pain. (Testimony).

With the restrictions provided by Dr. Kuhnlein, Mr. Roth felt that he could still perform work as a lab technician. (Testimony). Mr. Roth felt that he could no longer perform the Fruit Roll-Up position within the restrictions provided by Dr. Kuhnlein. (Testimony). Mr. Roth felt that he could no longer perform the process operator position, either. (Testimony). Mr. Roth further testified that he could not do the desserts department job without significant pain and because the repetitive motion required by the job would make his life worse. (Testimony). Mr. Roth could still perform some of the USDA job, but other parts might be difficult for him. (Testimony). He felt like he could no longer perform the job at the metal press factory based upon his issues. (Testimony). He also felt like he could perform parts of the job at the meat packing plant. (Testimony).

Aaron Ford, a health and safety manager for General Mills, testified on behalf of the defendant-employer. (Testimony). Mr. Ford confirmed that General Mills contracts with a company known as Medcor in order to have an on-site occupational therapist. (Testimony). Amy Wenger was the on-site occupational therapist at the time of Mr. Roth’s injury. (Testimony). She would provide initial triage for certain minor injuries. (Testimony). Mr. Ford was not aware of Ms. Wenger providing any referrals for Mr. Roth, and also that he was not aware of Mr. Roth requesting a visit from Ms. Wenger. (Testimony).

CONCLUSIONS OF LAW

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa Rule of Appellate Procedure 6.904(3).

Permanent Disability

The parties stipulated that the claimant sustained an injury, which arose out of and in the course of his employment, on August 18, 2017. At that time, the claimant was moving a pallet jack that suddenly jerked causing immediate pain to Mr. Roth's left shoulder. This resulted in a SLAP tear to the left shoulder, which required surgery. The parties stipulated further that the claimant's injury is a cause of permanent disability. There is a dispute as to whether or not the permanent disability is to the left shoulder, or to the left shoulder and left arm resulting in an industrial disability.

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 medical causation is "essentially within the domain of expert testimony." Cedar Rapids Cmty. Sch. Dist. v. Pease, 807 N.W.2d 839, 844-45 (Iowa 2011). The commissioner, as the trier of fact, must "weigh the evidence and measure the credibility of witnesses." Id. The trier of fact may accept or reject expert testimony, even if uncontroverted, in whole or in part. Frye, 569 N.W.2d at 156. When considering the weight of an expert opinion, the fact-finder may consider whether the examination occurred shortly after the claimant was injured, the compensation arrangement, the nature and extent of the examination, the expert's education, experience, training, and practice, and "all other factors which bear upon the weight and value" of the opinion. Rockwell Graphic Sys., Inc. v. Prince, 366 N.W.2d 187, 192 (Iowa 1985). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994). Supportive lay testimony may be used to buttress expert testimony, and therefore is also relevant and material to the causation question.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss of use of a scheduled member under Iowa Code 85.34(2)(a)-(u) or for loss of earning capacity under Iowa Code 85.34(2)(v). 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).

An injury to a scheduled member may, because of after effects or compensatory change, result in permanent impairment of the body as a whole. Such impairment may

in turn be the basis for a rating of industrial disability. It is the anatomical situs of the permanent injury or impairment which determines whether the schedules in Iowa Code 85.34(a)–(u) are applied. Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936).

Generally, permanent partial disability falls into two categories. A scheduled member, as defined by Iowa Code section 85.34(a) – (u), or a loss of earning capacity, also known as industrial disability, as defined by Iowa Code section 85.34(2)(v). Lauhoff Grain v. McIntosh, 395 N.W.2d 834 (Iowa 1986); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980); Dailey v. Pooley Lumber Co., 233 Iowa 758, 10 N.W.2d 569 (1943); Soukup v. Shores Co., 222 Iowa 272, 268 N.W. 598 (1936); Diederich v. Tri-City Ry. Co. of Iowa, 219 Iowa 587, 258 N.W. 899 (1935). Iowa Code section 85.34(2)(v) provides an alternative to the scheduled member and/or industrial disability compensation methods.

Iowa Code section 85.34(2)(v) states, in relevant part:

> If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

In determining whether the above provision of Iowa Code section 85.34(2)(v) applies, there is a comparison between the pre- and post-injury wages and earnings. McCoy v. Menard, Inc., File No. 1651840.01 (App. April 9, 2021). A claimant's hourly wage must be considered in tandem with the actual hours worked by that claimant or offered by the employer. Id. The parties previously stipulated that the claimant has returned to work for the defendant at the same, or greater wages than he received at the time of the injury. There is no information in the record to indicate that the claimant is working less hours than prior to the injury. Therefore, should it be determined that the claimant sustained an injury to both the left shoulder and the left upper extremity, the claimant would be compensated for his functional impairment only.

