BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOHN MEYER, Claimant, vs. UNITED PARCEL SERVICE, Employer, and LM INSURANCE CORPORATION, Insurance Carrier, Defendants.	File Nos. 19007381.01 20700630.01 20700631.01 ARBITRATION DECISION Head Note Nos.: 1108, 1402, 1402.50, 1403.30, 1600, 1800, 1802, 1803, 2401, 2700, 2701

STATEMENT OF THE CASE

The claimant, John Meyer, filed three petitions for arbitration seeking workers' compensation benefits from United Parcel Service, ("UPS") and its insurer LM Insurance Corporation. Nick Avgerinos appeared on behalf of the claimant. Lara Plaisance appeared on behalf of the defendants.

The matter came for hearing on November 3, 2021, before Deputy Workers' Compensation Commissioner Andrew M. Phillips. Pursuant to an order of the Iowa Workers' Compensation Commissioner related to the COVID-19 pandemic, the hearing occurred via Zoom. The hearing proceeded without significant difficulty.

The record in this case consists of Joint Exhibits 1-7, Claimant's Exhibits 1-8, and Defendants' Exhibits A-F. The claimant testified on his own behalf. The undersigned was asked by defendants to take judicial notice of a 2009 arbitration decision involving the same parties. The claimant did not object. Stephanie Cousins was appointed the official reporter and custodian of the notes of the proceeding. The evidentiary record closed at the end of the hearing, and the matter was fully submitted on December 3, 2021, after briefing by the parties.

STIPULATIONS

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

File No. 19007381.01

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

2. The claimant sustained an injury arising out of, and in the course of, employment, on October 10, 2019.

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

4. That, although entitlement to temporary disability and/or healing period benefits cannot be stipulated, the claimant was off work from June 19, 2020, through September 7, 2020.

5. That the claimant's gross earnings were one thousand seven hundred sixty and 45/100 dollars ($1,760.45) per week, and the claimant was married and entitled to two exemptions, which represents a weekly rate of compensation of one thousand ninety six and 51/100 dollars ($1,096.51).

6. That, with regard to the disputed medical expenses, noted below:

    a. The medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants would not offer contrary evidence.
    b. That although a causal connection of the expenses to the work injury cannot be stipulated, the listed expenses were at least causally connected to the medical condition(s) upon which the claim of injury is based.

7. That, prior to the hearing, the defendant was paid zero weeks of compensation.

8. That the defendants were entitled to credit pursuant to Iowa Code section 85.38(2) for payment of four thousand four hundred eighty five and 67/100 dollars ($4,485.67) in sick pay or disability income.

9. That the defendants were entitled to credit pursuant to Iowa Code section 85.38(2) for medical or hospitalization expenses.

10. That the costs in Claimant's Exhibit 8 were paid.

With regard to this file, the defendants waived their affirmative defenses.

File No. 20700630.01

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

2. The claimant sustained an injury which arose out of, and in the course of employment, on September 20, 2018.

3. That, although entitlement cannot be stipulated, the claimant was off work from June 19, 2020, through September 7, 2020.

4. That the claimant's gross earnings were one thousand six hundred thirty seven and 00/100 dollars ($1,637.00) per week, and that the claimant was married and entitled to two exemptions, which results in a weekly rate of compensation of one thousand eighteen and 24/100 dollars ($1,018.24) per week.

5. That, with regard to the disputed medical expenses, noted below:

    a. The medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants would not offer contrary evidence.
    b. That although a causal connection of the expenses to the work injury cannot be stipulated, the listed expenses were at least causally connected to the medical condition(s) upon which the claim of injury is based.

6. That, prior to the hearing, the defendant was paid zero weeks of compensation.

7. That the defendants were entitled to credit pursuant to Iowa Code section 85.38(2) for payment of four thousand four hundred eighty five and 67/100 dollars ($4,485.67) in sick pay or disability income.

8. That the costs listed in Claimant's Exhibit 8 were paid.

With regard to this file, the defendants waived their affirmative defenses.

File No. 20700631.01

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

2. That, although entitlement cannot be stipulated, the claimant was off work from June 19, 2020, through September 7, 2020.

3. That the claimant's gross earnings were one thousand six hundred fifty and 00/100 dollars ($1,650.00) per week, and that the claimant was married and entitled to two exemptions, which results in a weekly rate of compensation of one thousand twenty five and 77/100 dollars ($1,025.77) per week.

4. That, with regard to the disputed medical expenses, noted below:

    a. The medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the listed expenses and defendants would not offer contrary evidence.
    b. That although a causal connection of the expenses to the work injury cannot be stipulated, the listed expenses were at least causally connected to the medical condition(s) upon which the claim of injury is based.

5. That, prior to the hearing, the defendant was paid zero weeks of compensation.

6. That the defendants were entitled to credit pursuant to Iowa Code section 85.38(2) for payment of four thousand four hundred eighty five and 67/100 dollars ($4,485.67) in sick pay or disability income.

7. That the costs listed in Claimant's Exhibit 8 were paid.

With regard to this file, the defendants waived all of their affirmative defenses but one.

The parties are now bound by their stipulations.

ISSUES

The parties submitted the following issues for determination:

File No. 19007381.01

1. Whether the alleged injury is a cause of permanent disability.

2. Whether the claimant is entitled to temporary total disability, temporary partial disability, or healing period benefits from June 19, 2020, through September 7, 2020.

3. The extent of permanent partial disability benefits, should any be awarded.

4. Whether the disability is a scheduled member disability to right upper extremity only, the bilateral extremities pursuant to Iowa Code section 85.34(2)(t), or an industrial disability.

5. Whether the proper commencement date for permanent partial disability benefits, should any be awarded is October 15, 2020.

6. Whether the claimant is entitled to reimbursement for medical expenses as listed in Claimant's Exhibit 6.

7. With regard to the disputed medical expenses:

    a. Whether the fees or prices charged by providers are fair and reasonable.
    b. Whether the treatment was reasonable and necessary.
    c. Whether the listed expenses were causally connected to the work injury.
    d. Whether the requested expenses were authorized by defendants.

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

9. Whether the claimant is entitled to alternate medical care via treatment with Dr. Buckwalter, pursuant to Iowa Code section 85.27.

10. Whether the claimant is entitled to a specific taxation of costs as itemized in Claimant's Exhibit 8.

File No. 20700630.01

1. Whether the alleged injury is a cause of temporary disability during a period of recovery.

2. Whether the alleged injury is a cause of permanent disability.

3. Whether the claimant is entitled to temporary total disability, temporary partial disability, or healing period benefits from June 19, 2020, through September 7, 2020.

4. The extent of permanent partial disability benefits, should any be awarded.

5. Whether the disability is a scheduled member disability to only the right upper extremity, the bilateral upper extremities pursuant to Iowa Code section 85.34(2)(t), or an industrial disability.

6. Whether the proper commencement date for permanent partial disability benefits, should any be awarded, is October 15, 2020.

7. Whether the claimant is entitled to reimbursement for medical expenses as listed in Claimant's Exhibit 6.

8. With regard to the disputed medical expenses:

    a. Whether the fees or prices charged by providers are fair and reasonable.
    b. Whether the treatment was reasonable and necessary.
    c. Whether the listed expenses were causally connected to the work injury.
    d. Whether the requested expenses were authorized by defendants.

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

10. Whether the claimant is entitled to alternate medical care via treatment with Dr. Buckwalter, pursuant to Iowa Code section 85.27.

