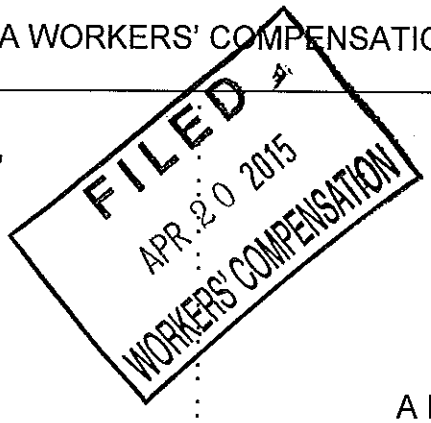
BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER



CHRISTINA J. BRADFORD, Claimant, vs. GENERAL MILLS, Employer, and LIBERTY MUTUAL INSURANCE, Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 5047470 ARBITRATION DECISION Head Note Nos.: 1108, 1803, 2401, 2500, 2800, 3001, 3200

STATEMENT OF THE CASE

Claimant, Christina Bradford, has filed a petition in arbitration seeking workers' compensation benefits from General Mills, employer, Liberty Mutual Insurance, insurance carrier, and Second Injury Fund of Iowa, all as defendants for an alleged work injury date of November 25, 2013.

The case was heard in Des Moines on March 9, 2015 and considered fully submitted upon the simultaneous filing of briefs on March 30, 2015. The evidence of this case consists of joint exhibits 1 through 6, claimant's exhibits 1-15, defendants' exhibits A and B and the oral testimony of the claimant and Jeffrey Richard Koenig.

ISSUES

1. Whether claimant sustained an injury on November 25, 2013, which arose out of and in the course of her employment;

2. Whether claimant's claim is barred for failure to give timely notice under Iowa Code section 85.23;

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

4. The appropriate commencement date of permanent disability benefits;

5. The extent of claimant's scheduled member disability;

6. Whether there is a causal connection between claimant's injury and the medical expenses claimed by claimant;

7. The rate of compensation;

8. Whether claimant is entitled to Second Injury Fund benefits and, if so, the amount of benefits.

9. Whether claimant is entitled to alternate care;

10. Whether claimant is entitled to reimbursement of an IME pursuant to Iowa Code 85.39;

11. Whether claimant is entitled to penalty benefits under Iowa Code section 86.13 and, if so, how much.

STIPULATIONS

The parties stipulate the claimant was an employee of the defendant employer at the time of the alleged injury date of November 25, 2013. They further agree that the work injury was a scheduled injury if permanent disability is found.

Claimant was single and entitled to one exemption at the time of the injury.

Prior to the hearing, claimant was paid 30 weeks of compensation at the rate of $797.14.

FINDINGS OF FACT

Claimant was a 50-year-old person at the time of the hearing. She began working for defendant employer on October 7, 1979 and has worked primarily in the desserts department during her tenure with the company.

She has a high school degree and one year of junior college. Prior to working at the defendant employer, claimant worked as a telephone operator for Northwestern Bell.

As an employee of the defendant employer, claimant has worked on several different lines including Hamburger Helper, Bisquick pouch, Bisquick 60 ounce box, Bac-Os, Pop Secret, and Stir 'n Frost.

Most of the jobs required claimant to lift raw product or packaging, place product

in a box, and then stack the boxes onto a pallet. At some point, more automation was introduced into the plant extending the conveyor belts and eliminating the need to hand palletize.

On or about November 25, 2013, claimant was working Ready to Spread (RTS) 2. This line is a packaging line where one-pound cans of frosting are filled and labeled. A line worker is required to load labels into a basket. At one point, claimant was required to dump large loads of caps into a hopper. Both RTS 1 and 2 job duties are expressed in Exhibit 8. Claimant disputes the accuracy of the job description, as she testified her job required frequent stooping whereas Exhibit 8 notes that stooping is only occasionally required in the RTS Packaging position. The job description in Exhibit 8 does indicate that repetitive hand/wrist activity was continuous and that reaching above her shoulder level and pushing and pulling was frequent. (Exhibit 8)

Jeffrey Richard Koenig, a supervisor who worked in safety, as a technical coordinator, and as claimant's team leader at one point, maintained that claimant's work was not repetitious as compared to the meat packing industry. He recalled in November 2013, hearing that claimant had problems with her hands and arms.