Iowa Code section 85.34(2)(x) states:

> In all cases of permanent partial disability described in paragraphs 'a' through 'u', or paragraph 'v' when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American medical association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment pursuant to paragraphs 'a' through 'u', or paragraph 'v' when determining functional disability and not loss of earning capacity.

I am bound by statute to only consider the functional disability ratings issued by the various medical providers.

Recently, our Supreme Court affirmed a ruling of the Commissioner regarding the definition of a shoulder pursuant to Iowa Code section 85.34(2)(n) as amended in 2017. The court provided the most recent analysis of this issue in Chavez v. MS Technology LLC, 972 N.W.2d 662 (Iowa 2022). The claimant in that case injured her right shoulder while working. Id. at 665. She felt a pop in her right shoulder, and suffered a full thickness rotator cuff tear, which retracted to the glenoid. Id. at 668. She also was diagnosed with severe AC arthrosis, tendonitis, and tearing of her biceps tendon. Id. The Commissioner and court ruled that the shoulder includes the shoulder structure, including injuries to the tendons, ligaments, muscles, and articular surfaces connected to the glenohumeral joint. Id. The court ruled that the legislature did not intend to limit the definition of the shoulder solely to the glenohumeral joint. Id. The Commissioner and court also noted that the claimant suffered biceps tendonitis and tearing, and that she underwent a biceps tenotomy along with her shoulder surgery. Id. at 671. The Court continued by noting that Ms. Chavez did not suffer a permanent impairment to her right arm due to her biceps injury. Id. at 671.

In this case, the claimant suffered a type IV SLAP tear of the left shoulder with biceps anchor involvement. As a result of the left shoulder injury, the claimant underwent an arthroscopic biceps tenodesis, an extensive debridement of a torn labrum, and an arthroscopic subacromial decompression. Dr. Kuhnlein provided helpful photos showing normal labral anatomy, and also the result of a biceps tenodesis and tenotomy. As Dr. Kuhnlein noted, the labrum works in concert with overlying muscles. Based upon the anatomical images provided by Dr. Kuhnlein, the labrum is closely intertwined with the glenohumeral joint. Additionally, the Commissioner and the court in Chavez previously held that the labrum was part of the shoulder. Id. Therefore, I find that the claimant suffered a permanent impairment to the left shoulder.

The claimant's argument is that the involvement of the biceps through the biceps tenotomy results in a permanent impairment to the arm due to its location. Based upon this argument, the claimant contends that the injury results in permanent impairment to the left shoulder and left arm, the result of which is entitlement to an impairment analysis using industrial disability rather than an impairment based on a scheduled member. The graphic provided in Dr. Kuhnlein's report indicates that a biceps tenodesis results in moving the origination of the biceps; however, Dr. Kuhnlein does not indicate how this changes the function of the biceps and whether or not it affects the function of the claimant's arm. Several cases contradict the claimant's argument. For example, the court in Chavez ruled that the claimant did not have a permanent impairment to her right arm due to her biceps injury. They did not find that Ms. Chavez suffered permanent impairment to her right arm simply because a biceps tenotomy was performed as the result of a tear to the biceps tendon.

Another case that bears similarities to the instant is Lanier v. Vermeer Manufacturing Co., File No. 5066811.01 (Arb. May 27, 2021). In that case, Mr. Lanier suffered a SLAP tear involving the origination of the long head of the biceps tendon. Id. This resulted in the need for a biceps tenotomy and tenodesis. Id. In Lanier, it was

determined that an open biceps tenodesis was related to the shoulder "based upon its anatomical location and entwinement with the glenohumeral joint." Id. This decision was never appealed and was made in line with the Chavez decision.

A third case that bears similarities to this case is Horne v. United Technologies Corp., File No. 21005075.01 (Arb. Feb. 3, 2023). Mr. Horne sustained a type II SLAP tear and partial rotator cuff tears. Id. Dr. Hart performed an arthroscopic rotator cuff repair, an arthroscopic SLAP repair, and a biceps tenodesis. Id. The claimant's impairment was evaluated based upon a permanent disability to the shoulder. Id.

