

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JUAN GARNICA SEGURA,	:	
	:	
Claimant,	:	File Nos. 5064709, 5064710
	:	5064711, 5064712
vs.	:	
	:	ARBITRATION
TYSON FOODS, INC.,	:	
	:	DECISION
Employer,	:	
Self-Insured,	:	Head Notes: 1108.50, 1402.20,
Defendant.	:	1402.40, 1803, 2907

STATEMENT OF THE CASE

Juan Garnica Segura, claimant, filed a petition in arbitration seeking workers' compensation benefits from defendant, Tyson Foods, Inc., self-insured employer. Hearing was held on August 20, 2019 in Des Moines, Iowa.

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.

Claimant was the only witness to testify live at trial. Claimant testified through Franklin Ruiz, a Spanish interpreter. The evidentiary record also includes joint exhibits 1-4, claimant's exhibits 1-6, and defendant's exhibits A-E. All exhibits were received without objection. The evidentiary record closed at the conclusion of the arbitration hearing.

The parties submitted post-hearing briefs on October 3, 2019, at which time the case was fully submitted to the undersigned.

ISSUES

File No. 5064709 (DOI: 12/28/16)

The parties submitted the following issues for resolution:

1. Whether the stipulated injury was the cause of permanent disability. If so, the nature and extent of the permanent disability.

2. The appropriate commencement date for any permanent partial disability benefits.
3. Whether claimant is entitled to reimbursement for an IME under Iowa Code section 85.39.
4. Assessment of costs.

File No. 5064710 (DOI: 07/21/17)

The parties submitted the following issues for resolution:

1. The nature and extent of the permanent disability.
2. The appropriate commencement date for any permanent partial disability benefits.
3. Whether claimant is entitled to reimbursement for an IME under Iowa Code section 85.39.
4. Assessment of costs.

File No. 5064711 (DOI: 12/12/17)

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury, which arose out of and in the course of employment, on December 12, 2017.
2. Whether the stipulated injury was the cause of permanent disability. If so, the nature and extent of the permanent disability.
3. The appropriate commencement date for any permanent partial disability benefits.
4. Whether claimant is entitled to reimbursement for an IME under Iowa Code section 85.39.
5. Assessment of costs.

File No. 5064712 (DOI: 06/08/18)

The parties submitted the following issues for resolution:

1. Whether claimant sustained an injury, which arose out of and in the course of employment, on June 8, 2018.
2. Whether the stipulated injury was the cause of permanent disability. If so, the nature and extent of the permanent disability.
3. The appropriate commencement date for any permanent partial disability benefits.
4. Whether claimant is entitled to reimbursement for an IME under Iowa Code section 85.39.
5. Assessment of costs.

FINDINGS OF FACT

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

Claimant, Juan Garnica Segura, was 49 years old at the time of the hearing. He was born and educated in Mexico. He has the equivalent of a high school education. He moved to the United States in 1989. He has not taken any English classes. He considers himself to be a below average English speaker. He is trying to learn how to speak better English via YouTube. He is able to perform his job without the use of an interpreter. He can read some, but not all, English. He does not write in English. He can usually function in English; sometimes his daughter will help him with important things. He does have a valid drivers' license; he can read English road signs. He is right-hand dominant. Juan's first work in the United States was as a farm laborer in South Texas. He also worked as a self-trained car mechanic. (Testimony)

Juan moved to Iowa in 2015. He began working for Tyson on November 9, 2015. He passed the pre-employment physical. He was hired to skin hams. This job involved standing in front of a machine, hams would come to Juan on a conveyor belt, he would grab and lift a ham, put it on a machine, skin it, and place the ham back on the conveyor belt. The hams ranged in size from 25-30 pounds a piece. He typically skinned 300 hams per hour. While he was working, his hands were always away from his body. Juan's job also required a significant amount of twisting. He performed this job all day long and it was unbearable for his arms. His job was more difficult if the hams were frozen or almost frozen because they were more difficult for the machine to skin. He would have to roll a frozen ham three times and have to push the frozen ham through the machine, versus just having to roll the ham one time if it was a thawed ham. He testified that the hams were typically frozen or partially frozen during the middle of the week. (Testimony)

