BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

VALENTINA ORDAGIC,	:	File Nos. 5058616, 5058617
Claimant,	:	ARBITRATION DECISION
vs.	:	
UNITYPOINT HEALTH-DES MOINES,	:	
Employer, Self-Insured, Defendant.	:	Head Notes: 1402.80, 1803

STATEMENT OF THE CASE

Claimant, Valentina Ordagic, filed petitions in arbitration seeking workers' compensation benefits from UnityPoint Health-Des Moines (UnityPoint), self-insured employer. This matter was heard in Des Moines, Iowa on April 3, 2018 with a final submission date of June 15, 2018.

The record in this case consists of Joint Exhibits 1-11, Claimant's Exhibits 1-7, Defendant's Exhibits A through P, and the testimony of claimant.

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

ISSUES

For File No. 5058616 (Date of injury, June 1, 2015):

1. Whether the injury is a cause of a temporary disability.

2. Whether claimant's claim is barred by application of Iowa Code section 85.23.

3. Whether the injury is a cause of a permanent disability; and if so

4. The extent of claimant's entitlement to permanent partial disability benefits.

5. Whether there is a causal connection between the injury and the claimed medical expenses.

6. Whether apportionment under Iowa Code section 85.34(7)(b) is appropriate.

For File No. 5058617 (Date of injury, January 21, 2016):

The extent of claimant's entitlement to permanent partial disability benefits.

FINDINGS OF FACT

Claimant was 44 years old at the time of hearing. Claimant was born in Bosnia and lived in Croatia. Claimant testified she received a nursing diploma in Bosnia. Claimant can read and speak Bosnian and English.

Claimant came to the United States in 1997.

Claimant worked as a housekeeper at Broadlawns Medical Center in Des Moines. Because of her background in nursing, claimant was later offered a job as a nursing assistant at Broadlawns. Claimant graduated from a community college course with a two-year nursing degree. Claimant began as a nurse at Broadlawns in the emergency room. In 2010 claimant became an operating room nurse.

Claimant testified her job as an operating room nurse was a physical position. Claimant's job duties included, but were not limited to, assisting with anesthesia, scrubbing, lifting and transferring patients.

Claimant's prior medical history is relevant. In November of 2012 claimant underwent an MRI for hip and leg pain. (Joint Exhibit 6, pages 81-85)

In 2012 and 2013 claimant had lumbar injections. (Jt. Ex. 2, pp. 21-25)

In November of 2013 claimant had a lumbar MRI that showed L4-5 and L5-S1 disc herniations. (Jt. Ex. 2, p. 25)

In December of 2013 claimant had an L5-S1 discectomy. (Jt. Ex. 2, p. 25(a))

Medical records from February of 2015 indicate, at that time, claimant complained of numbness and shooting pain in her legs when walking too much. (Jt. Ex. 8, p. 110)

In late September of 2014 claimant was working three days per week as an operating room staff nurse. She also worked with Aging Resources of Central Iowa taking care of her parents. (Ex. E, pp. 14-15)

On June 1, 2015 claimant was pushing a patient in a recliner chair. The patient weighed approximately 400 pounds. While pushing the patient, claimant felt numbness and tingling in her left leg when she turned a corner. (Ex. F, pp. 22-23)

On June 4, 2015 claimant was evaluated by Jon Yankey, M.D. Claimant had lower back pain and leg numbness from pushing an obese patient in a recliner. Claimant indicated no significant pain after back surgery until June 1, 2015. Claimant was assessed as having a possible flare up of a degenerative disc problem. Claimant was prescribed medication. She was also given modified work duty. (Jt. Ex. 4, pp. 60-61)

Claimant returned to Dr. Yankey on June 11, 2015. Claimant indicated improvement in her symptoms. Claimant was kept to modified work duty. (Jt. Ex. 4, p. 62)

On June 23, 2014 claimant saw Dr. Yankey in follow up. Claimant's symptoms continued to improve. Claimant indicated she would be leaving the country in five days and would be gone a month. Claimant was advised to continue medication, ice and restrictions on activity. (Jt. Ex. 4, p. 63)