Mr. Koenig agreed that since February 21, 2014, defendants have been able to keep claimant in her RTS Packaging position and abide by her restrictions. (Transcript page 82)

On the RTS 2 line, there is a machine called the depalletizer. The depalletizer required you to walk up and down several steps and across catwalks. As she developed problems in her knees, she moved to RTS 1, which did not require her to traverse stairs and catwalks.

Claimant maintains that the description of the position, as articulated in Exhibit 1A, exists only in a perfect environment where the machines do not malfunction in any way. Claimant also maintains that she loads more trays than 68 times because her weight restrictions require her to lift less weight but with more frequency. (Ex. A, p. 1) She also says that dumping caps exceeds 38 times per shift, particularly when it is busy.

Mr. Steve Mootz also incorrectly identifies claimant as working day shift when she works second shift. This was important for claimant because on Fridays she is required to do extensive cleanup, which entails the use of large hoses and wrenches to unhook pipes.

In the fall of 2013, claimant was working long hours, 19 days on and two days off. She had switched to the third shift to help with her sleep patterns[1].

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[1] Claimant testified that she worked day shift for 28 years and moved to second shift only after she was given restrictions because her peer group was not as helpful. (Trans. 35)

On October 18, 2013, claimant was seen by Kenneth A. Cearlock, M.D. for a number of issues including headaches, left knee pain, and difficulty with her grip. (Ex. 1) The left knee x-ray revealed osteoarthritis, and the patella femoral compartment shows mild degenerative change. (Ex. 1, p. 1) This is the only medical treatment in the record pertaining to the left knee. Dr. Cearlock referred claimant to Dr. Johns for examination of her hand issues. (Ex. 1, p. 1) James Johns, M.D. saw claimant on October 28, 2013. (Ex. 2) She presented with pain, numbness, and decreasing grip and dexterity over the past two years. (Ex. 2, p. 1) Dr. Johns recommended claimant undergo electrodiagnostic testing, which she underwent on October 21, 2013. (Ex. 3) The EMG revealed severe nerve damage in each hand and elbow[2]. Dr. Johns recommended claimant be seen by a neurologist.

Claimant was seen by Shereen J. Chang, M.D. on December 17, 2014. (Ex. 4) According to Dr. Chang's records, claimant had some problems with her feet and a tremor in her hand that had existed for many years, but recently worsened. (Ex. 4, p. 1-2) As to the repetitive nature of her work, claimant was noted to have worked over 30 years at General Mills but changes jobs routinely. The work "involves a lot of walking and upper extremity movement." (Ex. 4, p. 2) On examination, claimant exhibited difficulty performing heel-to-toe walk. (Ex. 4, p. 4) The high arches and weakness in her dorsiflexion, Dr. Chang attributed to her peripheral neuropathy. (Ex. 4, p. 5) Dr. Chang also diagnosed claimant with severe carpal tunnel syndrome and ulnar nerve palsy at the wrists. "Surgery will not help [claimant] regain the muscle, but it might help to decrease the pain and soreness at night." (Ex. 4, p. 5)

Dr. Chang also noted that claimant's hereditary neuropathy made her more vulnerable to local compression neuropathy such as carpal tunnel syndrome. (Ex. 4, p. 5) On December 30, 2013, Dr. Chang made a more definitive diagnosis of Charcot Marie Tooth Disease. (Ex. 4, p. 7)

