

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ENES OMERHODZIC,

Claimant,

vs.

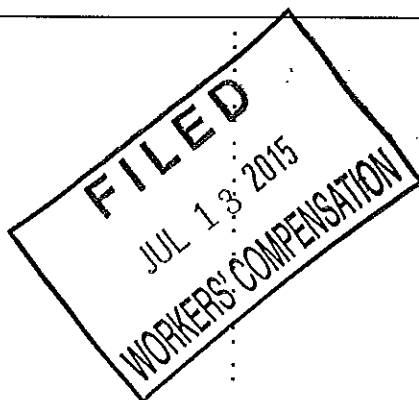
PITNEY BOWES, INC.,

Employer,

and

INDEMNITY INS. CO. OF
N. AMERICA,

Insurance Carrier,
Defendants.



File No. 5043219

ARBITRATION
DECISION

Head Note Nos.: 1108, 3001

STATEMENT OF THE CASE

Enes Omerhodzic, claimant, filed a petition in arbitration seeking workers' compensation benefits from Pitney Bowes, Inc., employer, and Indemnity Insurance Company of North America, insurance carrier. Hearing was held on March 20, 2015, in Des Moines, Iowa.

Claimant was the only witness testifying live at trial. Mr. Omerhodzic testified via interpreter, Zeljka Krvavica. The evidentiary record also includes claimant's exhibits 1-84 and defendants' exhibits A-M and O-V. Defendants offered exhibit N, the first report of injury, but this was objected to by defendants as irrelevant. Pursuant to Iowa Code section 86.11 the first report of injury was not admitted into evidence. The parties submitted a hearing report at the commencement of the evidentiary hearing. On the hearing report, the parties entered into certain stipulations. Those stipulations are accepted and relied upon in this decision. No findings of fact or conclusions of law will be made with respect to the parties' stipulations.

The parties requested the opportunity for post-hearing briefs, which were received by the agency on April 20, 2015.

ISSUES

The parties submitted the following issues for resolution:

1. Whether claimant sustained injury to his right arm, shoulder, neck, and/or mental sequela as a result of the September 22, 2009 work injury.
2. The nature and extent of claimant's permanent partial disability, including whether claimant is permanently and totally disabled and/or an odd-lot employee.
3. Claimant's gross weekly earnings at the time of the injury.
4. Whether claimant is entitled to payment of past medical expenses.
5. Whether claimant is entitled to reimbursement for the IME charges.
6. Assessment of costs.

FINDINGS OF FACT

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

Claimant is asserting injury to his right thumb, right arm, right shoulder, neck, and mental sequela. Defendants admit injury to the right thumb but deny any other injury. I find claimant has sustained an injury to his right hand but has failed to prove by a preponderance of the evidence that he sustained any injury beyond his right hand.

The parties submitted extensive medical records in this matter. Although all of the evidence has been reviewed by the undersigned only the more pertinent records will be highlighted in this decision.

Mr. Omerhodzic testified that he was very healthy when he began working for Pitney Bowes in June of 2009, approximately three months before the date of injury at issue. He worked as a sweeper, a fast-paced job in which he had to remove mail from a line and place in boxes. He testified that he had to work "very, very fast, and there was a lot of lifting." (Transcript page 21) He also said there were very heavy things that he had to lift. He had to use both hands to perform his job. He is right-hand dominant. (Testimony)

There is no dispute that Mr. Omerhodzic sustained an injury to his right thumb on September 22, 2009. He was sorting and grabbing the mail from the line and putting it in the box next to him. He testified that "at one point when I grabbed, I felt a horrible pain that really felt as if someone had hit me with a baseball bat. My whole arm and my hand swelled, and I really almost fainted." (Tr. p. 23) That same day he was seen in the Mercy Hospital Emergency Room for his left thumb. He reported he was pulling a heavy object when his hand cramped up. He was assessed with a left thumb sprain. (Exhibit A) On September 29, 2009, he was seen at Concentra for follow-up of his right thumb. The assessment was tenosynovitis of the right thumb. The note indicates he had been on restricted duty but feels he is ready to return to regular duty. (Ex. B) On

