

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JASON HILLS,  
Claimant,

vs.

JOHN DEERE DES MOINES WORKS,  
Employer,  
Self-Insured,  
Defendant.

File No. 5052067

ARBITRATION  
DECISION

Head Note Nos.: 1100, 1108

STATEMENT OF THE CASE

Claimant, Jason Hills, filed a petition for arbitration seeking workers' compensation benefits from John Deere Des Moines Works.

The matter came on for hearing on December 16, 2015, before Deputy Workers' Compensation Commissioner Joseph L. Walsh in Des Moines, Iowa. The record in the case consists of Claimant's Exhibits 1 through 10; Defense Exhibits A through I; and the sworn testimony of claimant, Jason Hills. The parties briefed this case and the matter was fully submitted on January 7, 2016. Roxann Zuniga was appointed as the official reporter of the proceedings.

ISSUES & STIPULATIONS

The claimant alleges he sustained a cumulative injury for the employer which arose out of and in the course of employment. The claimant alleges the injury manifested on either January 31, 2014 (the date initially used by the employer) or February 28, 2014 (the claimant's first date of lost work). The employer disputes that a cumulative injury occurred or that it was the cause of any permanent or temporary disability. The claimant alleges entitlement to healing period benefits from March 12, 2014, through June 3, 2014. The employer disputes this, however, acknowledges that if it is liable for the injury, claimant is entitled to healing period benefits for this period of time. The claimant further alleges entitlement to permanent partial disability benefits for a 12 percent loss of use of his bilateral upper extremities. The employer disputes this, however, the parties stipulate that any permanent disability should be calculated pursuant to section 85.34(2)(s). The parties further stipulate that the commencement date for permanent partial disability is June 4, 2014. The elements which comprise the rate of compensation are stipulated and the parties contend the appropriate rate of compensation is \$644.28 per week. There are no affirmative defenses. Claimant

alleges entitlement to medical benefits which are disputed based upon causal connection. The parties stipulate that the claimant was paid "weekly indemnity" benefits for 11.286 weeks and the employer is entitled to a credit for these payments.

#### FINDINGS OF FACT

The claimant, Jason Hills lives in Ankeny, Iowa with his wife and two children and two step children. Jason is 39 years old at the time of hearing. He served in the Army National Guard until June 2013. Jason works for John Deere Des Moines Works. He began working for Deere in August 2011. He described his job duties leading up to the alleged work injury as follows.

Claimant's injuries were caused by the repetitive work he performed. His duties included assembling batwings, or metal plates and pipes that are put together with screws, nuts and bolts. This required extensive use of both hands and arms, sometimes all day, every day for up to six days a week.

(Cl. Ex. 10, p. 55)

Jason was laid off from October 2013 through January 2014. He was not particularly active when he was not working. When he returned to work on January 6, 2014, he performed the job that involved assembling bat wings. He used a torque wrench or a torque gun to assemble the pieces. Shortly after he began performing this job, he started having pain in his bilateral hands. He described the work in detail at his deposition and his account was consistent at hearing.

Jason first complained about his bilateral hands on February 21, 2014. (Cl. Ex. 1, p. 1) The following is documented.

S: Has complaints of bilat hand pain. States that it started a couple weeks ago and has been getting worse to the point that he is having a hard time sleeping. Started bothering him when he worked in Dept. 31 assembling [sic] bat wings. This week he was moved to Dept. 30A doing the light assembly on the back of sprayers. He states that his left hand is worse than his right. He is right hand dominant. Both hands feel weak and he has been having trouble gripping and grasping. His forearm on the left side feels "tight" and he has some N/T into both his thumbs and part of his index fingers. He has been taking 600mg ibuprofen up to four times a day and has not tried to use ice. Denies any previous problems. States that he uses a lot of vibrating tools.

(Cl. Ex. 1, p. 1)

Deere presented payroll evidence that, after January 6, 2014, Jason missed quite a bit of work between his return date, January 6, 2014, and the date his hands began hurting, February 21, 2014. (Def. Ex. H, p. 44)

Nicholas Bingham, M.D., evaluated Jason on February 28, 2014.