Claimant returned to Dr. Yankey on August 4, 2015. Claimant had no change in symptoms. Claimant was assessed as having a flare up of degenerative disc disease of the lumbar spine. Claimant was recommended to undergo physical therapy and do strengthening on her own. (Jt. Ex. 4, p. 64)

Claimant underwent several physical therapy sessions. On September 16, 2015 claimant was discharged from physical therapy. Discharge records indicate at that time claimant had minimal pain. (Jt. Ex. 5)

On September 17, 2015 claimant was evaluated by Dr. Yankey. Claimant was much improved following physical therapy. Claimant's back strain was found to have resolved. Claimant was discharged from treatment. (Jt. Ex. 4, p. 66)

In an October 22, 2015 letter Dr. Yankey found claimant was at maximum medical improvement (MMI) as of September 17, 2015. He assessed claimant as having a lower back strain, temporarily aggravated and resolved left leg radiculopathy. He found claimant had no permanent impairment based upon the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. This was because claimant had returned to her pre-injury status as of September 17, 2015. (Jt. Ex. 4, pp. 67-69)

Claimant testified that after she was returned to work with no restrictions by Dr. Yankey she had continued pain. She testified she did not complain to her supervisors regarding her ongoing back pain symptoms. She said generally co-workers

knew she was in pain, but she did not report her pain to supervisors, as she was able to control it. (Ex. P; Deposition pp. 32-33) Claimant testified she requested to have her hours reduced to two days per week to save herself from further injury. (Ex. P; Depo. pp. 32-33)

Claimant testified at hearing she did not want to return to treatment with Dr. Yankey, as she did not believe the doctor would properly treat her for her back condition.

In an affidavit, Brittney Lodermeier, indicated prior to April of 2017, she was a co-worker of claimant's in the operating room for over seven years. Ms. Lodermeier indicated that she had reviewed claimant's deposition regarding claimant having continued pain after September 17, 2015, and co-workers and supervisors were aware of her problems. (Ex. M)

Ms. Lodermeier testified she was a co-worker of claimant from September 2015 through June of 2016, and during that time claimant never complained of back problems. Ms. Lodermeier indicated claimant never reported an inability to do her work. She indicated claimant never indicated she had difficulty doing her job due to back pain during that period. (Ex. M)

On January 21, 2016 claimant was changing CO2 tanks when she injured her right thumb. Claimant initially did not report the injury but waited a few months to see if swelling and pain in the right thumb wound go away.

On May 2, 2016 claimant was evaluated by Ze-Hui Han, M.D. for four-month-old right thumb pain. Claimant was assessed as having a rupture of the radial collateral ligament of the right thumb. Conservative care and surgery were discussed. (Jt. Ex. 11, p. 117)

Claimant eventually chose to have surgery on the right thumb. (Jt. Ex. 11, p. 118) On June 7, 2016 claimant underwent a right thumb metacarpophalangeal (MCP) joint radial collateral ligament repair. Surgery was performed by Dr. Han. (Jt. Ex. 11, p. 119)

Claimant returned in follow up with Dr. Han from June of 2016 through August of 2016. (Jt. Ex. 11, pp. 120-125)

On June 20, 2016 claimant was seen in the emergency room for new back pain. Claimant indicated pain began five days' prior. Claimant was assessed as having lumbar disc herniation with radiculopathy. Claimant underwent an MRI of the lumbar spine on the same day. It showed a new, moderate-sized disc herniation at the L5-S1 levels that compressed the S1 nerve root. (Jt. Ex. 3, p. 44)

Claimant texted David Hatfield, M.D. Claimant testified she worked with Dr. Hatfield in surgery. Claimant asked Dr. Hatfield to look at her MRI. (Ex. I, pp. 27-

28) Dr. Hatfield reviewed the MRI and recommended surgery. (Ex. I) Claimant testified she contacted Dr. Hatfield, as she trusted his opinions and treatment.