October 14, 2009, he was seen again at Concentra with right thumb pain. He reported he was doing well until today when he started to develop the same thumb symptoms. He was restricted to no use of his right hand. (Ex. 84) He returned to left-handed only work. Although the boxes were a bit smaller and the work a bit easier the work was still difficult because he could only use one hand. He continued to have pain and swelling and was not able to work more than five or six hours. (Tr. pp. 27-28)

On November 17, 2009, Mr. Omerhodzic saw Ronald Bergman, D.O. for consultation for right thumb pain. Dr. Bergman felt he had a right trigger thumb and would benefit from a trigger thumb release. (Ex. C, p. 1)

On November 17, 2009, Mr. Omerhodzic was given an employee disciplinary slip due to attendance issues. (Ex. P, p. 6) Mr. Omerhodzic testified he missed work because he was sick with a cold. (Tr. p. 28) Upon further questioning by his counsel Mr. Omerhodzic agreed that he was also experiencing some problems with his right hand at that time. (Tr. p. 28) Mr. Omerhodzic then clarified his answer by stating, "When I called sick, my right arm does not have anything to do with it." (Tr. p. 28) Mr. Omerhodzic's introductory period at work ended on September 30, 2009. At that time the employer generated a 90-Day Progress Report; his attendance was noted as "unacceptable." (Ex. P, p. 5)

Dr. Bergman performed a trigger thumb release on December 14, 2009. (Ex. C, p. 2) Mr. Omerhodzic testified that after the surgery he tried to talk Dr. Bergman into letting him go back to work right away. However, according to Mr. Omerhodzic, Dr. Bergman said he needed to go home and rest a few days because the anesthesia was very, very strong. There is no documentation in the record which indicates Dr. Bergman took the claimant off of work during this time. Mr. Omerhodzic testified that when he did go back to work he was fired. (Tr. p. 30) He then applied for and received unemployment benefits.

Mr. Omerhodzic saw Dr. Bergman on December 22, 2009. Evidently, Mr. Omerhodzic had not been notified that he needed to be moving his fingers frequently. Dr. Bergman recommended he begin physical therapy. He asked to see him back in approximately two weeks and anticipated discharging Mr. Omerhodzic from his care at that time. (Ex. 3, p. 3) It was at this time that Dr. Bergman took claimant off work for three weeks. (Ex. 3, p. 4) When claimant returned to see Dr. Bergman on January 12, 2010, he was noted to have improved with therapy. (Ex. 3, p. 5) On February 1, 2010, the physical therapist sent a letter to Dr. Bergman advising that Mr. Omerhodzic was reporting burning in his right hand, and numbness in his elbow and hand. The therapist noted that on that day the patient had worn a glove because his hand felt hot. The therapist discharged the patient because he had reached his therapy goals. (Ex. 6, pp. 12-13) Dr. Bergman's February 2, 2010, clinical note indicates that over the last ten days he had been having pain and tingling into his right hand and fingers. Dr. Bergman recommended EMGs. (Ex. 3, p. 6)

The EMGs were carried out on March 23, 2010. There was no evidence of right median or ulnar nerve entrapment. There was also no evidence of axonal loss to the right upper extremity muscles to suggest an acute radiculopathy. (Ex. E, pp. 1-2)

Mr. Omerhodzic returned to see Dr. Bergman on March 30, 2010. Dr. Bergman noted that he had "been totally non-compliant." Claimant was not using his splint nor was he taking Motrin as he had been instructed. Dr. Bergman reviewed the EMG which showed no evidence of carpal tunnel syndrome. (Ex. 3, p. 7) By early April Mr. Omerhodzic was doing better. He was wearing his splint and had no pain or paresthesias and no locking of the thumb. Dr. Bergman did not have any further recommendations for Mr. Omerhodzic but advised that if his symptoms continued he should seek a second opinion. (Ex. 3, p. 8; Ex. C, p. 5)

Mr. Omerhodzic presented at Broadlawns Medical Center on July 12, 2010. He reported arm pain on his right side for the past two weeks. The onset was acute. He also reported a stiff neck and numbness in his right arm. On examination his neck and upper extremities were noted to have full range of motion. The diagnoses at that time were arm pain and cervical radiculopathy. (Ex. 7, pp. 15-16)