11. Whether the claimant is entitled to a specific taxation of costs as itemized in Claimant's Exhibit 8.

File No. 20700631.01

1. Whether the claimant sustained an injury which arose out of, and in the course of employment on February 6, 2019.

2. Whether the alleged injury is a cause of temporary disability during a period of recovery.

3. Whether the alleged injury is a cause of permanent disability.

4. Whether the claimant is entitled to temporary total disability, temporary partial disability, or healing period benefits from June 19, 2020, through September 7, 2020.

5. The extent of permanent partial disability benefits, should any be awarded.

6. Whether the disability is a scheduled member disability to the bilateral upper extremities pursuant to Iowa Code section 85.34(2)(t), or an industrial disability.

7. Whether the proper commencement date for permanent partial disability benefits, should any be awarded, is October 15, 2020.

8. Whether the defendants proved the applicability of an affirmative defense of lack of timely notice pursuant to Iowa Code section 85.23.

9. Whether the claimant is entitled to reimbursement for medical expenses as listed in Claimant's Exhibit 6.

10. With regard to the disputed medical expenses:

    a. Whether the fees or prices charged by providers are fair and reasonable.
    b. Whether the treatment was reasonable and necessary.
    c. Whether the listed expenses were causally connected to the work injury.
    d. Whether the requested expenses were authorized by defendants.

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

12. Whether the claimant is entitled to alternate medical care via treatment with Dr. Buckwalter, pursuant to Iowa Code section 85.27.

13. Whether the claimant is entitled to a specific taxation of costs as itemized in Claimant's Exhibit 8.

FINDINGS OF FACT

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

John Meyer, the claimant, was 56 years old at the time of the hearing. (Testimony). He resides in Dubuque, Iowa. (Testimony). He is married, and has two adult children. (Testimony). His youngest child currently attends college. (Testimony). He is right hand dominant. (Testimony).

Mr. Meyer graduated from Dubuque Senior High School in 1983. (Testimony). He then attended Loras College. (Testimony). While in college, he started working for UPS. (Testimony). He graduated college with a bachelor's degree in management in 1989. (Testimony).

After graduation from Loras College, Mr. Meyer began full time employment with UPS. (Testimony). He has now worked for UPS for 36 years. (Testimony). His first job at UPS was unloading semi-trailers. (Testimony). He did this for five years. (Testimony). This job consisted of picking up packages, putting them on conveyors, and moving packages using his hands. (Testimony).

In 1990, Mr. Meyer became a casual service provider. (Testimony). In this role, he drove a delivery truck and delivered packages to customers. (Testimony). He had the least seniority, so he was provided with a route. (Testimony). Mr. Meyer was a member of a union at UPS, so his rate of pay increased over his time with the company.

(Testimony). When he started as a casual service provider, he worked from about 8:10 a.m., until the last package was delivered. (Testimony).

A casual service provider was considered a heavy labor demand position according to the standards of the U.S. Department of Labor. (Claimant's Exhibit 1:1). It included occasional lifting and carrying between 11 and 70 pounds. (CE 1:1). It also included constant lifting and carrying 1 to 10 pounds. (CE 1:1). Carrying items would constantly be between the waist and shoulder. (CE 1:1). There was occasional work below the waist and above the shoulder. (CE 1:1). The position required frequent sitting, ladder climbing, using a foot pedal, using two hand controls, and using his thumbs. (CE 1:1). The position also required constant walking. (CE 1:1). Mr. Meyer also would have occasionally stood, climbed stairs, and repetitively bent and squatted. (CE 1:1). Another requirement was the ability to deliver 1 to 45 stops per hour depending on the route. (CE 1:2).

He was bitten by a dog, and sustained some superficial lacerations in 1991. (Joint Exhibit 1:1). In 1994, Mr. Meyer fractured his left thumb, which required surgery. (Testimony; JE 1:1). He was given an impairment rating of 10 percent to the thumb and a full duty release. (Testimony; JE 1:8).

On an average day, Mr. Meyer would clock in, attend a driver meeting, perform a brief pre-trip inspection, load any final packages, and depart the UPS facility. (Testimony). He then delivered packages, fueled the truck at the end of the day, returned to the UPS facility, and completed a post-trip inspection to end his day. (Testimony).

By 1996 or 1997, Mr. Meyer earned enough seniority that he could bid to a preferred route. (Testimony). Around that time, the union went on strike, and a cap was placed on how much UPS employees were required to lift. (Testimony).

In 2006, Mr. Meyer had pain in his wrist and forearm. (Testimony). Mr. Meyer had a right wrist carpal tunnel release. (Testimony; JE 7:95-97). He was eventually released to full duty employment. (Testimony). Between this injury and 2018, Mr. Meyer suffered no intervening injuries. (Testimony).

In 2018, Mr. Meyer continued to work as a casual service provider. (Testimony). He noted that he made about 150 to 170 stops on an average day. (Testimony). During peak season, he made 200 to 250 stops per day. (Testimony). His truck required using two hand controls while driving. (Testimony). One hand control was a brake. (Testimony). The other control was a gear shift. (Testimony).

On September 20, 2018, Mr. Meyer was making his normal deliveries along his route. (Testimony). He was carrying two or three packages at an address. (Testimony). He slipped and fell onto both of his hands. (Testimony). He had considerable pain, especially in his right wrist. (Testimony). Mr. Meyer alleges that he reported this to UPS. (Testimony). UPS referred him for conservative care.

(Testimony). Mr. Meyer admitted that his right wrist hurt more than his left wrist, and that his left wrist showed a normal exam. (Testimony). His treatment was to the right wrist. (Testimony).

On September 21, 2018, Mr. Meyer reported to Medical Associates Clinic, P.C., where Emily Armstrong, PA-C, examined him. (JE 1:38-40). Mr. Meyer told Ms. Armstrong that he injured his right wrist while working for UPS on September 20, 2018. (JE 1:38). He reiterated that he slipped on an uneven surface and fell, landing on his right wrist. (JE 1:38). Ms. Armstrong found Mr. Meyer to have moderate swelling in the right hand and wrist with pain rated 3 out of 10. (JE 1:38). Examination of the left wrist showed no issues. (JE 1:39). Mr. Meyer had x-rays of the right wrist at Medical Associates Clinic, P.C. (JE 1:15). The x-ray showed no fracture, and only mild degenerative changes. (JE 1:15). Ms. Armstrong could not rule out a hairline fracture of the navicular bone. (JE 1:39). She recommended he use a thumb spica splint on the right side. (JE 1:39). She issued work restrictions of lifting, pushing, or pulling up to 30 pounds, and gripping or grasping as tolerated. (JE 1:39). However, she allowed him to return to work and drive within the restrictions. (JE 1:39).

Ms. Armstrong saw the claimant on September 28, 2018. (JE 1:35-37). Mr. Meyer wore a splint on the right side, and rated his pain 5 out of 10. (JE 1:35). He worked light duty sorting packages, and tolerated his 30 pound lifting, pushing, or pulling restriction. (JE 1:35). By the end of his day, he felt some soreness in his right wrist. (JE 1:35-36). Upon examination, he showed good grip strength without pain. (JE 1:36). Ms. Armstrong diagnosed Mr. Meyer with acute pain of the right wrist. (JE 1:36). Mr. Meyer could not move his wrist or thumb while in the thumb spica splint. (JE 1:36). Ms. Armstrong recommended that the claimant remain in his thumb spica splint at all times, except when icing. (JE 1:36). Ms. Armstrong released Mr. Meyer to work with restrictions as noted above. (JE 1:36).