Juan first started to experience symptoms and feel the stress of his work load in his shoulders and left hand in December of 2016. He did not have symptoms in his right hand at that time. On December 28, 2016, he reported a defective blade on the skinning machine. The defective blade increased the strain put on his body while operating the skinner. He was told to keep working on that machine because there were not any mechanics available to fix the faulty blade. Juan reported his symptoms to Tyson; they had him ice, and continue to perform his regular job. From December of 2016 until July 20, 2017, he continued to work, but his job was a struggle for him. He was experiencing pain in his shoulders and left wrist, but felt he had to work through the pain. He was provided Tylenol and ice by Tyson. He was also moved to a different department for approximately two to three months where he worked with lighter hams. He alternated between working for fifteen minutes and then resting for fifteen minutes. During this time, he felt that his shoulder pain decreased a lot because the hams he was working with were pretty small. His left shoulder pain decreased a lot and a bit later his right shoulder pain also decreased. He was then returned to his regular ham

line performing his regular duties. The record is void of any evidence to show that Juan sought any additional treatment or reported any other problems prior to the July 21, 2017 date of injury. (Testimony; Def. Ex. A, depo. pp. 10-11)

On July 21, 2017, there was a mechanical problem with the conveyor belt that brought the hams to Juan. This problem caused a ham to drop onto his right wrist. He had immediate pain in his wrist and went to the nurse's station where he was provided ice. Juan said that the pain eventually moved up into his arm. He requested to see a doctor, but Tyson denied his requests. When Juan felt he could not wait any longer to see a doctor, he informed Tyson that he was going to seek treatment on his own. It was at this point that Tyson sent him to see a physician. (Testimony)

On September 5, 2017, Juan saw David R. Archer, M.D. with complaints of right wrist pain that extended up to his forearm, elbow, and shoulder. He reported that on July 21, 2017 a bone-in ham struck his outer right wrist. Initially, it only hurt to move his hand, but the pain had since progressed up his arm. He had been working at Tyson as a skinner for the past 20 months. His treatment up to the time of this appointment had consisted of ice and ibuprofen. He reported that he was working with restrictions and at a 25 percent pace. Dr. Archer's assessment was work-related wrist contusion. Juan was to continue his restrictions and the reduced pace. Dr. Archer prescribed therapy three times per week, for two weeks. (Joint Exhibit 1, page 1)

Juan testified that when he returned to work, his symptoms got worse. Juan told his supervisor and the nurse that things were not going well. Sometimes his supervisor would send him to see the nurse and other times Juan was simply told to keep working. Juan was not happy with his supervisor or the nurse, and they were not happy with him. (Testimony)

On September 14, 2017, Juan saw Seth Harrer, M.D. at NWIA Bone, Joint & Sports Surgeons in Spencer. He reported continued pain in the ulnar aspect of his right wrist. Physical therapy increased his pain. Dr. Harrer noted claimant had difficulty with range of motion as far as ulnar deviation. Dr. Harrer reviewed radiographs and assessed Juan with a right ulnar styloid nondisplaced fracture. He placed Juan in an immobilizer, discontinued therapy, and restricted him to no use of the right upper extremity. Juan was to follow-up in 4 to 6 weeks. (JE3, p. 6)

Juan returned to see Dr. Harrer on October 18, 2017. He reported continued pain in the dorsal aspect of the wrist and the ulnar styloid, but no numbness or tingling. Dr. Harrer felt Juan might have a triangular fibrocartilage complex injury. He ordered an MRI of the wrist. (JE3, p. 7) The MRI was performed on October 20, 2017 and demonstrated a split tear of the extensor carpi ulnaris and increased fluid in the joint space between the pisiform. (JE2, pp. 2-3) Dr. Harrer referred Juan to Philip Deffer, M.D.