On August 4, 2010, Dr. Bergman saw Mr. Omerhodzic to determine permanency for his work injury of September 22, 2009. Dr. Bergman noted that Mr. Omerhodzic had partial sensory loss to all of his fingers including the thumb and was also present throughout the palmar surface of the hand and into the forearm. However, due to the comprehensive nature of the sensory loss Dr. Bergman did not feel that the impairment was due to his trigger finger or the release. Thus, he did not assign any impairment for abnormal sensation. He did assign impairment based on abnormal motion of the right thumb. Based on chapter 16 of the AMA Guides Dr. Bergman assigned three percent permanent impairment of the right thumb. Dr. Bergman noted that his grip and pinch strength were assessed and were "WFL in the (R) hand and no additional impairment was issued." (Ex. 4, pp. 9-10)

Mr. Omerhodzic returned to Broadlawns on September 8, 2010 for epigastric pain. He was also seen for right arm pain which he reported having for nine months. Mr. Omerhodzic did not relate this pain to any specific injury. (Ex. I, p. 2) He was seen again at Broadlawns on November 3, 2010, for follow-up of his gastritis, H. pylori infection. He reported he had right shoulder and neck pain; he denied any specific injury to that area. He also reported that he felt his medication for depression was making him worse. He was anxious and could not sleep. The assessment at that time was strain of neck muscles. (Ex. 9, pp. 18-21)

On February 3, 2011, Mr. Omerhodzic was seen again at Broadlawns for follow-up of gastroesophageal reflux disease, pinworm infestation, right arm numbness and pain. He reported that his neck pain radiated down his right arm with paresthesias in his arm and fingers. According to Mr. Omerhodzic this began after a work incident in September of 2009. However, the clinical note indicates that when this provider first saw the patient he could not recall how the pain and numbness started. The note

further states that at this February visit the patient was now reporting that he has a sensation of tingling or that his skin is crawling. Mr. Omerhodzcic also reported concern about some tremor which he feels has gotten worse since he started omeprazole. An MRI of the C-spine was ordered. His hydrocodone prescription was also refilled. (Ex. 9, pp. 22-25) The cervical MRI was carried out on February 15, 2011. There were no herniated or lateralizing disc abnormalities noted. (Ex. 10, p. 27)

On March 31, 2011, claimant returned to Broadlawns with abdominal pain, neck pain, poor sleep, and forgetfulness. The notes indicate that the patient did not understand how he could continue to have pain yet his MRI was normal. Also, Mr. Omerhodzcic believed his forgetfulness was due to his lack of sleep. He was referred to psychiatry for his anxiety and depression. (Ex. 11, pp. 28-30)

On May 11, 2011, Mr. Omerhodzcic was seen at Broadlawns Emergency Department and reported right side shoulder pain for two years. He reported a gradual onset that started with repetitive work. He said that even though he was no longer working, his symptoms did not improve. (Ex. 12, p. 31)

Mr. Omerhodzcic was seen again at Broadlawns on May 20, 2011 for "multiple issues." He continued to have anxiety and depression, significant reflux symptoms, sore throat and cough, significant arm and neck pain, and intermittent chest pains. (Ex. 12, pp. 33-34)

On June 1, 2011, Mr. Omerhodzcic was seen at Broadlawns for an initial psychiatric evaluation by Kisik Kim, M.D. According to the notes, Mr. Omerhodzcic reported that he injured his head at Pitney Bowes in 2001, had surgery and then upon returning to work he was fired. The notes also indicate he had been seen by Christopher R. Matson, D.O. who had him taking Paxil and Zolpidem. Mr. Omerhodzcic reported extreme anger and resentment before being dismissed from his job. He reported he was reluctant to go outside. The tentative diagnosis at that time was depressive disorder and a global assessment of functioning was 45. His medications were adjusted and he was told to follow up in six to eight weeks. (Ex. 13, pp. 35-36)

On July 9, 2011, Mr. Omerhodzcic again reported to the emergency department of Broadlawns. He reported right arm pain and was requesting hydrocodone. He was told that the emergency room does not fill or refill chronic pain medications. (Ex. 14, p. 37)

On July 31, 2011, Mr. Omerhodzcic returned to see Dr. Kim at Broadlawns reporting depression and paranoid thinking. He was sleeping better and his mood seemed to be brighter. He was advised to follow up in three months. (Ex. 15, pp. 39-41)