Claimant then returned to Dr. Cearlock for treatment of her carpal tunnel syndrome. On January 17, 2014, Dr. Cearlock opined that he believed "there is both contribution to work activity and relation to work. I do not feel this is secondary to the underlying neuropathy." (Ex. 1, p. 3) Dr. Cearlock did understand that claimant's work was more automated than it was in the past. (Ex. 1, p. 3) He reaffirmed his position in the January 31, 2014 treatment note that his impression was that her repetitive work, which changed recently, likely contributed "in some fashion" to the present carpal tunnel. (Ex. 1, p. 4)

On February 6, 2014, Dr. Cearlock filled out a work restriction form in which he maintained that prolonged use of the hands in excess of an eight-hour shift would result

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[2] The EMG history notes that claimant's symptoms began 5-6 years ago and had progressively worsened over the last year. (Ex. 3, p. 1) "Patient states she has been working on an assembly line for 34 years involving constant repetitive grasping, twisting, bending of elbows, and leaning onto surfaces with the elbow." (Ex. 3, p. 1)

in further injury. (Ex. 1, p. 5) He also imposed no lifting of over 20 pounds, avoiding the ladder, only occasional overhead reaching and outstretched arm work. (Ex. 1, p. 6) Bending at the waist, twisting and turning, kneeling and squatting, sitting, standing and walking, could all be done continuously. (Ex. 1, p. 6) Claimant should avoid firm grasping with both hands as well as steering clear of operating vibrating tools, rotating or bending the wrist, and repetitive wrist and hand activity. (Ex. 1, p. 6) He believed that so long as she kept within her work restrictions, she could continue her work duties. (Ex. 1, p. 8)

On May 27, 2014, following a review of a video reflecting claimant's job duties at the defendant employer plant, Dr. Johns wrote:

> As we discussed in our meeting at this office, there is no scientific proof directly linking any occupation to carpal tunnel syndrome. However, despite that lack of scientific evidence, it is the standard of practice in the United States to associate carpal tunnel syndrome with occupations that involve frequent gripping or grasping activities or occupations that involves frequent or repetitive motion of the digits and/or wrists. If the position that Ms. Bradford has been employed in involves those types of activities, her carpal tunnel syndrome would be considered aggravated by that position. The underlying neuropathy that she has been diagnosed with would not be related to any occupational factors.

(Ex. 2, p. 5) He further agreed with Dr. Cearlock's work restrictions. (Ex. 2, p. 6)

In November, claimant was sent by her attorney to Farid Manshadi, M.D. for an examination. The report was issued January 12, 2015, but covered an examination conducted on November 6, 2014. (Ex. 5, p. 6) Dr. Manshadi's history of claimant included that her job at General Mills required "repetitious use of the upper extremities including gripping, lifting boxes, etc." (Ex. 5, p. 6) Claimant was noted to have a fall at work in 1985 where she injured her left knee. The medical report goes on to note "She was found to have degenerative changes in her knee which has caused her pain and limitation in her activities." (Ex. 5, p. 6)

Dr. Manshadi concluded that claimant's repetitious activities at work resulted in a bilateral carpal tunnel syndrome. (Ex. 5, p. 9) He assigned a 28 percent upper extremity impairment rating using the motor deficits as well as sensory deficits. (Ex. 5, p. 9)

He also concludes that she has "significant left knee arthritis" and "permanent impairment in regard to her left knee prior to the 11/25/13, work injury." (Ex. 5, p. 10) No impairment rating was given by Dr. Manshadi.