Ms. Armstrong examined Mr. Meyer again on October 5, 2018. (JE 1:32-33). Mr. Meyer complained of right wrist pain, which he rated 1 out of 10. (JE 1:32). Mr. Meyer told Ms. Armstrong that he had improvement in range of motion and pain since his last visit. (JE 1:32). He continued to wear a thumb spica splint. (JE 1:32). He tolerated his work restrictions of 30 pounds of lifting/pushing/pulling well. (JE 1:32). Ms. Armstrong noted “satisfactory improvement” since his prior evaluation. (JE 1:33). Ms. Armstrong released Mr. Meyer to work with a restriction of wearing his splint while working for the next week. (JE 1:33). She also restricted him to lifting, pushing, or pulling, a maximum of 50 pounds. (JE 1:33). Effective October 12, 2018, Mr. Meyer could start weaning off his splint. (JE 1:33).

By October 9, 2018, Mr. Meyer was released to regular duty, and achieved maximum medical improvement (“MMI”) on November 2, 2018. (Testimony).

Mr. Meyer returned to Medical Associates Clinic, P.C. on October 19, 2018, due to right wrist pain following an incident on September 20, 2018. (JE 1:30-32). He denied wearing a brace, and told the provider that he was doing well. (JE 1:30). He

displayed a full range of motion to the right wrist and digits with no pain. (JE 1:30). The provider released Mr. Meyer to return to work with no restrictions effective immediately. (JE 1:31). His anticipated date of MMI was November 2, 2018. (JE 1:31). The provider welcomed him to return upon a recurrence of symptoms, but noted that she did not need to see him again. (JE 1:31).

On February 6, 2019, Mr. Meyer continued as a casual service provider. (Testimony). He delivered packages to a home situated on an incline. (Testimony). As he was walking back to his truck, he stepped on black ice. (Testimony). He fell onto his bottom and his hands. (Testimony). He was cautious with his hands after this fall. (Testimony). He testified that he told no one at work about this fall. (Testimony). He sought no medical care at the time, but did tell his chiropractor about his fall. (Testimony). As a result of this fall, he had symptoms in both of his wrists. (Testimony). His left wrist was worse than his right. (Testimony).

Mr. Meyer notified UPS of his wrist pain on October 10, 2019. (Testimony). He did this because he had more severe pain in his wrists that was not improving, and was provoked by repetition. (Testimony). His symptoms began in April or May of 2019, but he would improve on the weekends after rest. (Testimony).

Erin Kennedy, M.D., examined the claimant on October 11, 2019. (JE 1:28-30). Mr. Meyer complained of bilateral wrist and hand pain that occurred at an unknown time while working for UPS. (JE 1:28). He rated his pain 7 to 8 out of 10. (JE 1:28). Dr. Kennedy diagnosed Mr. Meyer with tendinitis of the wrist and hand. (JE 1:29). She referred Mr. Meyer for physical therapy and occupational therapy. (JE 1:16-17). Dr. Kennedy also ordered x-rays of the hand. (JE 1:17-18). The x-rays showed degenerative changes to the metacarpophalangeal joints bilaterally along with radiocarpal joint space narrowing. (JE 1:18). Dr. Kennedy restricted Mr. Meyer to no firm gripping or pinching with either hand, and lifting up to 3 pounds with either hand. (JE 2:41).

On October 25, 2019, Dr. Kennedy examined Mr. Meyer again. (JE 1:25-27). Mr. Meyer indicated no change from his previous visit. (JE 1:26). He had not begun physical therapy, yet. (JE 1:26). His pain was worse on the left than the right. (JE 1:26). Lifting, gripping, and carrying packages increased his pain. (JE 1:26). Upon physical examination, Dr. Kennedy found tenderness to the bilateral wrists in the area of the first compartment tendons. (JE 1:27). Dr. Kennedy diagnosed Mr. Meyer with tendinitis of the wrist and hand. (JE 1:27). She recommended that he stop using Voltaren, and begin physical therapy. (JE 1:27). Finally, she ordered a consult with an orthopedic doctor. (JE 1:27). Dr. Kennedy allowed Mr. Meyer to return to working full duty effective immediately. (JE 2:42). She also noted restrictions of no firm gripping or pinching with either hand, and lifting up to 3 pounds with either hand. (JE 2:42).

Mr. Meyer returned to Dr. Kennedy's office on November 5, 2019, for a recheck of his bilateral wrist and thumb pain. (JE 1:23-25). Mr. Meyer noted little improvement and that the left side was worse than the right. (JE 1:24). He noted feeling better on

the weekends, when he could avoid using his hands. (JE 1:24). Dr. Kennedy diagnosed Mr. Meyer with wrist pain. (JE 1:25). She questioned whether Mr. Meyer's condition was tendinitis versus an arthritic condition. (JE 1:25). Dr. Kennedy recommended that Mr. Meyer stop using Voltaren and continue physical therapy. (JE 1:25). Dr. Kennedy ordered a bilateral wrist MRI. (JE 1:25). Dr. Kennedy allowed Mr. Meyer to return to work with restrictions on November 5, 2019. (JE 2:43). Mr. Meyer was limited to lifting and carrying up to 3 pounds, and avoiding firm gripping or pinching. (JE 2:43).

Mr. Meyer had physical therapy at Medical Associates Clinic, P.C., on December 3, 2019. (JE 4:49). He noted having some time off during the prior week, but that this did not improve his pain in the bilateral wrists. (JE 4:49).

On December 6, 2019, the claimant reported to Medical Associates Clinic, P.C., for physical therapy. (JE 4:47-49). The therapist found no pain on palpation, but Mr. Meyer noted that he had pain when he closed his fingers and forcefully flexed his wrist. (JE 4:47). Mr. Meyer participated in therapy, and tolerated it well. (JE 4:48). Continued physical therapy was on hold until the results of an MRI were reviewed. (JE 4:48-49).

Mr. Meyer had an MRI left wrist arthrogram and MRI right wrist arthrogram at Medical Associates Clinic, P.C., as ordered by Dr. Kennedy, on December 9, 2019. (JE 3:45-46). The imaging of the left wrist showed a tear of the scapholunate ligament, and a deformity and abnormal signal involving the proximal scaphoid pole. (JE 3:45). The interpreting radiologist indicated that this was "worrisome for osteonecrosis." (JE 3:45). The radiologist questioned whether this was secondary to advanced osteoarthritic changes or trauma. (JE 3:45). The MRI of the right wrist showed an abnormal signal involving the proximal scaphoid pole, which the radiologist felt was consistent with osteonecrosis. (JE 3:46). It also showed a tear of the scapholunate ligament, and degenerative signals of the capitate and hamate bones. (JE 3:46).