On August 15, 2011, he was seen by Dr. Matson for "significant right upper extremity weakness, paresthesias. Continues to have right-sided neck pain." (Ex. 17, p. 44) The doctor noted that the MRI was reviewed and was a fairly benign report. (Ex. 17, pp. 15-48) He was seen again at Broadlawns on August 22, 2011, this time in the

emergency department. He reported right shoulder pain for the past two years. He was scheduled for physical therapy and an EMG. (Ex. 18, pp. 49-50) Another EMG and nerve condition testing were carried out on August 25, 2011. All the findings were within normal limits. (Ex. E, pp. 3-4)

On August 17, 2011, Mr. Omerhodzic filed a claim for disability due to "nerve damage in right arm and the right side of the neck." (Ex. R, p. 1) It was Mr. Omerhodzic's contention that he had been unable to work since December 15, 2009. In the Disability Determination Explanation it was noted that Philip Ascheman, Ph.D. opined that Mr. Omerhodzic showed no evidence of limitations in attention, concentration, memory or judgment. He also felt that he would be able to interact appropriately with supervisors, coworkers, and the general public. (Ex. R, p. 2) The report noted his right arm and neck pain. It was determined that Mr. Omerhodzic did not have any physical or mental problems that would significantly impact his ability to work and therefore, he was not found to be disabled. (Ex. R, p. 9) Mr. Omerhodzic's claim was again denied upon reconsideration. (Ex. R)

On September 9, 2011, Mr. Omerhodzic was seen at Broadlawns for an orthopedic evaluation by Frank Butera, D.O. He reported he had an injury two years ago while shuffling envelopes and developed a right hand problem and had right hand surgery. The doctor noted that there was a small scar on his right hand which was well healed with no sequelae. Mr. Omerhodzic reported that "after that he went to physical therapy and used a Cybex machine, which has now, he claims, caused him pain in his right shoulder." (Ex. 19, p. 51) The doctor noted that he had not undergone physical therapy for many months and was still claiming that he has pain and tenderness in his right shoulder, into his neck and occasionally his back. At the time of this September 2011 visit he also complained of headaches and had a tremor in his right and left hand. Dr. Butera noted that the cervical MRI was essentially negative and the right upper extremity EMG was negative. The doctor assessed him with right shoulder rotator cuff tendinitis/impingement syndrome; right trapezial spasm, paravertebral muscular spasm in the thorax region; and recurrent headaches and longstanding tremor. He recommended a neurology consult for the headaches and tremor. With regard to his right shoulder he recommended physical therapy. He restricted him from overhead motions and repetitive type motions, especially in the overhead position. (Ex. 19, pp. 51-55)

Mr. Omerhodzic underwent physical therapy at Broadlawns from September 15, 2011 through September 27, 2011. During this time he complained of headaches. (Ex. 21) Mr. Omerhodzic returned to the emergency department of Broadlawns on October 3, 2011, with neck pain and headaches. He reported that the neck pain was something new. He also reported muscle tightness in the right paracervical area. He was assessed as having tension headaches and paracervical muscle strain. He was given Flexeril and told to take Tramadol as instructed by Dr. Matson, and to use ice. (Ex. 22, pp. 64-65) Mr. Omerhodzic continued with physical therapy at Broadlawns. On October 20, 2011, Mr. Omerhodzic reported to therapy that his right shoulder and neck

pain was 10/10. He did not feel therapy was helping. It was recommended that he continue with home exercises. (Ex. 23, pp. 68-69; Ex. J)

On November 29, 2011, Mr. Omerhodzic was examined as part of a Social Security Disability evaluation. Dennis Weis, M.D. evaluated the claimant and noted that the general exam was entirely normal. Dr. Weis also noted that Mr. Omerhodzic's credibility was eroded. (Ex. R, p. 5) As part of the SSD evaluation Mr. Omerhodzic was also seen by Myrna Tashner, Ed.D. in December of 2011. She did not feel that there was any evidence of a mental health disorder. She did find evidence of malingering. (Ex. R, p. 6)

Mr. Omerhodzic was seen at Broadlawns Neurology Clinic on December 5, 2011 by Wendy A. Waldman, M.D. for neck and arm pain. Mr. Omerhodzic reported he had a work injury in 2009 where he hurt his right hand. He believes some of the neck pain and headaches started during physical therapy when his shoulder popped out. An EMG nerve conduction study of the right arm was recommended along with Gabapentin for general pain and headache. (Ex. 25, pp. 74-74)