On June 21, 2016 claimant had a revision surgery at the L5-S1 discectomy. Surgery was performed by Dr. Hatfield. (Jt. Ex. 3, pp. 53-54)

Claimant saw Dr. Hatfield for follow up care in June of 2016. Claimant still had numbness in the left leg along with back pain. A fusion was discussed and chosen as a treatment option. (Jt. Ex. 2, p. 29)

On July 1, 2016 claimant had a fusion at the L5-S1 levels. Surgery was performed by Dr. Hatfield. (Jt. Ex. 3, pp. 57-58)

On September 12, 2016 claimant was seen by Dr. Han in follow up. Claimant was found to be at MMI regarding her right thumb injury. (Jt. Ex. 11, p. 127)

On October 31, 2016 claimant returned in follow up with Dr. Hatfield. Claimant was given a 30-pound lifting restriction.

Claimant testified she returned from her back surgery on or about November 17, 2016. She testified she told her supervisor, at that time, that she needed to switch her work from three days per week to two days per week due to her back problems.

In an affidavit, Carrie Ostlund testified she was claimant's manager at the Methodist West Surgery Services and had been claimant's supervisor from June of 2015 through August of 2016. Ms. Ostlund indicated she was aware claimant testified in her deposition that claimant needed to reduce her work hours due to back problems. Ms. Ostlund disagreed with that testimony and indicated claimant actually reduced her schedule as her father died, and claimant needed to spend more time caring for her mother. (Ex. L)

Ms. Ostlund testified in her affidavit claimant worked three days per week from January 17, 2016 through February 7, 2017. She said during that time claimant never complained of back problems or requested accommodations for her back. (Ex. L)

Ms. Ostlund testified that since February 7, 2017 claimant has never complained of back problems or requested accommodations from her work. She indicated that from September 17, 2015 through June 20, 2016 claimant never complained or reported any back problems. (Ex. L)

Ms. Ostlund testified in her affidavit that despite claimant's testimony in deposition, co-workers have never assisted claimant and claimant has not been given less demanding work due to her back problems. (Ex. L)

In her deposition Ms. Ostlund testified she did not read claimant's deposition but was informed generally about claimant's deposition. (Claimant's Ex. 8, p. 91) Ms. Ostlund testified that when claimant returned to work following her back surgery,

claimant indicated she wanted to reduce her work hours in order to take care of her mother. (Ex. 8; Depo. p. 22)

Ms. Ostlund testified claimant has not requested or received any accommodations at work due to her back condition. (Claimant's Ex. 8, pp. 23-24; Depo. pp. 23-24) Ms. Ostlund testified claimant did not report she had a work-related back problem between September of 2015 and June 20, 2016. (Cl. Ex. 8; Depo. pp. 27-28)

In a March 2017 note Dr. Hatfield indicated he spoke with claimant at the hospital. Claimant indicated a left sciatica after moving a patient. A lumbar MRI taken March 31, 2017 was reviewed. Dr. Hatfield recommended claimant undergo epidural steroid injections (ESI) to deal with pain. (Jt. Ex. 2, p. 34; Jt. Ex. 3, p. 59)

On May 1, 2017 claimant was evaluated by Christian Ledet, M.D. for lower back pain. Claimant indicated she had been doing well until approximately four to five months' prior when she began having pain. An ESI was recommended. (Jt. Ex. 1, pp. 1-7)

In May of 2017 claimant underwent a lumbar ESI. (Jt. Ex. 1, pp. 8-12) Claimant returned to Dr. Ledet in July, August and November of 2017 for pain medication. (Jt. Ex. 1, pp. 13-18)

In an October 25, 2017 note claimant's counsel authored a letter for Dr. Hatfield. The letter requested Dr. Hatfield opine claimant's job duties aggravated claimant's underlying back condition and resulted in claimant's surgery. The records suggest Dr. Hatfield did not sign that letter. (Ex. J, p. 32)

In a November 29, 2017 letter Dr. Ledet indicated he treated claimant for lower back pain. He noted claimant did not indicate a work-related injury. Claimant sought care through her personal insurance. (Defendant's Ex. B)

In a December 11, 2017 note Dr. Hatfield indicated he regarded claimant's work activities as an aggravating factor in her back symptoms. (Jt. Ex. 2, p. 30)

On January 10, 2018 claimant underwent a functional capacity evaluation (FCE) with Todd Schemper, PT, DPT, OCS. Claimant was found to have given consistent effort. Claimant was found to be able to work in the light category of work. This limited claimant to a front carry of up to 20 pounds occasionally, and 30 pounds rarely. (Cl. Ex. 2, pp. 29-38)

In a February 23, 2018 report Jacqueline Stoken, D.O. gave her opinions of claimant's condition following an independent medical evaluation (IME). Claimant complained of pain in the back and left leg. Claimant also had pain in the right hand.