On February 5, 2015, claimant was seen by Teri S. Formanek, M.D., at the request of the defendants. (Ex. 6) According to Dr. Formanek's records, claimant has had a long history of progressive weakness in her hands. The onset of weakness was

gradual, and her symptoms such as tremors were intermittent in the past but had become more consistent in 2013. (Ex. 6, p. 4)

Dr. Formanek concluded that claimant did have bilateral carpal tunnel syndrome and possible cubital tunnel syndrome and that it was "the cumulative nature of her job activities over the course of her employment with the company for 35 years would aggravate this condition." (Ex. 6, p. 5) He did not agree with the impairment rating of Dr. Manshadi because he included impairment for both sensory loss and motor deficit because it combined the severe peripheral neuropathy impairment, which Dr. Formanek attributed to claimant's personal health condition in addition to the motor impairment due to the carpal tunnel syndrome. (Ex. 6, p. 5)

He opined that claimant's impairment was no more than 5 percent of each upper extremity. (Ex 6. p. 5) Dr. Formanek is a hand surgeon with over 25 years of clinical practice and in his experience, "patients who have residual after treatment of severe carpal tunnel syndrome, rarely have more than a 10% impairment of the upper extremity and most commonly, they have a 5% impairment of the upper extremity." (Ex. 6, p. 5)

Claimant testified at hearing that she took Celebrex for her knee but acknowledged she returned to work and resumed her normal job after her knee injury in 1985. Between 1980s and 2013, claimant did not see any physician for left knee complaints, and since the one visit with Dr. Cearlock in October 2013, she has not seen a doctor specifically for treatment of the osteoarthritis in her knee.

Defendants' rate calculations include the 13 weeks prior to claimant's injury. There are some weeks that claimant worked around 40 hours (five weeks) and others in which she worked 50-60 or more. The average weekly wage according to defendants is $1426.78. Based on her single status, claimant would be entitled to one exemption and therefore the benefit rate would be $797.14. (Ex. B1)

Claimant's rate calculation excludes any week in which she worked approximately 40 hours as non-representative. (Ex. 11) Claimant's calculation is based on an average weekly wage of $1610.76 with a benefit rate of $886.37. (Ex. 11) Claimant testified that a 40-hour work week was the exception and that she almost always worked at least one or two 12-hour days and weekends if those were available.

On February 26, 2015, claimant demanded, through her attorney, payment of Dr. Formanek's impairment rating with interest. (Ex. 10)

Claimant is currently working second shift, earning over $28.00 per hour.

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 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).

All the medical doctors agree that claimant suffers from both a hereditary neuropathy disease as well as carpal tunnel syndrome in her bilateral extremities. Defendants assert the carpal tunnel syndrome is not associated with her work because her work is not repetitive.

In support of their assertion that the work is not repetitive, they point to the study performed by Steve Mootz as well as the testimony of Jeff Koenig. Steve Mootz studied claimant's position that she undertook following the 2014 work restrictions of Dr. Cearlock. Mr. Koenig and claimant both testified that the defendants had accommodated claimant's restrictions which include no repetitive bilateral extremity work. There was no indication in Mr. Mootz' report that he studied her job prior to October 2013, although he did appear to look at the entire Ready to Spread line. Mr. Mootz' conclusions are of limited utility because they primarily focus on claimant's post-restriction job duties rather than her pre-restriction job duties.

The most useful and non-biased assessment of claimant's work duties is the job description. Despite Mr. Koenig's disagreement of the job description because of his previous work experience in the meat packing industry, defendants' own job description was analyzed as of December 9, 2002. (Ex. 8) Defendants' brief seems to characterize the job description as "second-hand assessments from others" but there's no indication that the job description in Exhibit 8 was not based on personal analysis of two individuals. Further, Dr. Johns did not conclude that claimant's carpal tunnel syndrome was based on repetitive work. Indeed, he wrote that claimant's carpal tunnel symptoms would be related to claimant's work if her work was "frequent or repetitive". (Ex. 2, pp. 3, 5)

The evidence supports a finding that claimant's work was not only repetitive but that even if it were not repetitive, there is sufficient medical evidence to support a finding that even frequent grasping and material handling aggravated claimant's underlying hereditary neuropathy.

Given that claimant's carpal tunnel syndrome is related to her work, claimant's medical bills associated with her CTS are awarded.