On December 13, 2011, Mr. Omerhodzic was seen for a psychological evaluation by Dr. Ascheman. The appointment was at the request of the Disability determination Services Bureau. Dr. Ascheman reviewed the records that were provided to him. Dr. Ascheman concluded that Mr. Omerhodzic did not display evidence of a mental health disorder. He did find evidence to support malingering for memory. Mr. Omerhodzic denied depression, and he did not identify feelings of anxiety. Dr. Ascheman felt there was no evidence of limitations in attention, concentration, memory, or judgment. Dr. Ascheman stated that he demonstrated a very socially outgoing nature, and Mr. Omerhodzic would be expected to be capable of interacting appropriately with others. He opined that there were no cognitive limitations and that Mr. Omerhodzic was also capable of managing his own funds. (Ex. G)

Mr. Omerhodzic was seen at the Orthopedic Clinic of Broadlawns on December 16, 2011, for right shoulder pain. He reported that since 2010 he has had right shoulder pain. He believes this began during occupational therapy, especially after performing bike exercise where he would peddle with his hands. At the December appointment he reported his pain was 10/10 at its worse and occurs with any sort of movement of his right shoulder. Mr. Omerhodzic indicated that due to pain he was unable to go through range of motion with his shoulder. An MRI was recommended. (Ex. 26)

On January 12, 2012, additional EMG and NCV testing was done. Again the test results were normal. (Ex. E, pp. 5-6)

Mr. Omerhodzic continued to follow up with various departments of Broadlawns. On January 16, 2012, he returned to the neurology clinic with complaints of headache, neck and shoulder pain. He had undergone an EMG of his right upper extremity the previous week and that was negative. A higher dose of Gabapentin was tried. (Ex. 28)

A January 20, 2012 MRI of the right shoulder was normal. (Ex. 29) On January 23, 2012, Mr. Omerhodzic returned to Broadlawns for abdominal pain, depression and headaches. He noted he had been feeling depressed recently. In late December he found out he was denied for disability. (Ex. 30) On January 24, 2012, Mr. Omerhodzic was seen at Broadlawns for an outpatient psychological assessment. He reported sleeping only two to three hours per night. There was mention that he loves to cook, but due to his concentration/fumbling behavior his wife prefers that he not be in the kitchen. Because of his depression and physical ailments he applied for Social Security Disability but was denied. Evidently, he became more depressed after the denial. Mr. Omerhodzic reported that he had submitted well over 200 applications for work but has not received any job offers. According to Mr. Omerhodzic some employers expressed concern over his physical issues. He was assessed with anxiety and severe recurrent major depression without psychotic features. He was scheduled for a psychiatric review. (Ex. 31) He continued to follow up at Broadlawns for mental health treatment.

By July of 2012, Mr. Omerhodzic reported that his antidepressant was working well and he was feeling less depressed. He continued to have numbness in his right hand fingertips as well as being unable to use his right arm. The note indicates that he had completed all the necessary reviews by the attending doctors at Broadlawns. Mr. Omerhodzic then asked that a "phone call be made to his disability attorney to outline a strategy." (Ex. 41, p. 130)

On February 8, 2012, he was seen at Broadlawns for an orthopedic visit for his right shoulder, neck, and hand pain. The MRI showed no significant pathology of the shoulder; thus, there was nothing that ortho was able to do for him. He was referred back to his primary care provider, psychiatrist, and neurologist. (Ex. 33)

Mr. Omerhodzic continued to be seen by Broadlawns with complaints of headaches, right upper extremity pain, right shoulder, and neck pain. He saw Dr. Matson on October 31, 2012, to discuss his chronic pain and numbness. He reported no significant change. The note indicates he was applying for disability due to chronic pain. The doctor felt that given his current pain and level of functioning he would be unable to have any meaningful employment. Dr. Matson continued to treat him conservatively. (Ex. 43) When he saw Dr. Matson on December 28, 2012, the two of them agreed to a pain clinic referral due to the lack of improvement in his symptoms. (Ex. 45)