Juan saw Dr. Deffer at NWIA Joint & Sports Surgeons on October 26, 2017. Dr. Deffer's impression was right wrist contusion with damage to the pisotriquetral joint and

extensor carpi ulnaris tendinitis. He injected his wrist and instructed Juan to immobilize his wrist for the next 2 weeks. (JE3, p. 8)

On November 30, 2017, Juan returned to see Dr. Deffer. He reported that he had done very well after the injection; most of his pain was gone. Dr. Deffer returned Juan to work. He was to start slowly at 2 hours per day and advance 1 hour weekly. (JE3, p. 9)

Dr. Deffer saw Juan again on December 21, 2017 for follow-up of his right wrist pain. He was back to 4 hours of work per day. He still had a little bit of residual pain in his small finger. Dr. Deffer thought that Juan developed some paresthesias after he injected his pisotriquetral joint and perhaps the digital nerve to the small finger was irritated. Dr. Deffer's impression was right wrist pain, resolving after injections. Juan was instructed to slowly return to normal work. Dr. Deffer noted that Juan asked him about his left hand which had developed some pain over the base of his thumb and up his forearm when he pinched. Dr. Deffer noted he had some mildly positive Finkelsteins. Juan told Dr. Deffer he would report this to the nurse at work and make a claim for his left hand. (JE3, p. 10)

Juan testified that the right wrist injection did provide some temporary pain relief, but the pain returned. Juan had difficulty performing his job. He had to ask for help from a coworker in order to perform his duties. He also relied on his left hand more to try to compensate for the problems he was experiencing with his right hand. Juan said he went to the nurse's office at work on several occasions and reported that his left hand was getting "stuck". Juan felt as though the nurse did not believe his symptoms. She advised him the next time his hand was stuck to come to the office and show her his hand while it was still stuck. In the meantime, she did offer him ice or heat. Eventually, Juan went to Human Resources and advised them he was going to quit his job due to the issues with his left hand. The office sent him to see Dr. Deffer. (Testimony; Defendant's Exhibit A; Deposition pp. 15-17)

On March 1, 2018, Juan returned to Dr. Deffer for follow-up of right upper extremity pain. He had been off of work for one month on vacation and was now back to work 3 hours per day. Dr. Deffer's impression was right hand and wrist pain. Juan was to continue to transition to full duty work. (JE3, p. 11)

On April 26, 2018 Dr. Deffer saw Juan for left wrist pain. He had returned to full-duty work without restrictions for his left wrist. He still had some intermittent pain, but it was tolerable. He also had continued complaints of right wrist and hand pain. There was no change from his prior complaints. Dr. Deffer's assessment was right and left wrist and hand pain. Dr. Deffer had nothing further to offer him. Juan had exhausted medical treatment with occupational therapy and injections. The MRIs did not show a surgically treatable lesion. Juan continued to complain of intermittent pains. He was to continue on Mobic and encouraged to use ice when experiencing pain. Dr. Deffer stated that Juan did not need to take breaks at work to ice. Dr. Deffer placed Juan at maximum medical improvement (MMI) for both upper extremities and assigned zero

percent impairment for each upper extremity. Juan was released to return to work without restrictions and discharged from care. (JE3, p. 12)