As established by a number of prior decisions, simply having a biceps tenodesis or tenotomy does not, on its own, establish that the claimant sustained a permanent impairment to the upper extremity in addition to their shoulder. In fact, the decisions support the contrary. I see no significant reason that this case differs from the three cited cases insofar as the claimant had a biceps tenodesis or tenotomy.

Dr. Kuhnlein does not provide a very thorough explanation as to why the claimant may have impairment to his left arm in addition to his left shoulder. He provided an odd addendum that was based upon no new treatment or records to simply state that the surgery "moved the long head of the biceps tendon origin from the shoulder as it is currently defined to the arm, where the stump of the long head of the biceps tendon was implanted into the humerus." Since this anatomic change occurred, Dr. Kuhnlein felt that the biceps was no longer anatomically connected, nor essential to the function of the shoulder. Of note, Dr. Kuhnlein's addendum does not indicate that this results in permanent impairment to the left arm. He simply indicates that the biceps function was not normal. This is not persuasive.

There is no other objective medical evidence that the claimant presents to prove, by a preponderance of the evidence, that the claimant suffered a permanent impairment to his left arm in addition to his left shoulder. Dr. Kuhnlein uses Figures 16-40, 16-43, and 16-46, from the Guides to provide an impairment rating based upon deficits in range of motion. Examining each of these Figures from the Guides, shows that they are each for range of motion issues in the shoulder. Dr. Kuhnlein then uses Table 16-35 on page 510 of the Guides to provide an additional 1 percent left upper extremity impairment due to "motor deficits." Dr. Kuhnlein does not specify whether this is due to an impairment in the arm caused by the biceps tenodesis or due to a motor deficit in the shoulder. Table 16-35 provides for impairment based upon manual muscle testing of individual units of motion of the shoulder and the elbow. It provides for different impairment ratings based upon deficits in either the shoulder or the elbow.

Based upon the information in the record, previous decisions, and the lack of opinion regarding any impairment caused by the biceps tenotomy, I find that the claimant failed to meet his burden of proof with regard to the alleged left upper extremity injury. The evidence, and applicable law, shows that a biceps tenotomy of the nature performed in this case involves the shoulder. Therefore, impairment should be assessed based upon the shoulder only, and does not involve the left arm.

Iowa Code section 85.34(2)(n) provides for compensation based upon 400 weeks for an impairment to the shoulder. Iowa Code section 85.34(2)(w) provides that

compensation shall be paid during the lesser number of weeks of disability determined, "as will not exceed a total amount equal to the same percentage proportion of said scheduled maximum compensation."

In this case there are two conflicting impairment ratings. Dr. Hart, the claimant's treating physician, who is a board certified orthopedic surgeon, opined that the claimant reached MMI on May 10, 2019. Dr. Hart measured the claimant's range of motion and found Mr. Roth to have active forward flexion of 150 degrees, active abduction of 150 degrees, and no other range of motion deficits in the left shoulder. Based upon Figure 16-40 and 16-43 in the Guides, Dr. Hart assigned a 3 percent left upper extremity impairment. Dr. Hart then used Table 16-35 of the Guides in noting that Mr. Roth displayed a strength deficit in his left shoulder involving external rotation. Based upon this deficit, Dr. Hart assigned a 2 percent permanent impairment. Dr. Hart then combined the ratings to arrive at a 5 percent left upper extremity impairment rating.

Dr. Kuhnlein provided an impairment rating based upon his IME. He used Figures 16-40, 16-43, and 16-46, to provide impairment ratings based upon deficits in range of motion. Dr. Kuhnlein opined that the claimant had a 5 percent left upper extremity impairment based upon issues with range of motion. Dr. Kuhnlein then used Table 16-35 to add a 1 percent permanent left upper extremity impairment based upon motor deficits. Dr. Kuhnlein combined the impairment ratings to arrive at a 6 percent left upper extremity impairment rating. Dr. Kuhnlein converted this to a whole person impairment, but the whole person impairment rating is irrelevant based upon my previous ruling as to the location of the permanent impairment. Dr. Kuhnlein added a 1 percent whole person impairment for the claimant's pain based upon Chapter 18 of the Guides. In an odd addendum, Dr. Kuhnlein later added an impairment of 2 percent based upon Section 2.5g on page 20 of the Guides insofar as it "adjusts for the effects of treatment."