Dr. Stoken found claimant had a 23 percent permanent impairment to the body as a whole regarding her back, based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. She recommended claimant have permanent

restrictions as per her FCE. Dr. Stoken opined claimant's lifting and repetitive trauma caused or aggravated claimant's back condition occurring in June of 2015. (Cl. Ex. 1, pp. 1-14)

Dr. Stoken found claimant had an 11 percent permanent impairment to the right upper extremity. She recommended claimant avoid repetitive keying, gripping or pinching with the right hand. (Cl. Ex. 1, pp. 14-15)

In a March 8, 2018 report, Jeff Johnson, MS, gave his opinions of claimant's vocational opportunities. He concluded claimant had a 50 percent loss of access to employment. He opined if claimant was not able to continue her current employment, claimant's earnings might fall within a range of $10.00 - $14.00 an hour. This was a significant decrease given claimant's current salary of $30.00 per hour. (Cl. Ex. 3)

In a March 21, 2018 report Lana Sellner, MS, gave her opinions of claimant's vocational opportunities. Ms. Sellner opined claimant continued to be employable, as claimant was still employed as an operating room staff nurse. Claimant continued to care for her mother through the Care of Parents Program. Ms. Sellner disagreed with Mr. Johnson's opinion claimant had a loss of 50 percent access to employment. This is because Ms. Sellner identified numerous potential employers, available in claimant's labor market, given the restrictions even from Dr. Stoken. Ms. Sellner indicated claimant did not have a loss of earning capacity, as claimant was still employed in the same position as she had prior to the June 2015 work incident. (Ex. E)

In a March 28, 2018 report Cassim Igram, M.D. gave his opinions of claimant's condition following an IME. He assessed claimant's June 1, 2015 work injury as a lower back strain that had resolved. He opined claimant's lower back pain was resolved as of September 17, 2015. This opinion was based on records showing claimant returned to baseline function level as of September 17, 2015. The opinion was also based upon the fact that when claimant reported increased symptoms, this was approximately 8-1/2 months after September of 2015. Dr. Igram indicated claimant's increase in symptoms on or about June of 2016 was not due to the June 1, 2015 work injury. (Ex. A, pp. 1-4)

Dr. Igram did not recommend further care for the June 1, 2015 injury. This was because the temporary injury had resolved on or about September 17, 2015. (Ex. A, pp. 4-5) Dr. Igram opined claimant's later treatment, including surgery, was not related to the June 1, 2015 work injury. (Ex. A, pp. 4-5)

In deposition Dr. Igram testified claimant's June 1, 2015 work injury did not cause the need for claimant to have treatment following her release from care by Dr. Yankey on September 17, 2015. He testified he did not believe claimant's June 1, 2015 work injury was a substantial contributing factor to claimant's permanent impairment or permanent restrictions. (Cl. Ex. 8; Depo. pp. 24-25)

Claimant testified she still has back pain. She says she has cramping in her back and legs. Claimant said because of her back pain, she cannot run and has

difficulty sitting for extended periods of time. Claimant has difficulty driving or sitting in her car for extended periods of time. Claimant testified her back pain makes sleep difficult. Claimant testified she has problems with lifting.

Claimant testified that after her June and July of 2016 surgeries, she did not contact her employer about her back pain being work related. She said she did not request authorized care for the June and July of 2016 surgeries and subsequent treatment, but submitted claims to her personal health insurance carrier. Claimant said when she was off work for the 2016 surgery she submitted a claim for short-term disability benefits. She said when she completed short-term disability forms she indicated her problems were not work related.