On July 3, 2018, at the request of the defendant, Juan saw Douglas W. Martin, M.D. for evaluation of right upper extremity difficulty. Dr. Martin noted that Juan also had complaints of the left upper extremity, but he was specifically asked by Tyson to evaluate only the right upper extremity. Dr. Martin stated that Juan was "quite dramatic with regards to his explanation of his right upper extremity symptomatology." (Def. Ex. E, p. 1) He reported pain in the forearm, pain in the elbow, and pain in the shoulder. He did not report any neck pain. He did report numbness and tingling in the ring and small fingers. He also felt he was losing grip strength. Dr. Martin's assessment included right cubital tunnel syndrome, right wrist and forearm extensor-based pain, prior history of some sort of a right wrist fracture, by examinee account, and history of right extensor tendon problems, status post injection, per examinee report. Dr. Martin wanted to see Juan's prior treatment records. He recommended right upper extremity electrodiagnostic tests. He provided him with an elbow pad and restrictions. (Def. Ex. E, pp. 1-3)

On July 13, 2018, Juan saw William J. Andrews, M.D. for an EMG of his right upper extremity. (JE4, p. 15) On July 20, 2018, Dr. Martin was asked for his opinion in light of the electrodiagnostic test. The test indicated moderate median neuropathy at the wrist consistent with carpal tunnel syndrome. However, there was no electrodiagnostic abnormality of the ulnar nerve at the elbow. Dr. Martin felt that Juan had presented with fairly classic signs and symptoms of right cubital syndrome, so he was surprised by the findings of carpal tunnel. Dr. Martin recommended a referral to an orthopedic surgeon. (JE4, pp. 16-17)

Juan saw Dr. Martin again on July 23, 2018 for his right upper extremity. His symptoms were unchanged. Dr. Martin noted Juan had symptoms that were somewhat exaggerated; however, he thought Juan probably needed to consider carpal tunnel release. Juan was referred to an orthopedic surgeon. Dr. Martin continued his temporary restrictions. (JE4, pp. 18-20)

On July 30, 2018 Dr. Martin sent a letter to Tyson answering questions posed to him by Tyson. Dr. Martin stated that he reviewed Juan's entire chart and the additional documents Tyson sent to him. Dr. Martin felt that Juan's presentation was of "quite exaggerated symptomatology, which made it difficult to originally get a very good exam". (JE4, p. 21) Dr. Martin offered his opinions with regard to claimant's carpal tunnel syndrome. He opined that the diagnosis was related to the fracture injury of July 21, 2017. He had no reason to disagree that the fracture of the wrist was at MMI and no further treatment for the wrist fracture seemed to be necessary. Dr. Martin did not feel that cubital tunnel syndrome remained a diagnosis for Juan. (JE4)

Juan returned to NWIA Bone on August 16, 2018 with ongoing left wrist pain that radiated into the elbow. Dr. Deffer noted that Juan had been in a light-duty position or off of work for a good part of the prior several months. Physical examination of the left

upper extremity revealed excellent range of motion of his elbow, wrist, and digits. The doctor also noted that there was no focal swelling, but Juan insisted that his hand and wrist were swollen. Dr. Deffer stood by his April 26, 2018 opinions. He once again discharged Juan from his care. (JE3, p. 13)

On September 6, 2018, Juan saw Yorell Manon-Matos, M.D., a hand surgeon. Juan had requested that he be able to see Dr. Matos because he had researched this doctor and found that he was a good doctor; Tyson authorized Dr. Matos. The doctor's notes reflect that Juan had a longstanding ulnar-sided wrist pain on his right wrist with a radiating and burning sensation proximally and distally. These symptoms had been present since mid-July. Repetitive activity seemed to aggravate his symptoms. Juan told the doctor that he really just wanted to get back to work. Dr. Matos assessed Juan as having right ECU tendinosis with split tear, severe, and right moderate carpal tunnel syndrome. Dr. Matos felt there might be some degree of symptom magnification given his emotionality during the visit. He recommended a corticosteroid injection for the carpal tunnel and the ECU sheath. Juan was advised to use a wrist brace, therapy for ECU tendinosis, and carpal tunnel syndrome protocol. (JE4, pp.26-28)