The next question is the manifestation date of claimant's injury. Defendants argue that claimant's injury was one she knew or should have known about for years pre-dating the October 2013 medical visit to Dr. Cearlock, and therefore the time to bring a claim has passed.

The statute and notice defenses are largely dependent on the manifestation date particularly given that claimant reported hand and arm pain to her supervisors, as acknowledged by Mr. Koenig, within a month of her October 2013 visit.

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).

Claimant did have ongoing weakness, occasional tremors, and pain in her wrists dating back several years, however, it was not until October 2013 that she sought out medical care, and it was not until February 2014 that claimant's work was impacted by a diagnosis of bilateral carpal tunnel syndrome.

There was no evidence that prior to October 2013 that the tremors, weakness and pain was a condition serious enough to have a permanent, adverse impact on her employment. Claimant had worked for over three decades with the defendant employer and had been working 19 days in a row with only two days off preceding her medical visit to Dr. Cearlock.

Based on the foregoing, claimant's manifestation date is October 18, 2013, when she first saw Dr. Cearlock, and he suggested she had severe carpal tunnel. (Ex. 1) The claim was filed on May 19, 2014, well within the statute of limitations. Claimant had informed the defendants of her carpal tunnel syndrome by November 2013, which was within the 90-day notice period. Defendants argue that claimant did not specifically identify that her carpal tunnel problems were associated with her work and thus the notice is inadequate. Yet by January 31, 2014, defendants had sent a letter to Dr. Cearlock requesting information on how her injury might affect her job performance. (Ex. 1, p. 5) Claimant also testified credibly that she informed Mr. Koenig that she had seen Dr. Johns and that there was a high probability of severe carpal tunnel. (Trans. 43) She asked to see a company doctor and was told that they did not have one she could see. (Trans. 43) Claimant saw Dr. Johns in late October and November of 2013.

A notice defense is an affirmative defense, and the burden rests with the defendants (or the party asserting the affirmative defense). DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940). In this case, defendants did not meet its burden that it lacked notice within the 90-day period.

The next issue is the commencement date of claimant's permanent disability benefits.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, Iowa App 312 N.W.2d 60 (1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

The evidence does not indicate claimant missed any work related to her carpal tunnel injury and therefore, pursuant to section 85.34(1) claimant's commencement date of benefits would be October 18, 2013.

The benefit rate is also in dispute.

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment.

If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately

preceding the injury. Any week that does not fairly reflect the employee's customary earnings that fairly represent the employee's customary earnings, however. Section 85.36(6).

Claimant argues that weeks where she worked only 40 hours is non-representative, but prior to claimant's injury, 5 of the 13 weeks were 40-hour work weeks. Thus 40-hour work weeks were customary. The evidence supports a finding that defendants' calculations are consistent with the statute's intent. Claimant's customary earnings include the 40-hour work week and thus, the benefit rate of $797.14 is adopted.

The next issue is the extent of claimant's bilateral simultaneous upper extremity injury.

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

Claimant's functional limitations per Dr. Cearlock include no lifting over 20 pounds, no repetitive work with her hands, limited reaching and outstretched arm work. Claimant should avoid ladders and vibrating tools. Dr. Formanek assigned a 5 percent rating to each bilateral upper extremity, and Dr. Manshadi awarded 28 percent. Dr. Formanek, a hand specialist of over 25 years of experience, wrote that the upper limits of residual carpal tunnel syndrome rarely exceeded 10 percent and that Dr. Manshadi's sensory deficit rating incorrectly took into account claimant's underlying neuropathy.

Claimant continues to work with modified restrictions, is earning more today than she did at the time of her injury, and has modified her lifestyle to reflect her impairment. She buys more things with zippers. She took her necklaces in to get the clasps changed out to a magnetic clasp. She bought a self-propelled mower. She wears her braces when she does yard work and sometimes when she bikes and does her yoga. Her own behavior does not comport with Dr. Manshadi's opinion that she has lost nearly a third of her bilateral upper extremity function.