At the request of his attorney claimant was seen by Sunil Bansal, M.D. for an IME on November 2, 2012. Dr. Bansal reviewed the medical records which were provided to him and also examined Mr. Omerhodzic. He reported constant pain in his right arm, shoulder, and neck with severe sharp radiating pain. Dr. Bansal noted that his right hand was darker in color, sweats more, and had less hair than the left hand. Mr. Omerhodzic reported numbness of all his fingers on the right hand, pain in right shoulder, and a significant decrease in the range of motion of his right arm. Mr. Omerhodzic also reported that he could not see out of his right eye and had lost the

feeling on the right side of his face. Additionally, he said he had pain and swelling in his right leg. Mr. Omerhodzic feels as though the entire side of his right body has been affected. He also reported frequent headaches. Mr. Omerhodzic reported that his right shoulder pain can easily get as high as 10/10; he reported he had even passed out due to his severe pain.

On examination Dr. Bansal noted full range of motion of the right shoulder with extension, adduction, external rotation, and abduction. Dr. Bansal diagnosed right trigger thumb. Dr. Bansal causally related this to the work injury of September 22, 2009. He agreed with Dr. Bergman that Mr. Omerhodzic reached MMI on August 4, 2010. He did not feel any additional diagnostic procedures or medical treatment was indicated. Dr. Bansal did not agree with Dr. Bergman's impairment rating. He felt that claimant's right hand grip and pinch strength were substantially diminished. (Ex. 69, p. 276) He assigned 20 percent impairment of the right upper extremity; the equivalent of 22 percent of the hand. He restricted Mr. Omerhodzic to no lifting greater than 10 pounds occasionally, 5 pounds frequently with the right hand. Dr. Bansal felt that he simply did not have the grip strength to lift more. He also restricted him to no frequent squeezing, pinching, grasping, pushing or pulling with the right hand in order to avoid further damage to his hand. Dr. Bansal also felt claimant had right shoulder rotator cuff tendinitis and impingement, which he attributed to the work injury, specifically to the physical therapy. (Ex. 69, p. 27) Dr. Bansal noted that during therapy Mr. Omerhodzic was using a "pedaling machine" with his right arm. Dr. Bansal was not sure why part of rehab for a thumb would include arm bicycling. (Ex. 69, p. 278) Dr. Bansal then recommended additional testing for the shoulder and assigned 2 percent permanent impairment to the whole person and restrictions due to his right shoulder. However, Dr. Bansal later determined that the impairment to the shoulder was merely temporary. (Ex. 69, p. 277; Ex. 70, p. 284) It is Dr. Bansal's opinion that claimant had significant pain which was likely to continue. (Ex. 69, p. 280)

Mr. Omerhodzic was seen at Broadlawns on April 2, 2013 for medication management of depression. He reported he had been turned down for disability three times and he had lost faith in the process. (Ex. 48)

On May 21, 2013, Mr. Omerhodzic was seen at Broadlawns Pain Management Clinic by Karen A. Mellody, ARNP for consultation regarding right shoulder and neck pain which was present since 2009. He described his pain as constant dull aching. He also described a sharp pain that radiates through his right arm and up his shoulder into his neck. Additionally, he reported having bouts of syncope with pain. The notes indicate that the review of systems was "remarkable for chest pain, swelling of the feet and legs, shortness of breath, insomnia, difficulty sleeping, weight gain, joint pain, neck pain, decreased urine flow, headaches, depression, and loss of appetite." (Ex. 49, p. 165) The assessment was arthralgia of the upper arm and shoulder pain. His medications were adjusted. (Ex. 49)

At the end of August 2013, Mr. Omerhodzic was seen again at the Pain Management Clinic for follow-up of his chronic right shoulder and neck pain. Since his

prior visit he had a violation of his clinic agreement; he ran out of his medications about nine days early. Due to the clinic violation it was determined that he must be off opiates for up to six months. Thus, the Oxycodone was stopped and he was prescribed Tramadol for pain. (Ex. 54)