On December 11, 2019, Dr. Kennedy examined the claimant for his left and right radial wrist pain. (JE 1:21-23). Mr. Meyer complained of unchanged pain, which he rated 3 out of 10. (JE 1:22). The worst pain was in the left radial wrist. (JE 1:22). Dr. Kennedy discussed the results of the December 9, 2019, MRI, which she noted "suggests osteonecrosis of bilat [*sic*] scaphoid and tears of bilat [*sic*] scapholunate ligaments." (JE 1:22). Mr. Meyer told the doctor about his falls in February and March of 2019, which involved impacts to his palms. (JE 1:22). Mr. Meyer further told Dr. Kennedy that the pain began with the first fall and worsened with the second. (JE 1:22). The claimant could continue working, so he did not seek medical care. (JE 1:22). Dr. Kennedy diagnosed the claimant with bilateral wrist pain, and suggested that the claimant likely sustained derangements to his wrists at the time of his falls with increased pain after faulty wrist mechanics impacted his function. (JE 1:23). Dr. Kennedy concluded her note, "[h]e may have falsely assumed that job duties were CAUSING [*sic*] the injury but they were only causing the symptoms of the original injury which was fall with derangements." (JE 1:23). Dr. Kennedy recommended that Mr. Meyer consult with a hand specialist. (JE 1:23). Dr. Kennedy allowed Mr. Meyer to

return to work with restrictions of lifting, carrying, pushing, and pulling, up to 20 pounds. (JE 2:44). Mr. Meyer also was told to avoid firm gripping or pinching. (JE 2:44).

Mr. Meyer reported to ORA Orthopedics on December 17, 2019. (JE 5:52-56). He filled out a medical history form and indicated that he fell in the fall of 2018, and February of 2019. (JE 5:52). He further indicated that he had pain in his bilateral wrists; however, the left was worse than the right. (JE 5:52, 54). He told the provider that he tried to deal with the February of 2019 fall on his own, but he did not see any improvement. (JE 5:54). Upon physical examination, Jonathan Winston, M.D., found limited range of motion of the radiocarpal joint bilaterally. (JE 5:54). Dr. Winston reviewed x-rays which showed "SLAC wrist arthritis between the scaphoid and radius, which is moderate in severity." (JE 5:54). Dr. Winston opined that, if Mr. Meyer had arthritis in 2018, then his fall in 2018 "pre-exacerbated his pre-existing condition, and the fall probably did not cause the arthritis." (JE 5:55). Dr. Winston continued to note that the claimant's arthritis would follow a predictable pattern regardless of activity levels. (JE 5:55). Dr. Winston asked Mr. Meyer to return in one month, and completed the cortisone injection. (JE 5:55). He allowed the claimant to return to work, but indicated that the claimant required assistance in lifting heavy boxes. (JE 5:56).

Dr. Winston wrote a letter to Liberty Mutual dated January 8, 2020. (JE 5:57). In the letter, Dr. Winston confirmed that Mr. Meyer suffered from a pre-existing condition. (JE 5:57). He continued, indicating that the pre-existing condition required three months of conservative treatment to return Mr. Meyer to his pre-existing condition status of "moderate SLAC wrist arthritis." (JE 5:57). Treatment could include a combination of cortisone shots, activity modification, and therapy or bracing. (JE 5:57).

On January 13, 2020, Mr. Meyer was discharged from physical therapy at Medical Associates Clinic, P.C. (JE 4:50-51). The therapist noted that Mr. Meyer displayed improved range of motion and improved strength despite his continued pain complaints. (JE 4:51).

The claimant returned to Dr. Winston's office on January 21, 2020, for treatment of his bilateral wrist SLAC arthritis. (JE 5:58-60). Mr. Meyer continued to experience pain in his wrists and felt that the injections did not provide relief. (JE 5:58). Upon examination, Dr. Winston noted tenderness to palpation to Mr. Meyer's bilateral wrists over the radiocarpal joint space. (JE 5:58). Dr. Winston recommended a trial of Celebrex and wrist braces. (JE 5:58). He also put Mr. Meyer on a 65-pound lifting limit at work. (JE 5:58).

On February 20, 2020, Dr. Winston saw Mr. Meyer again for his bilateral SLAC wrist arthritis. (JE 5:61-63). Mr. Meyer indicated that his left side was worse than the right at the time of the meeting. (JE 5:61). His bilateral wrists continued to cause him significant pain despite the previous cortisone injections, braces, and Celebrex. (JE 5:61). Dr. Winston discussed a potential for a denervation, scaphoid excision, and four-corner fusion. (JE 5:61). Mr. Meyer expressed a desire to proceed with a denervation procedure with arthroscopic styloid excision. (JE 5:61). He understood that this may

only result in a 70 percent to 75 percent relief of his condition. (JE 5:61). Dr. Winston allowed Mr. Meyer to return to work with no restrictions. (JE 5:63).

Dr. Winston authored a missive to Liberty Mutual, dated March 13, 2020. (JE 5:64). Dr. Winston opined that Mr. Meyer was at a baseline for his pre-existing condition, and the surgery discussed during the February 20, 2020, visit was not work related. (JE 5:64). He placed Mr. Meyer at MMI on February 20, 2020. (JE 5:64).

Subsequent to receiving this letter, Liberty Mutual issued a denial as it relates to the right and left wrist injuries allegedly incurred on October 10, 2019. (Defendants' Exhibit C:8-9).

On April 21, 2020, Dr. Winston forwarded another letter to Liberty Mutual. (JE 5:65). With regard to the February of 2019 injury, Dr. Winston placed Mr. Meyer at MMI effective May of 2019. (JE 5:65). Dr. Winston continued by noting that if Mr. Meyer had an injury or aggravation in October of 2019, then the claimant would have achieved MMI in January of 2020. (JE 5:65). Dr. Winston recommended no further treatment related to the work injury. (JE 5:65). However, Dr. Winston indicated that the claimant may require treatment for his non-work related condition. (JE 5:65). Dr. Winston opined that Mr. Meyer suffered no permanent impairment due to his work condition; however, he did have a decreased range of motion and arthritis due to his pre-existing condition. (JE 5:65). Dr. Winston again noted that this was not work related. (JE 5:65).

In April of 2020, Mr. Meyer bid to, and accepted, another UPS position. (Testimony). He testified that he bid to a new position because he struggled with driving the delivery truck and lifting packages. (Testimony). He now works as an international package scanner, also known as an International ODC Clerk. (Testimony). This job is less physically demanding because he does not have to deliver packages. (Testimony). He now sets up loading docks with a dolly, scans international packages, and reviews their paperwork. (Testimony). He processes paperwork, and helps move trucks for the washer. (Testimony). He works 3:00 p.m. to 11:00 p.m. (Testimony). He makes thirty four and 00/100 dollars ($34.00) per hour now, which is less than he earned as a driver. (Testimony). He testified that he is asked to work overtime periodically, but that he turns it down. (Testimony).

On June 18, 2020, Mr. Meyer began care with Joseph Buckwalter, M.D. (JE 6:66-69). Mr. Meyer related his history of falling in 2018 causing wrist pain which resolved until he fell again "sometime in 2019." (JE 6:66). After another fall, he felt worsening wrist pain with activity. (JE 6:66). Dr. Buckwalter noted the results of the MRIs. (JE 6:66). Mr. Meyer told Dr. Buckwalter that his shoulder pain shot up his arm into his shoulder. (JE 6:66). His pain was worse on the left than the right. (JE 6:66). He also had weakness when lifting. (JE 6:66). While sleeping, he had numbness and tingling, especially in the right forearm. (JE 6:66). This numbness and tingling radiates to the right shoulder. (JE 6:66). Upon physical examination, Dr. Buckwalter observed a slight decrease in bilateral wrist flexion. (JE 6:67). Mr. Meyer also reported throbbing pain at the base of his fifth metacarpal, however, the record does not indicate on which

side the throbbing occurred. (JE 6:67). Dr. Buckwalter diagnosed the claimant with bilateral SLAC arthritis and bilateral carpal tunnel syndrome. (JE 6:68). Dr. Buckwalter discussed a left scaphoid excision and four corner fusion to treat the SLAC arthritis. (JE 6:68). Mr. Meyer indicated he would contact Dr. Buckwalter's office if he wished to proceed with that procedure. (JE 6:68). With regard to the bilateral carpal tunnel syndrome, Dr. Buckwalter discussed a surgical release, as well. (JE 6:68).