Juan returned to see Dr. Matos on October 4, 2018. The injections provided 50 percent improvement, but he still used a splint and continued to have pain. Juan also reported new-onset shoulder pain which was somewhat nonspecific. He denied recent injury. The doctor's assessment was right ECU tendinosis, right moderate carpal tunnel syndrome, and right shoulder pain. (JE4, p. 29)

Juan returned to Dr. Matos on December 4, 2018. Juan's tendinosis or ulnar-sided wrist pain had improved significantly. His pain was 0/10 at rest and 4/10 when active. He continued to have numbness and tingling and paresthesias in his right hand. His discomfort radiated proximally and he had aggravated shoulder pain on the right. Juan also reported similar symptoms on the left side, but realized the focus for this visit is the right side. Dr. Matos noted there was some degree of symptom magnification and some improvement, Juan continued to have ulnar-sided wrist pain and the paresthesias related to carpal tunnel. Dr. Matos recommended a surgical approach. (JE4, pp. 30-33)

On February 11, 2019, Dr. Matos performed a right open carpal tunnel release. Juan followed up with Dr. Matos on April 26, 2019. He was status post right carpal tunnel release, right diagnostic arthroscopy, TFC repair, and partial release and debridement of tendinosis. The doctor noted that Juan had significant symptom magnification and a very difficult time with recovery. Juan had been refusing some therapy modalities. The therapist suggested proceeding with a home exercise program. Juan was restricted to less than 2 pounds at work for 4 weeks with braces, as needed. (JE4, pp. 34-35)

Juan returned to Dr. Matos on May 28, 2019 with continued pain near the ulnar aspect of his wrist extending up to his elbow. The doctor noted that Juan had "continuous issues with compliance related to therapy and home program, significant

guarding and symptom magnification.” (JE4, p. 37) The surgeon also noted that Juan continued to “complain quite emphatically that he is not sure he can use his hand for regular work.” (id.) Dr. Matos tried to reassure Juan that he needed to use his hand more normally in order to get past the stiffness. Dr. Matos felt he should start a work-hardening program in order to return to regular work. Dr. Matos would consider Juan to have reached MMI once he returned to regular duty. (JE4, pp. 37-39)

On July 15, 2019, Dr. Deffer responded to a letter from counsel for the defendant. Dr. Deffer had reviewed the medical records and the IME report from Jacqueline M. Stoken, D.O. Dr. Deffer stated that during his encounters with Juan he found no evidence or complaints of shoulder pain or back pain and therefore, could not comment on any disability regarding the shoulder or back. He did not feel he could comment on any ongoing disability to the right upper extremity because Juan had undergone surgery since he last saw him. (JE3, p. 14)

On July 30, 2019, Dr. Matos opined that Juan had sustained 3 percent impairment of the right hand/wrist. The rating was based on the AMA Guides, 5th edition, Tables 16, 28-30. According to The Guides, 3 percent of the hands equates to 3 percent of the upper extremity. (JE4, p. 40)

Juan saw Dr. Stoken on May 22, 2019, at the request of his attorney, for an independent medical examination (IME). At the time of the IME, Juan reported aching, tiring, continuous, and numb pain in his right arm and wrist. He also complained of aching pain in his right shoulder and aching pain in his left arm. Juan also stated he had pain in his left shoulder which he described as aching and morning pain. Dr. Stoken noted that Juan had aching and nagging back pain that was made worse with bending down, standing up, and lifting. His pain interfered moderately with sleep, social activities, showering and bathing, dressing, and sexual activities. He reported that his pain interfered completely with lifting 10 pounds, daily activities, chores around the house, writing and typing, and his mood. Dr. Stoken’s impression was as follows:

1. Status post work injury on or about December 2016 with bilateral upper extremity, bilateral shoulder, and back injuries.
2. Status post work injury on or about July 2017 with bilateral upper extremity, bilateral shoulders and back. Right carpal tunnel syndrome. Chronic right ulnar-sided wrist pain. Chronic right wrist TFC injury. Right wrist extensor carpi ulnaris tendinosis.
3. Status post work injuries on or about December 2017 with bilateral upper extremity, bilateral shoulders and back.
4. Status post work injury on or about June 2018 with bilateral upper extremity, bilateral shoulders and back.