Using section 2.5g is quite odd. In its entirety, Section 2.5g, on page 20 of the Guides states:

> 2.5g Adjustments for Effects of Treatment or Lack of Treatment
>
> In certain instances, the treatment of an illness may result in apparently total remission of the person's signs and symptoms. Examples include the treatment of hypothyroidism with levothyroxine and the treatment of type I diabetes mellitus with insulin. Yet it is debatable whether, with treatment, the patient has actually regained the previous status of the normal good health. In these instances, the physician may choose to increase the impairment estimate by a small percentage (eg 1% to 3%).
>
> In some instances, as with organ transplant recipients who are treated with immunity-suppressing pharmaceuticals or persons treated with anticoagulants, the pharmaceuticals themselves may lead to impairments. In such an instance, the physician should use the appropriate parts of the Guides to evaluate impairment related to pharmaceutical effects. If information in the Guides is lacking, the physician may combine an estimated impairment percent based on the severity of the effect, with the

> primary organ system impairment, by means of the Combined Values Chart (p. 604).
>
> A patient may decline surgical, pharmacologic, or therapeutic treatment of an impairment. If a patient declines therapy for a permanent impairment, that decision neither decreases nor increases the estimated percentage of the individual's impairment. However, the physician may wish to make a written comment in the medical evaluation report about the suitability of the therapeutic approach and describe the basis of the individual's refusal. The physician may also need to address whether the impairment is at maximal medical improvement without treatment and the degree of anticipated improvement that could be expected with treatment.

See Guides, section 2.5g, page 20. Dr. Kuhnlein uses this portion to provide the claimant with an additional 2 percent whole person impairment. Dr. Kuhnlein opined that this was appropriate because it "adjusts to the effects of treatment." The examples provided by the Guides contradict Dr. Kuhnlein's reasoning. Additionally, Dr. Kuhnlein did not provide much justification beyond allowing for an adjustment to the effects of treatment. Dr. Hart noted that neither of the examples or arguments provided in section 2.5g apply to Mr. Roth. He noted further that Mr. Roth received all necessary treatment. This is backed up by Dr. Kuhnlein's IME which recommends only additional stretching using a TheraBand. Perhaps Dr. Kuhnlein is asserting that it is debatable whether Mr. Roth regained his status of normal good health; however, his statement lacks detail and specificity as to why section 2.5g should apply.

Dr. Kuhnlein also adds on an impairment for pain based upon Chapter 18 of the Guides. He simply states, "[a]n additional 1% whole person impairment would be assigned for the pain based on Chapter 18." Chapter 18 of the Guides is simply titled "Pain." Guides, page 565. The chapter defines pain and the various concepts surrounding pain. Id. at 566-567. The Guides notes the difficulty with integrating pain-related impairment into an impairment rating system as provided in the Guides. Id. at 569. One of the most basic difficulties noted is the subjectivity surrounding pain when the Guides is supposed to base impairment on objective findings. Id. The Guides states, "[t]he inherent subjectivity of pain is incongruent with the Guides' attempts to assess impairment on the basis of objective measures of organ dysfunction, as it requires that determinations of pain intensity and the restrictions imposed by it must be largely based on patients' reports." Id.

Before outlining three scenarios where Chapter 18 should be used to evaluate pain-related impairment, the Guides states, "[o]rgan and body system ratings of impairment should be used whenever they adequately capture the actual ADL deficits that individuals experience." Id. at 570. The three scenarios envisioned by the Guides for using pain related impairment are: when there is excess pain accompanying a verifiable medical condition that causes pain, when there is a well-established pain syndrome that lacks a significant identifiable organ dysfunction to explain the pain, and when there are other associated pain syndromes. Id. at 570-571. The Guides lays out three scenarios in which Chapter 18 should not be used to provide an impairment rating for pain, which are: when an adequate rating is provided by other chapters of the

Guides, when there are credibility issues, and when pain syndromes are ambiguous or controversial. Id. at 571. Specifically, section 18.3b states, "[e]xaminers should not use this chapter to rate pain-related impairment for any condition that can be adequately rated on the basis of the body and organ impairment rating systems given in other chapters of the Guides." Id.

Dr. Kuhnlein notes that the claimant has pain that was not present prior to his surgery or injury; however, he does not mention in his impairment rating why the impairment categories provided by Chapter 16 are inadequate in the context of Mr. Roth's left shoulder injury.