At the request of his attorney Mr. Omerhodzic was seen by Eva Christiansen, Ph.D. for a psychological evaluation on May 12, 2014. She opined that Mr. Omerhodzic's mental status included a moderately severe major depressive disorder, panic disorder with agoraphobia, and pain disorder with physical and psychological factors. She found that his GAF score was 50. Dr. Christiansen felt that the workplace injury was a significant factor in bringing about or worsening the diagnoses. She reasoned that none of the diagnoses were present prior to the injury, "so that the injury and ensuing developments, including his loss of employment and loss of identity as a good worker, brought about his current mental health conditions." (Ex. 72, p. 289) She opined that his attitude, anxious avoidance and constant pain would make it impossible for Mr. Omerhodzic to return to work at the level he did prior to the injury. She felt at this point he was not capable of competitive employment and he could benefit from mental health counseling. (Ex. 72)

On July 13, 2013, Dr. Bergman opined that the only injury sustained by Mr. Omerhodzic was to his right thumb. It was still his opinion that the three percent impairment to the right thumb and the release to full duty was appropriate. Given the described mechanism of injury and his findings Dr. Bergman saw "no basis to support any type of causal connection between the 09/22/09 work accident and the alleged (R) arm, (R) shoulder, neck, or mental injury complaints." (Ex. C, p. 8)

On January 31, 2014, Mr. Omerhodzic was seen at the request of the defendants for an IME by orthopedic surgeon, William C. Jacobson, M.D. In addition to examining Mr. Omerhodzic, Dr. Jacobson also reviewed his medical records. Dr. Jacobson opined that Mr. Omerhodzic did not sustain an injury to his right shoulder. Dr. Jacobson was unable to come up with a plausible diagnosis to explain the right shoulder symptoms and the findings of his examination. Dr. Jacobson further stated that the mechanism of injury described by Mr. Omerhodzic was not consistent with a shoulder injury. Additionally, he did not feel that Mr. Omerhodzic sustained an injury as a result of the post-injury physical therapy. He opined that Mr. Omerhodzic did not require any temporary or permanent restrictions for his right shoulder. (Ex. D)

On February 4, 2015, Mr. Omerhodzic was seen for a neuropsychological assessment at the University of Iowa Hospitals and Clinics with Daniel Tranel, Ph.D. In addition to the assessment Dr. Tranel also reviewed extensive medical records. At the time of the examination Mr. Omerhodzic reported significant difficulty with pain in his right arm that affected his sleep and other daily activities. Additionally, he reported poor memory, difficulty concentrating, occasional word-finding problems, and significant depression and anxiety. (Ex. F, p. 10) Dr. Tranel noted that the University's evaluation of Mr. Omerhodzic indicated a "profound over-reporting of physical, psychological, and cognitive symptoms." He did not pass the symptom validity testing for cognitive or

psychological complaints.” (Ex. F, p. 13) Dr. Tranel concluded, “within a reasonable degree of neuropsychological and psychological certainty, that Mr. Omerhodzic does not have any mental condition caused by, attributable to, or aggravated by the 9/22/09 work incident.” (Ex. F, p. 13) Dr. Tranel felt Mr. Omerhodzic had a Somatic Symptom Disorder that was not caused by or attributable to the September 22, 2009, workplace incident. Dr. Tranel disagreed with Dr. Christiansen’s diagnostic suggestions and speculates they were inaccurate due to incomplete information about the patient. Dr. Tranel opined that Mr. Omerhodzic was employable at the same level he was prior to the September 22, 2009 work incident. (Ex. F)

On March 5, 2015, Timothy P. Olson, M.D. authored a letter to Mr. Omerhodzic’s attorney. Dr. Olson stated that his current psychiatric diagnosis for Mr. Omerhodzic was depression. He indicated he had previously entertained the diagnosis of somatoform disorder, but he abandoned that diagnosis. He felt that the patient’s depression was stable and chronic. Dr. Olson suspected that Mr. Omerhodzic may have had “a vulnerability to depression prior to his work injury, but the injury and subsequent loss of employment certainly aggravated his depression contributing to a worsening of his mental and physical condition.” (Ex. 68, p. 258) Dr. Olson opined that Mr. Omerhodzic was not able to work due to his psychological condition. He felt he would not have the stress tolerance or stamina to work in a competitive setting. Dr. Olson recommended medication management and pain management along with supportive psychotherapy during exacerbations of his condition. (Ex. 68, p. 258)

At hearing claimant testified that he continues to have problems with his hand and shoulder. He testified that he has had continuous pain in his arm since the work accident. He testified that he still has continuous swelling and numbness, especially in his fingers. He testified he always feels like his right upper extremity is not part of his body. He has pain in his hand, fingers, and also in his right shoulder radiating through his arm.