Mr. Meyer called Dr. Buckwalter's office on June 26, 2020, and indicated that he wished to proceed with a carpal tunnel release surgery and that he did not want to jump through the hoops presented by the workers' compensation process. (JE 6:69). During this call, Mr. Meyer requested that Dr. Buckwalter alter his previous medical record to indicate that the injury was caused by work. (JE 6:69). The nurse explained that she discussed the matter with Dr. Buckwalter, who declined to alter his note, to which the claimant requested that she ask the doctor again. (JE 6:69).

On July 6, 2020, Dr. Buckwalter performed a scaphoid excision and four corner fusion on Mr. Meyer's left wrist. (JE 6:73-76). Mr. Meyer tolerated the procedure well, and was released nonweightbearing with the left upper extremity and with a splint. (JE 6:76).

Mr. Meyer had x-rays done on his left wrist on July 16, 2020, at the University of Iowa. (JE 6:77). The x-ray showed diffuse osteopenia and no evidence of hardware complication after his surgery. (JE 6:77). Jennifer Jungen, PA-C, also examined Mr. Meyer on this date. (JE 6:78). Mr. Meyer continued to have pain and significant edema in his fingers. (JE 6:78). They removed his sutures during the visit. (JE 6:78).

Additional x-rays of the left wrist were done on August 20, 2020. (JE 6:81). The x-rays showed postsurgical changes from the surgery and ongoing fusion. (JE 6:81). Dr. Buckwalter re-examined Mr. Meyer on this date. (JE 6:82-84). Dr. Buckwalter removed the cast on the left wrist. (JE 6:82). Mr. Meyer had achy pain, stiffness, and constant tingling with movement of his fingers. (JE 6:82). He managed pain with Tylenol and asked Dr. Buckwalter about work restrictions. (JE 6:84). Dr. Buckwalter released him to work with a 15-pound lifting restriction, and then to unrestricted work in two weeks. (JE 6:84). Mr. Meyer had an occupational therapy visit on the same day. (JE 6:85-87). The therapist tested the fit of a splint on the left wrist. (JE 6:86).

On September 3, 2020, the claimant reported to urgent care at Medical Associates, P.C., where Marc Dicklin, PA-C, examined him. (JE 1:19-21). Mr. Meyer had swelling to his left fingers after the wrist surgery. (JE 1:19). His fingertips were painful along the nails. (JE 1:19). He was also examined for a commercial driver medical examination. (JE 1:21).

Mr. Meyer returned to Dr. Buckwalter's office on October 15, 2020. (JE 6:89-92). Mr. Meyer complained of a lack of strength and range of motion after the surgery. (JE 6:89). Dr. Buckwalter recommended that Mr. Meyer continue physical therapy for range of motion and strengthening. (JE 6:91).

On December 4, 2020, Dr. Buckwalter spoke to claimant's counsel. (JE 6:93). Subsequent to that conversation, he authored a letter to claimant's counsel. (JE 6:93). In the letter, Dr. Buckwalter explained that he told the claimant that in order to proceed with a workers' compensation claim, the claimant would need to establish causation of his injury by his position with UPS. (JE 6:93). The claimant told Dr. Buckwalter that he understood this. (JE 6:93). Dr. Buckwalter opined that the left wrist was worse than the right due to scapholunate advanced collapse (SLAC) of the wrist. (JE 6:93). Because Dr. Buckwalter managed the claim without a workers' compensation claim, he declined to address causation. (JE 6:93). Dr. Buckwalter was careful to note that his position did not confirm or challenge the issue of causation. (JE 6:94).

The claimant retained Robert Rondinelli, M.D., Ph.D., C.I.M.E., for the purpose of conducting an IME. (CE 3:4-17). Dr. Rondinelli is board certified by the American Board of Physical Medicine and Rehabilitation. (CE 3:19). Dr. Rondinelli reviewed Mr. Meyer's medical records. (CE 3:4-17). Dr. Rondinelli noted Mr. Meyer's fall on September 20, 2018, at which time he landed on both wrists and hands with his arms, forearms and wrists outstretched. (CE 3:5). Mr. Meyer complained of residual pain in the right upper extremity around his wrist, "like a wrist band." (CE 3:8). Pain also radiated from the dorsum of the wrist to the upper-outer arm and behind the right shoulder. (CE 3:8). His left upper extremity no longer had pain extending proximally to the upper-outer arm and shoulder. (CE 3:8). He claimed a loss of range of motion after the fusion. (CE 3:8). His pain increased while lifting parcels repetitively. (CE 3:8). Mr. Meyer told Dr. Rondinelli that his surgical outcome on the left was favorable in terms of pain control; however, he still had residual weakness. (CE 3:9). He expressed an interest in having surgery on his right hand after his left hand improved further. (CE 3:9). Dr. Rondinelli measured Mr. Meyer's maximum grip strength on the right side at 84 pounds, and on the left side at 64 pounds. (CE 3:10). Mr. Meyer also displayed a mild trigger in his left fourth metacarpophalangeal joint with forced flexion of the fist. (CE 3:10). Dr. Rondinelli found a positive Tinel sign on the right wrist at the radial styloid process. (CE 3:10).

Dr. Rondinelli diagnosed Mr. Meyer with right wrist scapholunate advanced collapse ("SLAC") associated with osteonecrosis of the bone, status post left wrist scaphoid excision with four corner fusion with significant resolution of the left upper extremity pain, and residual right wrist pain in the absence of surgery. (CE 3:11). Dr. Rondinelli opined that Mr. Meyer had two work-related traumatic events, and that, due to his work in a highly repetitive, physically challenging occupation, and exposure to inclement or icy conditions, made it "conceivable" that Mr. Meyer sustained the falls on September 20, 2018, and February 6, 2019. (CE 3:11). Dr. Rondinelli further opined that the SLAC issues could occur either with or without trauma, and that it was medically probable that Mr. Meyer suffered "sufficient direct trauma to both wrists to give rise to the osteonecrosis of bone." (CE 3:11-12). Even if Mr. Meyer had an underlying vascular defect, or other predisposition to avascular necrosis of the bone, it would also be medically probable that the separate injuries and collective overuse accelerated the avascular necrosis of the bone. (CE 3:12).