However, the above two discrepancies are not fatal to Dr. Kuhnlein's opinions. I find that Dr. Kuhnlein's report provided a more clear evaluation of the claimant's range of motion. Dr. Kuhnlein provided the exact ranges of motion found during his examination. His examination also was the most recent prior to the hearing. Dr. Hart's opinions are certainly credible, but they lack specificity as to certain ranges of motion used in evaluating an impairment. Dr. Kuhnlein's report documents all areas and measurements of range of motion in the claimant's left shoulder. Additionally, Dr. Hart's report documented that the claimant's left shoulder had 80 degrees of internal rotation. The Guides provides that 90 degrees of rotation is considered normal. It is unclear whether Dr. Hart considered this abnormal measurement in providing his impairment rating.

Based upon my foregoing analysis, I find that it is not reasonable to include Dr. Kuhnlein's opinions as to impairment derived from Chapter 18, nor is it reasonable to include Dr. Kuhnlein's additional impairment based upon section 2.5g. As such, I find that the claimant is entitled to impairment to the left shoulder of 6 percent. When this is taken into consideration with the 400 weeks of impairment provided by Iowa Code section 85.34(2)(n), I find the claimant is entitled to 24 weeks of benefits for his left shoulder impairment (.06 x 400 weeks = 24 weeks). The hearing report indicated that credits against this award were no longer an issue. Therefore, I make no ruling on whatever credit to which the defendants may be entitled.

Payment of Medical Expenses

There is a dispute as to six hundred one and 00/100 dollars ($601.00) in medical billing pertaining to the treatment provided by Dr. Pape. The claimant indicates in their posthearing brief that they are also requesting that I order the defendants to continue care with Dr. Pape at their cost. This would be a dispute pursuant to Iowa Code section 85.27. The hearing report does not indicate that the claimant seeks alternate care pursuant to Iowa Code section 85.27. The hearing report was reviewed on the record with the parties, and claimant's counsel did not indicate that this was an issue in contention. Therefore, I decline to issue any order or ruling regarding the same. However, I will address the medical billing at issue, as the claimant contends entitlement to the same.

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. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 1975).

Pursuant to Iowa Code 85.27, claimant is entitled to payment of reasonable medical expenses incurred for treatment of a work injury. Claimant is entitled to an order of reimbursement if he/she has paid those expenses. Otherwise, claimant is entitled only to an order directing the responsible defendants to make such payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988).

In cases where the employer's medical plan covers the medical expenses, claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, the defendants are ordered to make payments directly to the provider. See Krohn, 420 N.W.2d at 463. Where medical payments are made from a plan to which the employer did not contribute, the claimant is entitled to a direct payment. Midwest Ambulance Service v. Ruud, 754 N.W.2d 860, 867-68 (Iowa 2008) ("We therefore hold that the commissioner did not err in ordering direct payment to the claimant for past medical expenses paid through insurance coverage obtained by the claimant independent of any employer contribution."). See also Carl A. Nelson & Co. v. Sloan, 873 N.W.2d 552 (Iowa App. 2015)(Table) 2015 WL 7574232 15-0323.

The employee has the burden of proof to show medical charges are reasonable and necessary, and must produce evidence to that effect. Poindexter v. Grant's Carpet Service, I Iowa Industrial Commissioner Decisions, No. 1, at 195 (1984); McClellon v. Iowa S. Util., 91-92, IAWC, 266-272 (App. 1992).

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodward State Hospital-School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Border Company , No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury) See also Bass v. Veith Construction Corp., File No 5044438 (App. May 27, 2016)(Claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v. Trinity Health, File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills).

Nothing in Iowa Code section 85.27 prohibits an injured employee from selecting his or her own medical care at his or her own expense following an injury. Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 205 (Iowa 2010). In order to recover the reasonable expenses of the care, the employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial. Id. The Court in Bell Bros. concluded that unauthorized medical care is beneficial if it provides a "more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id. Iowa Code section 85.27(4) also allows for a claimant to choose their own care at the employer's expense in the event of an emergency, provided an agent for the employer cannot be immediately reached.