5. Status post right open carpal tunnel release. Right wrist diagnostic arthroscopy. Right wrist arthroscopic debridement synovectomy. Right wrist peripheral type IB TFC repair. Right wrist ECU sheath limited release and debridement. Application of long-term plaster splint on 2/11/2019 done by Dr. Yorell Manon-Matos. Postoperative diagnosis is right carpal tunnel syndrome. Chronic right ulnar-sided wrist pain. Chronic right wrist TFC injury. Right wrist extensor carpi ulnaris tendinosis.
6. Chronic pain of the right upper extremity, left upper extremity and back.

(CL. Ex. 1, pp. 8-9)

Claimant relies on the opinions of Dr. Stoken. I do not find Dr. Stoken's opinions to be persuasive. Dr. Stoken's report is not well-reasoned; at best, her report is vague and confusing. With regard to the issues of causation, permanent impairment, restrictions, and dates of injury, Dr. Stoken's report is difficult to decipher. Dr. Stoken assigned permanent restrictions and permanent impairment to the left upper extremity, low back, and right upper extremity. However, the report fails to state that the permanent impairment or the need for restrictions is because of a work injury. The report does state that she does not assign any permanent impairment for the December 2016 or December 2017 dates of injury. However, it is not clear which date of injury, if any, she believes caused the permanent impairment or the need for the restrictions that she did assign.

With regard to the July 21, 2017 injury date, Dr. Stoken stated, "The lifting and repetitive trauma caused or aggravated the patient's injury to the bilateral upper extremities, bilateral shoulders, back, and body as a whole occurring on or about July 2017. He also sustained a significant contusion of the right upper extremity that required surgery." (Cl. Ex. 1, p. 10) With regard to the June 2018 date of injury, Dr. Stoken stated, "[The] lifting and repetitive trauma caused or aggravated the patient's injury to the bilateral upper extremities, bilateral shoulders, back, and body as a whole occurring on or about June 2018." (Cl. Ex. 1, p. 9) Dr. Stoken does not state whether the aggravations are temporary or permanent in nature. As noted, Dr. Stoken does not set forth a specific diagnosis for Juan's bilateral shoulders or back. In her report, Dr. Stoken does assign permanent impairment to Juan; however, the report fails to state which, if any, injury caused any permanent impairment. Likewise, Dr. Stoken assigns permanent restrictions, but fails to state if these restrictions are necessitated because of a work injury. Furthermore, Dr. Stoken's opinions regarding causation, permanent impairment, and restrictions are vastly different than the opinions of the other physicians and the treatment records in this case. I give little to no weight to the opinions of Dr. Stoken.

We now turn to the issue of whether claimant sustained any permanent disability as the result of the alleged work injuries. Claimant has filed four petitions for four different dates of injury; all four petitions allege injury to the same body parts. Juan

testified that he has ongoing symptoms that he believes are caused by his work at Tyson. However, there are a lack of reliable expert opinions to support his contentions. There are several physicians who have rendered their opinions regarding permanent impairment and restrictions in these cases. Dr. Deffer, an orthopaedic surgeon who treated Juan, has opined that he sustained zero percent impairment to his left and right wrist. Dr. Deffer released Juan back to full-duty work. Dr. Martin, an occupational medicine doctor, also released Juan back to full-duty work. Dr. Matos, the physician selected by Juan and authorized by the defendant, also provided his opinions. He opined that Juan sustained 3 percent impairment of his right upper extremity as the result of the July 21, 2017 injury. He released him to return to full-duty work. Dr. Stoken also provided her opinions; however, for the reasons set forth above, I do not find her opinions to be reliable or persuasive. Thus, I find the only permanent disability Juan has demonstrated is 3 percent impairment of the right upper extremity which amounts to 7.5 weeks of permanent partial disability. I further find this permanent disability is the result of the July 21, 2017 work injury.