S: The patient is here for worker's comp new injury. The patient is an assembler at John Deere. He was called back from layoff in mid-January. Along the first part of February, he started to feel pain in his bilateral hands along with some tingling in the right hand. He had been icing his hands at the plant clinic but has not restricted his duties. At night, the symptoms become so severe that he cannot sleep secondary to pain and paresthesias. The patient denies any outside work activity that would contribute to this, although plant personnel do tell me that he does play games on his phone at times. The patient tells me that they have been working 12-hour shifts so he largely just comes home, eats, and relaxes until it is time for bed. He has been wearing night splints.

(Cl. Ex. 2, p. 5) Dr. Bingham diagnosed bilateral carpal tunnel syndrome and tendinitis. He ordered occupational therapy, prescribed medications and restricted his activities. (Cl. Ex. 2, p. 6)

Jason completed occupational therapy, but his symptoms did not improve. (Cl. Ex. 3) On March 17, 2014, Dr. Bingham wrote a memo to the file wherein he opined that Jason's condition was not related to his work activities. "At this time, I do not feel that the patient's problems are related to a mere 8 shifts of production duty." (Cl. Ex. 2, p. 7) The claim was apparently denied at this point.

The parties have stipulated that the claimant went off work on March 12, 2014, through June 3, 2014. (Hearing Report) This stipulation is accepted and is binding upon the parties. Jason sought treatment on his own through the Veterans' Administration (hereafter, V.A.). He had an EMG, which showed bilateral carpal tunnel. (Cl. Ex. 4, p. 24) He had surgery on the left side on April 21, 2014, and the right side on May 5, 2014. (Cl. Ex. 4, pp. 28-30) He recuperated and was released without restrictions on June 3, 2014. (Cl. Ex. 4, p. 33) Claimant was paid benefits through a non-occupational disability policy during his time off and the parties have stipulated to a credit. That stipulation is accepted and is deemed binding upon the parties.

Jason was evaluated by Eugene Cherny, M.D., in November 2014. Dr. Cherny reviewed all of the relevant medical records and took a detailed history from Jason. (Cl. Ex. 5, pp. 38-39) He performed a thorough evaluation as well. (Cl. Ex. 5, pp. 40-41) Dr. Cherny clearly understood that Jason had not been working long before he developed the pain and symptoms in his hands and arms. (Cl. Ex. 5, p. 40) Nevertheless, he opined that the work activities "did aggravate his compression neuropathies in his bilateral upper extremities." (Cl. Ex. 5, p. 40) He further opined that Jason had suffered a loss of function in his bilateral upper extremities rated at 12 percent of his body as a whole. (Cl. Ex. 5, pp. 41-42)

In November 2015, Jason was seen for a defense evaluation by Joshua Kimelman, D.O. Dr. Kimelman, like Dr. Cherny, is highly qualified to evaluate upper

extremity injuries. He reviewed medical records and examined Jason. He opined that Jason had not worked long enough and the work was not repetitive enough to cause the carpal tunnel. (Def. Ex. E, pp. 34-35)

### CONCLUSIONS OF LAW

The first issue in this case is whether the claimant suffered a cumulative injury which arose out of and in the course of his employment, and if so, what is the date of injury?

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.

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 or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 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 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 finding of an injury is a minimal standard. By a preponderance of evidence, I find that Jason suffered an injury to his bilateral arms, which manifested on or about February 28, 2014, the date he first received medical treatment and restrictions from a physician for this condition. At that time, the work was clearly causing his hands and wrists to hurt such that he required medical treatment. (Def. Ex. E, p. 34)

The real fighting issue in this case is whether the injury which manifested on February 28, 2014, meets the medical causation standards. In other words, did this injury cause (as defined by Iowa law) any temporary or permanent disability or his need for medical treatment?

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).