Based on her testimony and the doctor's opinions, relying more heavily on that of Dr. Formanek than Dr. Manshadi, claimant is found to have sustained a 12 percent body as a whole impairment rating predicated on her bilateral functional impairment loss.

The claimant asserts she is entitled to alternate medical care. It is not an issue briefed, and the evidence is not clear as to whether claimant has satisfied the elements of an alternate care claim. Therefore, the alternate care claim is denied. Claimant is entitled to medical care associated with her carpal tunnel syndrome.

Iowa Code 85.39 governs the payment of independent medical examinations. Pursuant to Dart v. Young, No. 14-0231 (Filed October 1, 2014), the Iowa Court of Appeals notes that the timing of events are important to consider prior to awarding an IME fee. A claimant's IME fee can only be awarded after there is an adverse rating by an employer's physician. In the present case, the only adverse rating by a physician of the employer's choosing came on January 19, 2015. Dr. Manshadi's opinion was sought out on November 11, 2014, and issued on January 12, 2015. Dr. Formanek had Dr. Manshadi's report before issuing his own. Therefore, the employer is not obligated to reimburse claimant for Dr. Manshadi's report.

Claimant also seeks a penalty award for nonpayment, underpayment and lack of contemporaneous denial of benefits pursuant to Iowa Code section 86.13(4). This particular provision requires that if a delay in commencement or termination of benefits occurs without reasonable or probable cause or excuse, the workers' compensation commissioner shall award additional weekly benefits in an amount not to exceed 50 percent of the amount of benefits that were unreasonably delayed or denied. Iowa Code section 85.13(4)(b). A reasonable or probable cause or excuse must satisfy the following requirements:

- (1) The excuse was preceded by a reasonable investigation and evaluation by the employer or insurance carrier into whether benefits were owed to the employee;
- (2) The results of the reasonable investigation and evaluation were the actual basis upon which the employer or insurance carrier contemporaneously relied to deny, delay payment of, or terminate benefits;
- (3) The employer or insurance carrier contemporaneously conveyed the basis of the denial, delay in payment, or termination of benefits to the employee at the time of the denial, delay or termination of benefits.

(Iowa Code section 86.13(4)(c))

Defendants have the burden to show compliance with this statutory provision in order to avoid the mandatory assessment of a penalty. It does appear that defendants undertook a reasonable investigation. There is correspondence between the defendants and Dr. Cearlock and Dr. Johns in early 2014.

Dr. Cearlock issued work restrictions on January 31, 2014. He indicated at that time that she had carpal tunnel syndrome. There was no causation opinion given at that time. Dr. Johns informed claimant's attorney on March 12, 2014, that he was of the opinion that claimant's work aggravated her underlying neuropathy and led to claimant's carpal tunnel syndrome. In May of 2014, a letter from defendants' attorney to Dr. Johns indicated that there was an in-person meeting between Dr. Johns and Pat Killean of

General Mills. Dr. Johns followed this meeting (and a review of the video of claimant's work) with a letter of May 27, 2014, indicating that if the claimant had been employed doing work requiring frequent gripping or grasping then the carpal tunnel syndrome would have been aggravated. (Ex. 2, p. 5)

Defendants did not pay any benefits until February 27, 2015, when a check for 30 weeks was issued. (Ex. 15) Defendants' argument is that claimant's injury was fairly debatable. She had an underlying hereditary neuropathic disease. Even after her injury she worked within the same set of tasks that she had prior to the injury. Further, they argued that her claim was time barred or at the very least the timeliness of her claim was fairly debatable.

Mr. Koenig and Mr. Mootz support the defendants' claim that claimant's work was not repetitive. However, defendants' own documentation indicates that claimant's work was repetitive and the medical evidence from Dr. Johns and Dr. Cearlock supported a finding that claimant's carpal tunnel syndrome was related to her work back in 2014.