We now must determine the appropriate commencement date for the permanency benefits for the July 21, 2017 work injury. Dr. Deffer placed Juan at MMI as of April 26, 2018. Defendant contends the permanency benefits should commence on April 26, 2018. However, Dr. Matos subsequently performed surgery on Juan's right wrist on February 11, 2019. (JE4, p. 34) He opined that Juan would be at MMI for his right wrist when he returned to regular-duty work. (JE4, p. 40) Juan returned to his regular job approximately three months before hearing. (Tr. p. 41) I find he returned to regular-duty work on May 20, 2019. I find claimant's permanency benefits shall commence on May 20, 2019.

Claimant is also seeking reimbursement for the cost of the Dr. Stoken IME in the amount of \$3,200.00. Dr. Stoken's examination occurred on May 22, 2019, which is after Dr. Deffer opined that Juan had sustained zero percent impairment for the left wrist and right wrist. I find claimant is entitled to an IME for the right wrist and left wrist. However, claimant is not entitled to an IME for his back because there was not a prior rating of impairment. Defendant disputes the reasonableness of the charges. According to Dr. Stoken's invoice, she charged \$800.00 for the examination. She charged an additional \$300.00 for each additional site and stated she examined two additional sites for a total of \$600.00. She also charged 4.5 hours at \$400.00 per hour for preparation of the report for a total of \$1,800.00. Defendant argues that this amount is above the average cost of such a rating across the state. However, the record is void of any evidence regarding what the average charges for such an IME are in the state of Iowa. I do not find defendant's reasonableness argument to be persuasive. I find defendant is responsible for the IME pursuant to Iowa Code section 85.39. However, defendant is not responsible for the \$300.00 associated with the low back. Thus, defendant is responsible to reimburse claimant for the IME in the amount of \$2,900.00.

Claimant alleges that the stipulated December 28, 2016 work injury caused permanent disability. However, I find that the record does not support claimant's contention. Following the stipulated injury, Juan was placed on lighter duty work for a

few months. He was then returned to his regular ham line, performing his regular duties. The record is void of any evidence to show that Juan sought any treatment for his alleged bilateral shoulder condition prior to the July 21, 2017 date of injury. Additionally, even his own IME doctor, Dr. Stoken opined that there is no permanent impairment that can be calculated for this date of injury. Furthermore, she did not assign any permanent restrictions to his activities as the result of this injury. I find there is no reliable expert opinion to support claimant's contention that he sustained any permanent injury as the result of the December 28, 2016 injury. As such, all other issues regarding this alleged date of injury are rendered moot.

Claimant alleged he sustained a work injury arising out of and in the course of his employment on December 12, 2017, which resulted in permanent disability. However, I find that the record does not support claimant's contention. For the reasons set forth above, I find there is no reliable expert opinion to support claimant's contention that he sustained a permanent disability due to a work injury on December 12, 2017. As such, all other issues regarding this alleged date of injury are rendered moot.

Claimant alleged he sustained an injury arising out of and in the course of his employment on June 8, 2018 work injury, which resulted in permanent disability. For the reasons stated above, I find there is no reliable expert opinion to support claimant's contention that he sustained any permanent disability as the result of a work injury on June 8, 2018. As such, all other issues regarding this alleged date of injury are rendered moot.