Dr. Rondinelli opined that Mr. Meyer achieved MMI with respect to the left upper extremity. (CE 3:12). With respect to the right hand, Dr. Rondinelli noted that if the claimant is "disinclined to undergo the additional surgery on his right side, I will also consider him at MMI for his right sided work-related condition at that time." (CE 3:12). Based upon Figure 16-28 in the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Dr. Rondinelli provided a 2 percent impairment to the right upper extremity due right wrist flexion limited to 45 degrees. (CE 3:13). He also opined that Mr. Meyer displayed left wrist flexion of 20 degrees, which translated to 7 percent permanent impairment to the left upper extremity. (CE 3:13). Mr. Meyer's right wrist extension of 40 degrees translates to a 4 percent upper extremity impairment. (CE 3:13). His left wrist extension is 35 degrees provides a 4 percent upper extremity impairment. (CE 3:13). Any right and left wrist radial deviation equaled zero percent upper extremity impairment. (CE 3:13). Any right wrist ulnar deviation also provided a zero percent upper extremity impairment. (CE 3:13). His left wrist ulnar deviation of 25 degrees equated to a 1 percent upper extremity impairment. (CE 3:13). Dr. Rondinelli totaled up the impairment ratings and opined that the right wrist sustained a 6 percent upper extremity impairment. (CE 3:13). He further opined that the left wrist sustained a 12 percent upper extremity impairment. (CE 3:13). Dr. Rondinelli then addressed a separate estimate of upper extremity impairment after a carpal arthroplasty, including the left wrist scaphoid excision with a four corner fusion. (CE 3:13). According to Dr. Rondinelli, this qualified Mr. Meyer for a 10 percent left upper extremity impairment rating. (CE 3:13). When this rating was considered with the range of motion impairments, Dr. Rondinelli concluded that Mr. Meyer sustained a 21 percent left upper extremity impairment along with the 6 percent right upper extremity impairment rating. (CE 3:13).

With regard to the right hand and right upper extremity, Dr. Rondinelli felt that Mr. Meyer had yet to achieve MMI. (CE 3:13). Dr. Rondinelli further opined that Mr. Meyer would benefit from the surgery despite his apprehension. (CE 3:13). Dr. Rondinelli concluded that Mr. Meyer should be allowed to continue working modified duty indoors, moving packages on horizontal conveyors at waist level for an indefinite period of time. (CE 3:14). Mr. Meyer testified that Dr. Rondinelli's IME was a thorough examination. (Testimony).

On October 13, 2021, at the request of the defendants' counsel, Dr. Winston issued impairment ratings pursuant to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. (DE F:13). Dr. Winston based his opinions on the medical records from Dr. Buckwalter and the University of Iowa. (DE E:11-12; DE F:13). Based upon these records, Dr. Winston provided a 12 percent upper extremity impairment raring to the left wrist, which equated to a 7 percent whole person impairment rating. (DE F:13). Dr. Winston did not address causation in his letter.

Mr. Meyer testified that he has lingering stiffness in his left hand. (Testimony). Physically demanding things and certain movements hurt his left and right hands. (Testimony). He wears a brace on both wrists while working at UPS. (Testimony).

CONCLUSIONS OF LAW

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

File No. 20700631.01 – Affirmative Defense – Notice

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940).

Iowa Code section 85.23 provides that an injury is not compensable unless, within ninety (90) days of the "date of the occurrence of the injury," either (1) the employer had actual knowledge of the occurrence of an injury, or (2) notice of the occurrence of an injury was provided to the employer. On July 1, 2017, "date of the occurrence of the injury" was defined to mean "the date that the employee knew or should have known that the injury was work related." Iowa Code section 85.23.

The purpose of this rule is to give the employer an opportunity to timely investigate the facts surrounding the injury. Defendants often read this to strictly require the defendants to have actual notice rather than constructive or imputed notice. However, the second part of Iowa Code section 85.23 allows for something less than actual notice. When an employer as a reasonably conscientious manager is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related meets the actual notice alternative to notice. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Dept. of Transp., 296 N.W.2d 809 (Iowa 1980). Actual knowledge must include information that the injury might be work connected, but does not require claimants to include the specific body parts injured or the specific word "injury." Robinson, 296 N.W.2d at 811.

"[T]he date that the employee knew or should have known that the injury was work related" is a more stringent standard. Iowa Code section 85.23. Courts have yet to interpret this new portion of the statute; however, previous arbitration decisions of this agency have addressed this change. In Stiles v. Annett Holdings, Inc., d/b/a TMC Transportation, File No. 5064673 (Arb. November 15, 2019), the deputy commissioner indicated that "[t]he new statutory provisions for notice and statute of limitations are consistent with the discovery rule that has been followed in workers' compensation cases in Iowa for many years." Additionally, in an appeal decision, the Commissioner stated, "I conclude the Legislature's amendments to Iowa Code sections 85.23 and 85.26 codified the judicial precedent establishing the cumulative injury rule/manifestation test, but did not abrogate the discovery rule." Carter v. Bridgestone Americas, Inc., File No. 1649560.01 (App. July 8, 2021). Under the discovery rule, the period "does not begin to run until the claimant knows or in the exercise of reasonable diligence should know 'the nature seriousness and probable compensable character' of his or her injury." Baker v. Bridgestone/Firestone, 872 N.W.2d 672, 685 (Iowa 2015).

The claimant must have actual or imputed knowledge of all three elements before the statute begins to run. Swartzendruber v. Schimmel, 613 N.W.2d 646, 650-651 (Iowa 2000).

In this matter, the claimant testified that he delivered packages to a home situated on an incline on February 6, 2019. When he was returning to his truck, he slipped on black ice. He fell backwards onto his bottom with his hands hitting the ground. He bruised his hands and wrists in a similar manner to what happened in September of 2018. Mr. Meyer testified that after the injury, he was cautious with his hands and thought that he could "just get by until they healed."

He further testified that if his wrists bothered him enough, he "would have let them know." "Them" in the context of his testimony meant UPS. Mr. Meyer admitted that he never told anyone in a supervisory capacity at UPS about the February 6, 2019, incident. He worked through it, and did not seek medical attention until a later time when he told his chiropractor. He did not seek medical attention until October 10, 2019, and he did not contact UPS about his pain that he attempts to relate to the February 6, 2019, incident until October 10, 2019. He further testified that he noticed symptoms in April and May that would worsen on Wednesday through Friday and then improve without work on the weekend. At that time, he had more pain which did not go away on the weekends.

Mr. Meyer had a previous work injury resulting from a fall in September of 2018. He clearly understood that an injury occurring at work was compensable. It follows that he understood that his injury was compensable as soon as it occurred on February 6, 2019. He may not have understood the seriousness of the injury until April or May of 2019, when his symptoms persisted through the weekend. Based upon the evidence in the record, he understood the nature of the injury sometime between February and May of 2019. He testified that he did not tell anyone at UPS. Further, he continued working. He provided no testimony that he complained of pain to anyone at UPS, nor did he tell anyone that he fell on February 6, 2019.

Based upon the information in the record, the claimant did not provide adequate notice to UPS within 90 days of the February 6, 2019, injury. Additionally, the discovery rule indicates that the latest date that could arguably apply to the notice requirement would have been in April or May of 2019. It was not until October 10, 2019, that the claimant reported his injury and this alleged injury date to UPS. This is more than 90 days after "May of 2019." There is also no information in the record that UPS could have had constructive notice of the February 6, 2019, injury. Therefore, the claim related to the February 6, 2019, injury is not compensable based on Iowa Code section 85.23 due to the claimant's failure to provide notice of the alleged injuries within 90 days. Any questions or issues related to that date of injury are moot and will not be discussed further.

Temporary Disability and/or Healing Period Benefits

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

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

Iowa employers take an employee subject to any active or dormant health problems, and must exercise care to avoid injury to both the weak and infirm and the strong and healthy. Hanson v. Dickinson, 188 Iowa 728, 176 N.W. 823 (1920). While a claimant must show that the injury proximately caused the medical condition sought to be compensable, it is well established that a cause is "proximate" when it is a substantial factor, or even the primary or most substantial cause to be compensable under the Iowa workers' compensation system. Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994); Blacksmith v. All-American, Inc., 290 N.W.2d 348 (Iowa 1980).