In this case, the claimant felt that he had pain continuing in his left shoulder. He visited his personal physician on December 21, 2022, and requested an orthopedic referral. He eventually saw Dr. Pape on March 1, 2023, for ongoing discomfort in the shoulder, cervical trapezius, and neck. Dr. Pape opined that the claimant's complaints were consistent with a left shoulder injury and that his new complaints were consistent with a neck issue. Dr. Pape offered and performed a subacromial injection. Mr. Roth argues that the defendants should be ordered to pay for his treatment on March 1, 2023. There is not adequate evidence in the record to prove that this unauthorized care was reasonable and beneficial. The claimant was released by his treating physician, Dr. Hart, with no recommendations for further care. Dr. Kuhnlein, the claimant's hand-selected IME physician, opined that the claimant needed no further care, except for a periodic replacement of a TheraBand and occasional over-the-counter medications. Additionally, by the time the claimant asked Dr. Jain for a referral for an orthopedic visit, he was unquestionably familiar with the procedures of the workers' compensation system. If he desired care, he could have reached out through his attorney or directly to the defendants to request said care. The claimant failed to carry his burden that the unauthorized medical care provided an outcome that was more favorable than care authorized by the employer, as the claimant did not request care. I decline to order the defendants to reimburse the claimant for the unauthorized medical care at issue.

IME Reimbursement Pursuant to Iowa Code section 85.39

The claimant seeks reimbursement for Dr. Kuhnlein's supplemented IME expenses of two hundred fifty and 00/100 dollars ($250.00).

Iowa Code 85.39(2) states:

> If an evaluation of permanent disability has been made by a physician retained by the employer and the employee believes this evaluation to be too low, the employee shall, upon application to the commissioner and upon delivery of a copy of the application to the employer and its insurance carrier, be reimbursed by the employer the reasonable fee for a subsequent examination by a physician of the employee's own choice, and reasonably necessary transportation expenses incurred for the examination.
>
> . . .
>
> An employer is only liable to reimburse an employee for the cost of an examination conducted pursuant to this subsection if the injury for which the employee is being examined is determined to be compensable under this chapter or chapter 85A or 85B. An employer is not liable for the cost of such an examination if the injury for which the employee is being examined is determined not to be a compensable injury. A determination of the reasonableness of a fee for an examination made pursuant to this subsection shall be based on the typical fee charged by a medical provider to perform an impairment rating in the local area where the examination is conducted.

Iowa Code section 85.39(2).

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. The 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). An opinion finding a lack of causation is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021).

It is well accepted in Iowa law that a claimant is only entitled to reimbursement for one IME pursuant to Iowa Code section 85.39. Larson Mfg. Co., Inc. v. Thorson, 763 N.W.2d 842, 861 (Iowa 2009). Therefore, I decline to award the claimant the requested costs for Dr. Kuhnlein's amended IME report pursuant to Iowa Code section 85.39.

Costs

Claimant seeks an award of costs. According to discussion held at the outset of the hearing, claimant requests reimbursement for the IME addendum of Dr. Kuhnlein. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

> [c]osts 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, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in Des Moines Area Regional Transit Authority v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (noting additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App. December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056857 (App. September 27, 2019).

The claimant seeks two hundred fifty and 00/100 dollars ($250.00) for the addendum report of Dr. Kuhnlein. There is no indication in Dr. Kuhnlein's invoice as to how the fee is broken down between examination and/or drafting of the report. However, based upon the context of the report, there was no additional examination; it was simply Dr. Kuhnlein drafting an addendum to his prior report.

Based upon my discretion, I award the claimant two hundred fifty and 00/100 dollars ($250.00) in costs for the reasonable fees of Dr. Kuhnlein's addendum report.

ORDER

THEREFORE, IT IS ORDERED:

That the claimant's permanent disability is limited to only the left shoulder.

That the defendants shall pay the claimant 24 weeks of permanent partial disability benefits at the stipulated rate of eight hundred sixty-three and 18/100 dollars ($863.18) per week, commencing on May 10, 2019.

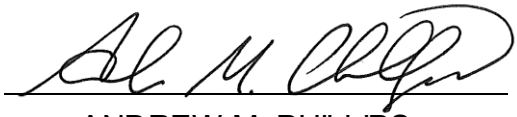
That the claimant is not entitled to reimbursement for certain unauthorized medical expenses.

That the defendants shall reimburse the claimant two hundred fifty and 00/100 dollars ($250.00) for costs incurred.

That the defendants shall pay accrued weekly benefits in a lump sum together with interest. All interest on past due weekly compensation benefits shall be payable 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. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

That the defendants shall file subsequent reports of injury (SROI) as required by this agency pursuant to 876 Iowa Administrative Code 3.1(2) and 876 Iowa Administrative Code 11.7.

Signed and filed this ___30th___ day of December, 2023.



ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Joanie Grife (via WCES)

Peter Thill (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.