CONCLUSIONS OF LAW

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

The claimant has the burden of proving by a preponderance of the evidence that the alleged injury actually occurred and that it both arose out of and in the course of the employment. Quaker Oats Co. v. Ciha, 552 N.W.2d 143 (Iowa 1996); Miedema v. Dial Corp., 551 N.W.2d 309 (Iowa 1996). The words "arising out of" referred to the cause or source of the injury. The words "in the course of" refer to the time, place, and circumstances of the injury. 2800 Corp. v. Fernandez, 528 N.W.2d 124 (Iowa 1995). An injury arises out of the employment when a causal relationship exists between the injury and the employment. Miedema, 551 N.W.2d 309. The injury must be a rational consequence of a hazard connected with the employment and not merely incidental to the employment. Koehler Electric v. Wills, 608 N.W.2d 1 (Iowa 2000); Miedema, 551 N.W.2d 309. An injury occurs "in the course of" employment when it happens within a period of employment at a place where the employee reasonably may be when performing employment duties and while the employee is fulfilling those duties or doing an activity incidental to them. Ciha, 552 N.W.2d 143.

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 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).

Based on the above findings of fact, I conclude claimant failed to carry his burden of proof to demonstrate that he sustained any permanent disability as the result of a December 21, 2017 or June 8, 2018 work injury.

Claimant alleges that the stipulated December 28, 2016 work injury caused permanent disability. Claimant contends that the cumulative bilateral shoulder and left wrist conditions manifested on December 28, 2016. However, I find that the record

does not support claimant's contention. Following the stipulated injury, Juan was placed on lighter-duty work for a few months. He was then returned to his regular ham line, performing his regular duties. The record is void of any evidence to show that Juan sought any treatment for his alleged bilateral shoulder condition prior to the July 21, 2017 date of injury. Additionally, even his own IME doctor, Dr. Stoken opined that there is no permanent impairment that can be calculated for this date of injury. Furthermore, she did not assign any permanent restrictions to his activities as the result of this injury. I conclude claimant failed to carry his burden of proof to demonstrate that he sustained permanent disability as the result of the December 28, 2016 work injury. Because he failed to prove entitlement to any permanency benefits the issue of the appropriate commencement date is rendered moot.

Based on the above findings of fact, I conclude claimant did carry his burden of proof to show that he sustained permanent impairment to his right upper extremity as the result of the July 21, 2017 injury.

A wrist injury is an injury to the arm, not the hand. Holstein Elec. v. Breyfogle, 756 N.W.2d 812 (Iowa 2008). Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 250 weeks as the disability bears to the body as a whole. Section 85.34(m).

Thus, I conclude the only permanent disability Juan has demonstrated is 3 percent impairment of the right upper extremity which amounts to 7.5 weeks of permanent partial disability. I further find this permanent disability is the result of the July 21, 2017 work injury.

Finally, claimant is seeking an assessment of costs. Cost are to be assessed at the discretion of the hearing deputy. 876 IAC 4.33. I find that claimant was generally not successful in his claims. I exercise my discretion and do not assess costs against the defendant. Each party shall bear their own costs.

ORDER

THEREFORE, IT IS ORDERED:

File No. 5064709 (DOI: 12/28/16)

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

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

File No. 5064710 (DOI: 07/21/17)

Claimant is entitled to seven point five (7.5) weeks of permanent partial disability at the stipulated rate of four hundred ninety-eight and 83/100 dollars (\$498.83). These benefits shall commence on May 20, 2019.

Defendant is entitled to a credit for weekly benefits paid prior to the hearing.

Defendant shall reimburse claimant in the amount of two thousand nine hundred and 00/100 dollars (\$2,900.00) for the IME of Dr. Stoken.

Each party shall bear their own costs.

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

File No. 5064711 (DOI: 12/12/17)

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

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

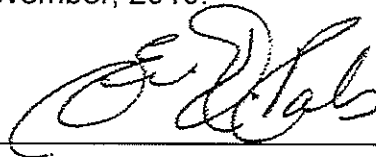
File No. 5064712 (DOI: 06/08/18)

Claimant shall take nothing from these proceedings.

Each party shall bear their own costs.

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

Signed and filed this 21st day of November, 2019.



ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Jason Wiltfang (via WCES)

Tom Drew (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 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.