The claim was not fairly debatable under a reasonable investigation. Therefore, the claimant is entitled to penalty benefits for lack of payment at 25 percent of the amount that accrued from Dr. Johns' letter of May 27, 2014, up to February 27, 2015.

The final issue is one of the applicability of the Second Injury Fund of Iowa.

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

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); Iowa Practice, Workers' Compensation, Lawyer and Higgs, section 17-1 (2006).

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

Claimant asserts the first qualifying injury is a knee injury which took place in the early 1980s. Since that time she has had a single medical visit to Dr. Cearlock regarding her left knee. There are no restrictions assigned to claimant because of her left knee other than those written by Dr. Manshadi, which are contained in the last

paragraph of his multiple page report—almost as an afterthought. Claimant testified that she moved away from one job because it required walking and climbing of steps. Other than those two thin pieces of evidence there is little to suggest that claimant has sustained any permanent or preexisting disability related to her left knee. Indeed, even subsequent medical records refer to foot drop and other neuropathy issues but none pertaining to claimant's left knee pain.

The claimant has not carried her burden as it relates to the first qualifying injury. The left knee was of little to no significance prior to her injury date of October 18, 2013, and it appeared to be of little to no significance after her injury date. The only time it was addressed, other than the October 18, 2013 visit with Dr. Cearlock, was in the medical examination of Dr. Manshadi who did not even provide an impairment rating. The work restrictions of Dr. Cearlock, which were adopted by Dr. Johns and Dr. Manshadi did not prevent claimant from standing, walking, squatting, twisting or bending. There were no restrictions from claimant's treating physicians, ones that she chose rather than those selected by her workers' compensation insurer or defendant employer, pertaining to her left knee.

Therefore, claimant is not entitled to benefits from the Second Injury Fund of Iowa.

Finally, claimant pursues costs but the affidavit of costs contained in Exhibit 14 pertains to a different case. Claimant is awarded the filing and service fees.

ORDER

THEREFORE, it is ordered:

That defendants are to pay unto claimant sixty (60) weeks of permanent partial disability benefits at the rate of seven-hundred ninety-seven and 14/100 dollars ($797.14) per week from October 18, 2013.

That defendants are to pay unto claimant penalty benefits of twenty five (25) percent of the amount of permanent disability benefits that accrued from Dr. Johns' letter of May 27, 2014, up to February 27, 2015.

That claimant is entitled to reimbursement and/or payment of medical bills including mileage in Exhibits 12 and 13.

That claimant is entitled to ongoing medical care pertaining to her carpal tunnel syndrome.

That defendants shall pay accrued weekly benefits in a lump sum.

That defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

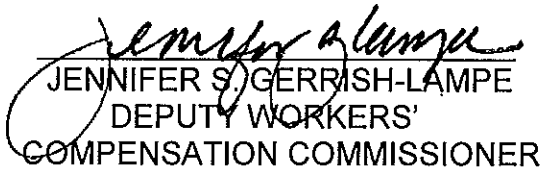
That defendants are to be given credit for benefits previously paid.

That defendants shall file subsequent reports of injury as required by this agency pursuant to rule 876 IAC 3.1(2).

That defendants shall pay the costs in the form of filing fees and services fees pursuant to rule 876 IAC 4.33.

As to the Second Injury Fund of Iowa, claimant shall take nothing.

Signed and filed this 20th day of April, 2015.



JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

Copies to:

Robert R. Rush
Attorney at Law
PO Box 637
Cedar Rapids, IA 52406-0637
bob@rushnicholson.com

Peter J. Thill
Attorney at Law
111 E. Third St., Ste. 600
Davenport, IA 52801-1596
pjt@bettylawfirm.com

Stephanie Jo Copley
Dept. of Justice-Special Litigation
Hoover State Office Bldg.
Des Moines, IA 50319
Stephanie.copley@iowa.gov

JGL/sam

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