As a general rule, "temporary total disability compensation benefits and healing-period compensation benefits refer to the same condition." Clark v. Vicorp Rest., Inc., 696 N.W.2d 596 604 (Iowa 2005). The purpose of temporary total disability benefits and healing period benefits is to "partially reimburse the employee for the loss of earnings" during a period of recovery from the condition. Id. The appropriate type of benefits depends on whether or not the employee has a permanent disability. Dunlap v. Action Warehouse, 824 N.W.2d 545, 556 (Iowa Ct. App. 2012).

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is disabled by the injury.

Iowa Code 85.33(1) provides

> [T]he employer shall pay to an employee for injury producing temporary total disability weekly compensation benefits, as provided in section 85.32, until the employee has returned to work or is medically capable of returning to employment substantially similar to the first employment in which the employee was engaged at the time of injury, whichever occurs first.

Temporary total disability benefits cease when the employee returns to work, or is medically capable of returning to substantially similar employment.

Iowa Code 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 first of the three items to occur ends a healing period. See Waldinger Corp. v. Mettler, 817 N.W.2d 1 (Iowa 2012); Evenson v. Winnebago Indus., 881 N.W.2d 360 (Iowa 2012); Crabtree v. Tri-City Elec. Co., File No. 5059572 (App., Mar. 20, 2020). 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, 312 N.W.2d 60 (Iowa App. 1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986). Compensation for permanent partial disability shall begin at the termination of the healing period. Id.

The parties dispute whether the injury sustained on September 20, 2018, was a cause of temporary disability. The parties stipulated that, if temporary disability benefits were awarded, they would run from June 19, 2020, through September 7, 2020.

On September 20, 2018, the claimant fell forward onto both of his hands. He initially reported complaints to his bilateral wrists. During his initial examination, the provider noted no abnormalities to the left wrist. Mr. Meyer also testified that he had no issues with the left wrist. The care provided to the claimant following the September 20, 2018, incident all centered around his right wrist. The claimant wore a thumb spica splint and was given restrictions to work limited duty. By October 9, 2018, he was released to work regular duty, and achieved MMI by November 2, 2018. The provider told him to return if his symptoms worsened; however, he never returned.

The claimant then alleges another fall in February of 2019. I previously determined that Iowa Code section 85.23 bars the claimant from recovering for this alleged fall. The claimant then alleges a cumulative trauma with a manifestation date of October 10, 2019.

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of

trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part of all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or unusual occurrence. Injuries which result from cumulative trauma are compensable. However, increased disability from a prior injury, even if brought about by further work, does not constitute a new injury. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by Iowa Code 85A is specifically excluded from the definition of personal injury. Iowa Code 85.61(4)(b); Iowa Code 85A.8; Iowa Code 85A.14.

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the facts may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. 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 defendants argue in their posthearing briefs that the October 10, 2019, date of injury appears to be a fictitious "catch-all" for symptoms related to the February 6, 2019, fall. While I found that Iowa Code section 85.23 barred the claimant from recovering for that date of injury, there is still substantial information in the record regarding that date of injury and the claimant's condition after that fall. When treating physician Dr. Kennedy was informed of the February of 2019 fall, she noted that Mr. Meyer likely sustained an injury at that time, followed by improvement which subsequently deteriorated due to faulty wrist mechanics. Based upon the evidence in the record, it appears that the claimant injured himself on February 6, 2019, when he fell on his hands. He continued working, and his disability increased over time until he sought treatment in October of 2019. He testified that his pattern of pain began after his 2019 fall, and was consistent from the time of the fall through the time of his treatment in October of 2019. This is not a "new" injury for the purposes of a cumulative trauma. I agree with the defendants' argument that the October 10, 2019, date of injury is an attempt to have a "catch-all" for symptoms stemming from the February 6, 2019, fall.

As a result of the above injuries, the claimant alleges that he was off work from June 19, 2020, through September 7, 2020. During this time, he was recovering from a surgery to his left wrist. Based upon the evidence in the record, I find that the September 20, 2018, injury caused a temporary disability to the claimant's right wrist. There is not sufficient evidence in the record to prove that the September 20, 2018,

injury caused a period of temporary disability to the left wrist. The evidence in the record indicates that the left wrist and subsequent surgical intervention thereto were either caused or lit up by the February 6, 2019, fall, which I determined was not compensable. Therefore, the claimant shall take nothing further regarding temporary disability.

Permanent Disability

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

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

Again, there are multiple dates of injury to consider. The first consideration is whether the September 20, 2018, injury is a proximate cause of permanent disability. The claimant achieved MMI on November 2, 2018, for his treatment. He was released to regular duty and returned to work. The provider told Mr. Meyer that if he had any lingering or worsening issues, he could return for continued care. I find that the September 20, 2018, fall did not cause permanent disability.

The claimant did not seek additional care until after his alleged October of 2019, date of injury. In the interim, the claimant fell on February 6, 2019. Mr. Meyer testified that he had pain and soreness in his wrists after this fall. He testified that he thought time would heal his wounds. His pain and symptoms ended up increasing until he decided to seek treatment in October of 2019. Based upon the information in the record, it appears that the February 6, 2019, fall either caused the claimant's bilateral wrist complaints or lit up the claimant's previously healed left wrist issue. Considering I

previously found that the February 6, 2019, fall is not compensable based upon a lack of timely notice by the claimant, the claimant is not able to recover for any permanent disability that stems from the injuries suffered in that fall.

Based upon the evidence in the record, I find that the September 20, 2018, incident was not a cause of permanent disability. I also find that the October 10, 2019, date of alleged injury was not a cause of permanent disability. I find that the February 6, 2019, fall was the cause of any permanent disability. Therefore, the claimant shall take nothing regarding his claims for permanent disability.

Alternate Care

Iowa Code 85.27(4) provides, in relevant part:

> For purposes of this section, the employer is obligated to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care…. The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

Iowa Code 85.27(4). See Pirelli-Armstrong Tire Co. v. Reynolds, 562 N.W.2d 433 (Iowa 1997).

"Iowa Code section 85.27(4) affords an employer who does not contest the compensability of a workplace injury a qualified statutory right to control the medical care provided to an injured employee." Ramirez-Trujillo v. Quality Egg, L.L.C., 878 N.W.2d 759, 769 (Iowa 2016) (citing R.R. Donnelly & Sons v. Barnett, 670 N.W.2d 190, 195, 197 (Iowa 2003)). "In enacting the right-to-choose provision in section 85.27(4), our legislature sought to balance the interests of injured employees against the competing interests of their employers." Ramirez, 878 N.W.2d at 770-71 (citing Bell Bros., 779 N.W.2d at 202, 207; IBP, Inc. v. Harker, 633 N.W.2d 322, 326-27 (Iowa 2001)).

The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening, October 16, 1975). An employer's right to select the provider of medical treatment to an injured worker does not include the right to determine how an injured worker should be diagnosed, evaluated, treated, or other matters of professional medical judgment. Assmann v. Blue Star Foods, File No. 866389 (Declaratory Ruling,

May 19, 1988). Reasonable care includes care necessary to diagnose the condition, and defendants are not entitled to interfere with the medical judgment of its own treating physician. Pote v. Mickow Corp., File No. 694639 (Review-Reopening, June 17, 1986).