CONCLUSIONS OF LAW

The first issue to be determined is whether the injury is a cause of temporary disability. Claimant seeks temporary disability benefits from June 21, 2016 through November 16, 2016.

Defendant stipulated claimant sustained an injury on June 1, 2015 that arose out of and in the course of employment. Defendant contends claimant reached MMI for the June 1, 2015 date of injury on September 17, 2015.

Claimant contends her underlying back injury was substantially aggravated by her work duties as an operating room nurse. Defendant disputes claimant sustained a cumulative injury to her back.

The party who would suffer loss if an issue were not established has the burden of proving that issue by a preponderance of the evidence. Iowa R. App. P. 6.14(6).

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001);

Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling, Inc., 516 N.W.2d 910 (Iowa App. 1994).

When 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).

The Iowa Supreme Court has adopted the full-responsibility rule. Under that rule, where there are successive work-related injuries, the employer liable for the current injury also is liable for the preexisting disability caused by any earlier work-related injury if the former disability when combined with the disability caused by the later injury produces a greater overall industrial disability. Venegas v. IBP, Inc., 638 N.W.2d 699 (Iowa 2002); Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258, 265 (Iowa 1995); Celotex Corp. v. Auten, 541 N.W.2d 252, 254 (Iowa 1995). The full-responsibility rule does not apply in cases of successive, scheduled member injuries, however. Floyd v. Quaker Oats, 646 N.W.2d 105 (Iowa 2002).

Claimant was found to be at MMI, for her June 1, 2015 back injury, on September 17, 2015 by Dr. Yankey. Dr. Yankey opined claimant had no permanent impairment and no permanent restrictions from the June 1, 2015 work injury. (Jt. Ex. 4, pp. 66-69)

Between September 17, 2015 and June 19, 2016 claimant received no medical care for any lower back pain. Claimant did not report a work injury during this time. There is no evidence in the record, other than claimant's own testimony, that claimant had any back problems between September 17, 2015 and June 19, 2016.

Ms. Lodermeier was a co-worker of claimant. Since June of 2017 Ms. Lodermeier has been claimant's supervisor. Ms. Lodermeier testified claimant never complained of back problems, never requested accommodations, and never reported difficulty doing her job due to back pain. (Ex. M)

On June 20, 2016 claimant was seen for medical care. At that time claimant's complaint was a "new" back pain with an onset of five days' prior. (Jt. Ex. 3, p. 38) An MRI taken on June 20, 2016 showed a "new" moderated-sized disc extrusion at L5-S1. (Jt. Ex. 3, p. 43)

Five experts have given their opinions regarding causation of claimant's need for surgery in June and July of 2016 and subsequent medical care. Dr. Yankey treated claimant for an extended period of time. Dr. Yankey opined claimant had a temporary aggravation to her back that resolved by September of 2015. (Jt. Ex. 4, pp. 67-69)

Dr. Igram evaluated claimant one time for an IME. Dr. Igram also opined claimant had a low back pain that resolved by September of 2015. (Ex. A, p. 3)

He opined claimant's surgeries in June and July of 2016 were not related to the work injury of June 1, 2015. This opinion was based, in part, on the fact that claimant had gone for approximately 8-1/2 months between the time she was released from care in September of 2015 until the time she sought treatment in June of 2016. (Ex. A, pp. 3-4; Cl. Ex. 8; Depo. pp. 16-17)

Dr. Ledet treated claimant for an extended period of time following her back surgeries. Dr. Ledet noted when he treated claimant in 2017 for continuing back pain following surgery, she never indicated her treatment was for a work-related injury. (Def. Ex. B)

Dr. Hatfield performed claimant's surgeries in June and July of 2016. Dr. Hatfield noted based upon his review ". . . of the requirements and the typical activities associated with Ms. Ordagic's work, I would regard her work activities as an aggravating factor in her back symptoms and findings." (Jt. Ex. 2, p. 35)

However, Dr. Hatfield's December of 2017 note does not opine claimant's work activities aggravated her back necessitating medical treatment and surgery, as was originally requested by claimant's counsel. (Ex. J, p. 32) Dr. Hatfield only states claimant's work is "an aggravating" factor, suggesting work was one of several factors in her symptoms. Given these issues, it is found Dr. Hatfield's December of 2017 note does not establish claimant's work materially aggravated claimant's back necessitating a need for treatment and surgery, nearly nine months after claimant was found to be at MMI.