By a preponderance of evidence, I find that the claimant has suffered a cumulative work injury which resulted in the diagnosis of bilateral carpal tunnel syndrome. He has met his burden of proof that his repetitive work activities were a substantial factor in his condition of bilateral carpal tunnel syndrome. Deere has repeatedly contended that Jason only worked "8 shifts" prior to complaining of pain in his arms. Jason returned to work at Deere in early January 2014. The first documented complaint of the condition was on February 21, 2014, when he went to the medical department. He filled out an injury report on February 28, 2014, where he appeared to estimate the date his symptoms first began, which was used as the working "injury date." Jason, however, did not have any restrictions from work until he saw Dr. Bingham on February 28, 2014.

Having heard all of the evidence presented and having reviewed all of the exhibits submitted by both parties, I find that the evidence supports the claimant's position. The claimant's expert clearly understood that the repetitive activity occurred over the course of a relatively short time frame. I find the opinion of Dr. Cherny more compelling than the opinion of Dr. Kimelman. The evidence demonstrated the work was repetitive and it was the type of work likely to cause a cumulative trauma injury.

The next issue is the nature and extent of claimant's disability, and specifically, the extent of his entitlement to temporary and permanent disability benefits.

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. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

The parties have stipulated that the claimant was off work for specified periods of time while recuperating from surgery. Jason was off work recovering from surgery between the dates March 12, 2014, and June 3, 2014. He is entitled to healing period during that period of time.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Since the location of the disability is the bilateral hands and arms, the compensation is dictated by Iowa Code section 85.34(2)(s) (2015).

By a preponderance of evidence, I adopt the rating of Dr. Cherny as the best reflection of claimant's functional losses in his bilateral arms, hands and thumbs. (Cl. Ex. 5) Dr. Cherny's opinion is most consistent with the claimant's ongoing complaints of pain and symptoms of disability found in the record. Therefore, I find the claimant has suffered a permanent functional loss of 12 percent of the body as a whole. Twelve percent of 500 weeks is 60 weeks. I conclude that the claimant is entitled to 60 weeks of benefits for the permanent functional disability in his bilateral hands and arms under Iowa Code section 85.34(2)(s).

The next issue is medical expenses.

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 section 85.27 (2013).

Since I have found medical causation between the claimant's injury and his bilateral carpal tunnel condition, I find he is owed the reasonable and necessary medical expenses to treat the injury.

Claimant is entitled to an order of reimbursement only if he has paid treatment costs; otherwise, to an order directing the responsible defendants to make payments directly to the provider. See Krohn v. State, 420 N.W.2d 463 (Iowa 1988). Defendants should also pay any lawful late payment fees imposed by providers. Laughlin v. IBP, Inc., File No. 1020226 (App., February 27, 1995).

#### ORDER

#### THEREFORE IT IS ORDERED:

Defendant shall pay weekly healing period benefits to the claimant commencing March 12, 2014, through June 3, 2014, at the stipulated weekly compensation rate of six hundred forty-four and 28/100 dollars (\$644.28).

Defendant shall pay the claimant sixty (60) weeks of permanent partial disability benefits at the stipulated weekly compensation rate of six hundred forty-four and 28/100 dollars (\$644.28) commencing on June 4, 2014.

Defendant shall pay accrued weekly benefits in a lump sum.

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

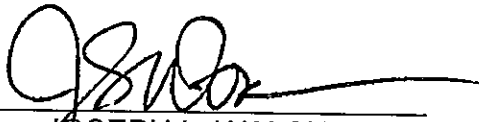
Defendant shall be given credit as stipulated for eleven point eighty-six (11.86) weeks paid at four hundred forty-three and 00/100 dollars (\$443.00) per week.

Defendant is responsible for reasonable and necessary medical expenses associated with this claim.

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

Costs are taxed to defendant.

Signed and filed this 26<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
JOSEPH L. WALSH  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER

Copies to:

Jason Neifert  
Attorney at Law  
1441 – 29<sup>th</sup> St., Ste. 111  
West Des Moines, IA 50266  
[jneifert@nbolawfirm.com](mailto:jneifert@nbolawfirm.com)

Joseph A. Quinn  
Attorney at Law  
700 Walnut St., Ste. 1600  
Des Moines, IA 50309-3899  
[jquinn@nyemaster.com](mailto:jquinn@nyemaster.com)

JLW/sam

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