The employer must furnish "reasonable medical services and supplies *and* reasonable and necessary appliances to treat an injured employee." Stone Container Corp. v. Castle, 657 N.W.2d 485, 490 (Iowa 2003)(emphasis in original)). Such employer-provided case "must be offered promptly and be reasonable suited to treat the injury without undue inconvenience to the employee." Iowa Code section 85.27(4).

By challenging the employer's choice of treatment - and seeking alternate care – claimant assumes the burden of proving the authorized care is unreasonable. See e.g. Iowa R. App. P. 14(f)(5); Bell Bros. Heating and Air Conditioning v. Gwinn, 779 N.W.2d 193, 209 (Iowa 2010); Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995). An injured employee dissatisfied with the employer-furnished care (or lack thereof) may share the employee's discontent with the employer and if the parties cannot reach an agreement on alternate care, "the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order the care." Id. "Determining what care is reasonable under the statute is a question of fact." Long, 528 N.W.2d at 123; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. As the party seeking relief in the form of alternate care, the employee bears the burden of proving that the authorized care is unreasonable. Id. at 124; Gwinn, 779 N.W.2d at 209; Pirelli-Armstrong Tire Co., 562 N.W.2d at 436. Because "the employer's obligation under the statute turns on the question of reasonable necessity, not desirability," an injured employee's dissatisfaction with employer-provided care, standing alone, is not enough to find such care unreasonable. Id.

The claimant requests continued care with Dr. Buckwalter, the surgeon who performed the claimant's left wrist surgery. I previously determined that the claimant suffered no permanent impairment to his right wrist due to the September 20, 2018, fall. I also determined that the claimant suffered injuries to his bilateral wrists due to a noncompensable fall on February 6, 2019. Finally, I concluded that the October 10, 2019, alleged injury and/or cumulative trauma claim was related to the February 6, 2019, fall, and thus not compensable. Based upon the fact that the noncompensable February 6, 2019, fall appears to have either been the cause, or the incident that lit up the claimant's underlying bilateral carpal tunnel, I decline to award alternate care in this matter.

Medical Reimbursement and Mileage

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Iowa Code 85.27. Holbert v.

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

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

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

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

The employee has the burden of proof in showing that treatment is related to the injury. Auxier v. Woodard State Hospital-School, 266 N.W.2d 139 (Iowa 1978), Watson v. Hanes Border Company , No. 1 Industrial Comm'r report 356, 358 (1980) (claimant failed to prove medical charges were related to the injury where medical records contained nothing related to that injury) See also Bass v Vieth Construction Corp., File No 5044430 (App. May 27, 2016)(Claimant failed to prove causal connection between injury and claimed medical expenses); Becirevic v Trinity Health, File No. 5063498 (Arb. December 28, 2018) (Claimant failed to recover on unsupported medical bills)

Nothing in Iowa Code section 85.27 prohibits an injured employee from selecting his or her own medical care at his or her own expense following an injury. Gwinn, 779 N.W.2d at 205 (Iowa 2010). In order to recover the reasonable expenses of the care, the employee must still prove by a preponderance of the evidence that unauthorized care was reasonable and beneficial. Id. The Court in Gwinn concluded that unauthorized medical care is beneficial if it provides a "more favorable medical outcome than would likely have been achieved by the care authorized by the employer." Id.

The defendants declined to reimburse the claimant for medical care incurred subsequent to Dr. Winston's letter opining that the medical care related to the left wrist was not work related and that the claimant achieved MMI for the October 10, 2019, alleged injuries as of February 20, 2020. According to the defendants, the medical care

was paid for by the claimant's group health insurance. The claimant requests reimbursement for medical care related to injuries he sustained to his left wrist including a surgical intervention. I previously determined that the left wrist injuries were related to the February 6, 2019, fall. I also determined that this was not compensable based upon Iowa Code section 85.23. Therefore, the claimant is not entitled to reimbursement for medical care and/or mileage related to the February 6, 2019, fall.

Reimbursement of IME Expenses of Dr. Rondinelli

Iowa Code 85.39(2) states:

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

Iowa Code section 85.39(2).

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008). An opinion finding a lack of causation is tantamount to a zero percent impairment rating. Kern v. Fenchel, Doster & Buck, P.L.C., 2021 WL 3890603 (Iowa App. 2021).

Dr. Winston first indicated his opinion that Mr. Meyer's issues were pre-existing on January 8, 2020. He reiterated the opinion on February 20, 2020, and March 13, 2020. In an April 21, 2020, letter Dr. Winston again opined that the claimant had achieved MMI and had not sustained any permanent impairment. On May 27, 2021, Dr. Rondinelli examined Mr. Meyer, and subsequently issued an IME report. Dr. Rondinelli

billed three thousand seven hundred fifty and 00/100 dollars ($3,750.00) for the examination and report. (CE 7). Based upon the information in the record, the defendants shall reimburse the claimant for the cost of Dr. Rondinelli's IME.

Costs

Claimant seeks the award of costs as outlined in Claimant's Exhibit 8. Costs are to be assessed at the discretion of the deputy commissioner hearing the case. See 876 Iowa Administrative Code 4.33; Iowa Code 86.40. 876 Iowa Administrative Code 4.33(6) provides:

> Costs taxed by the workers' compensation commissioner or a deputy commissioner shall be (1) attendance of a certified shorthand reporter or presence of mechanical means at hearings and evidential depositions, (2) transcription costs when appropriate, (3) costs of service of the original notice and subpoenas, (4) witness fees and expenses as provided by Iowa Code sections 622.69 and 622.72, (5) the costs of doctors' and practitioners' deposition testimony, provided that said costs do not exceed the amounts provided by Iowa Code sections 622.69 and 622.72, (6) the reasonable costs of obtaining no more than two doctors' or practitioners' reports, (7) filing fees when appropriate, including convenience fees incurred by using the WCES payment gateway, and (8) costs of persons reviewing health service disputes.

Pursuant to the holding in Des Moines Area Regional Transit v. Young, 867 N.W.2d 839 (Iowa 2015), only the report of an IME physician, and not the examination itself, can be taxed as a cost according to 876 IAC 4.33(6). The Iowa Supreme Court reasoned, "a physician's report becomes a cost incurred in a hearing because it is used as evidence in lieu of the doctor's testimony," while "[t]he underlying medical expenses associated with the examination do not become costs of a report needed for a hearing, just as they do not become costs of the testimony or deposition." Id. (nothing additionally that "[i]n the context of the assessment of costs, the expenses of the underlying medical treatment and examination are not part of the costs of the report or deposition"). The commissioner has found this rationale applicable to expenses incurred by vocational experts. See Kirkendall v. Cargill Meat Solutions Corp., File No. 5055494 (App., December 17, 2018); Voshell v. Compass Group, USA, Inc., File No. 5056587 (App., September 27, 2019).

In my discretion, I decline to award costs in this matter.

ORDER

THEREFORE, IT IS ORDERED:

That the claimant shall take nothing further for temporary disability benefits.

That the claimant shall take nothing further for permanent disability benefits.

That the claimant's petition for alternate medical care is denied.

That the claimant shall not be reimbursed for the requested medical expenses and mileage.

That the defendants shall reimburse the claimant three thousand seven hundred fifty and 00/100 dollars ($3,750.00) for the IME of Dr. Rondinelli.

That the parties shall bear their own costs.

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

Signed and filed this __24th___ day of January, 2022.

ANDREW M. PHILLIPS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Nick Avgerinos (via WCES)

Lara Plaisance (via WCES)

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