Dr. Stoken evaluated claimant on one occasion for an IME. Dr. Stoken noted,

> The lifting and repetitive trauma aggravated the patient's injury to the back and body as a whole occurring on or about June of 2015. Prior to this she did have a back injury and pain with resultant lumbar L5-S1 discectomy; however, she was still able to work full duty without restrictions.

(Cl. Ex. 1, p. 14)

Dr. Stoken's opinion regarding causation is confusing. Dr. Stoken's opinion indicates claimant's lifting and repetitive trauma aggravated claimant's injury to her back occurring in June of 2015. Claimant's injury of June of 2015 was caused by a single traumatic event, not a cumulative injury. There is nothing in Dr. Stoken's opinion indicating claimant's need for treatment and surgery after June of 2016, almost nine months after being found to be at MMI, was caused by her work activities. For these reasons, Dr. Stoken's opinion is not convincing that there was a causal link between claimant's work and her need for treatment after June of 2016.

Claimant was found to be MMI as of September 17, 2015 for the June 1, 2015 injury. Claimant did not seek any medical treatment for almost nine months after being found to be at MMI. Records from June 20, 2016 indicate claimant's injury was a "new" injury, and not related to the June 1, 2015 date of injury. The opinions of Drs. Yankey, Igram, and Ledet all support that claimant's need for treatment after June 20, 2016 was not related to the June 1, 2015 date of injury. The opinions of Drs. Hatfield and Stoken are inadequate to establish that the June 1, 2015 injury, and claimant's work activities, necessitated claimant's need for treatment after June 20, 2016. Given this record, claimant has failed to carry her burden of proof that her treatment and surgeries on and after June 20, 2016 were caused or materially aggravated by her work activities or were related to the June 1, 2015 injury.

As claimant has failed to carry her burden of proof that her treatment and surgeries on and after June 20, 2016 were caused by her June 2015 injury or her work following that injury, all other issues related to File No. 5058616 (Date of injury, June 1, 2015) are moot.

The next issue to be determined is the extent of claimant's entitlement to permanent partial disability benefits regarding the January 21, 2016 injury to the thumb.

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). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Claimant had a right thumb injury on January 21, 2016. Dr. Han treated claimant for an extended period of time. Dr. Han also performed surgery on claimant. Dr. Han eventually found claimant had a 1 percent permanent impairment to the right thumb. (Jt. Ex. 11, p. 129)

Dr. Stoken opined claimant had an 11 percent permanent impairment to the right upper extremity due to deficits in range of motion. (Cl. Ex. 1, p. 14) It appears Dr. Stoken's opinion is based upon a finding that claimant actually has a 31 percent permanent impairment to the right thumb. (Cl. Ex. 1, p. 17)

The opinions of treating physicians are not to be given greater weight solely because they are treating physicians. Gilleland v. Armstrong Rubber Co., 524 N.W.2d 404, 408 (Iowa 1994). As a practical matter, Dr. Han has far greater experience and familiarity with claimant's medical presentation and condition, than does Dr. Stoken. Based upon this, it is found the opinions of Dr. Han regarding permanent impairment to the right thumb are more convincing.

Based upon Dr. Han's opinions, claimant is due .6 weeks of permanent partial disability benefits (60 weeks x 1%). The hearing report indicates defendant has already paid claimant permanent partial disability benefits based upon Dr. Han's rating. Based on this, claimant is not due any further permanent partial disability benefits for the right thumb injury.

ORDER

Therefore it is ordered:

For File No. 5058616 (Date of injury, June 1, 2015):

That claimant shall take nothing from this file.

For File No. 5058617 (Date of injury, January 21, 2016):

That claimant shall take nothing in additional permanent partial disability benefits from this file.

Regarding both files:

That defendant shall file subsequent reports of injury as required by Rule 876 IAC 3.1(2).

That both parties shall pay their own costs.

Signed and filed this 7th day of September, 2018.

JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.