There is no dispute that claimant sustained a compensable injury to his right thumb. However, there is a dispute regarding the extent of permanency he sustained as a result of that injury. Dr. Bergman is the doctor who treated Mr. Omerhodzic’s thumb over a long period of time and ultimately performed the trigger thumb release procedure. It is his opinion that Mr. Omerhodzic sustained three percent impairment of his right thumb due to abnormal motion. He released Mr. Omerhodzic to full duty. (Ex. C, pp. 6-8) Dr. Bergman confirmed his opinions on July 29, 2013. Dr. Bansal also addressed the issue of permanency with regard to claimant’s right thumb. He examined the claimant and opined that Mr. Omerhodzic sustained 22 percent impairment of his hand. (Ex. 69)

In the present case I find the opinions of Dr. Bergman to be persuasive. Dr. Bergman provided extensive treatment to Mr. Omerhodzic, including surgery. Dr. Bergman had the advantage of seeing the patient on numerous occasions over a period of approximately ten months. He examined the patient both before and after surgery. Therefore, I find that as a result of the September 22, 2009, work injury

Mr. Omerhodzic sustained three percent permanent partial disability to his thumb. I further find that he does not have any restrictions placed on his activities as a result of the thumb injury. I also find that he reached maximum medical improvement on August 4, 2010.

The next issue to be addressed is whether claimant sustained injury to his right arm, shoulder, neck, and/or mental sequela as a result of the September 22, 2009, work injury. With regard to Mr. Omerhodzic's allegations that he sustained physical injury beyond his thumb I find the preponderance of the evidence does not support his claim. Dr. Bergman, Dr. Jacobson, and Dr. Bansal all agree that there is no evidence of any physical injury beyond the right thumb.

In the present case I find the opinions of Dr. Jacobson, an orthopedic surgeon, to be persuasive. Dr. Jacobson reviewed the medical records provided to him regarding Mr. Omerhodzic's treatment and personally examined him on January 31, 2014. Dr. Jacobson was unable to find a plausible diagnosis for the reported right shoulder symptoms. It was further his opinion that the described mechanism of injury was not consistent with a shoulder injury. Also, Dr. Jacobson's opinion is consistent with the extensive diagnostic testing that has been performed on Mr. Omerhodzic.

The evidentiary records demonstrate that claimant has been seen numerous times for various complaints at Broadlawns. Mr. Omerhodzic has presented with right arm pain, shoulder pain, neck pain, bilateral foot pain, bilateral knee pain, left upper extremity complaints, upper respiratory complaints, headaches, skin tags, tremors in his hands, epigastric issues, chest pain, insomnia, depression, and anxiety. (Ex. 7-46; Ex. H) As a result of his reported symptoms Mr. Omerhodzic has undergone extensive testing. Despite numerous clinical visits and testing there is a lack of objective findings to support an injury to his right shoulder or neck. Claimant's February 15, 2011, cervical MRI failed to reveal any abnormalities of any significance. (Ex. 10) A January 20, 2012 MRI of the right shoulder was normal. (Ex. 29) EMGs from 2010, 2011, and 2012 were all normal. The medical record as a whole does not support Mr. Omerhodzic's contention that he sustained any injury beyond his thumb. I find that Mr. Omerhodzic has failed to carry his burden of proof to show by a preponderance of the evidence that he sustained any physical injury beyond his right thumb.

We now turn to claimant's allegation that he sustained a physical/mental disability. Mr. Omerhodzic contends that as a result of his physical injury he has sustained mental disability. However, I find that the preponderance of the evidence does not support this claim. A review of the record reveals that Mr. Omerhodzic has been seen and evaluated by several mental health providers with regard to his mental health condition.

During his Social Security Disability application process he was seen by Myrna Tashner, Ed.D. She found no evidence of any mental health disorder. However, she did find evidence of malingering. (Ex. R) He was also seen by Dr. Ascherman who did not find any evidence of a mental health disorder. Dr. Ascherman opined that there

was no evidence of limitations in his attention, concentration, memory, or judgment. He too found evidence of malingering. (Ex. G)

He was also seen by mental health providers in connection with this workers' compensation matter. At the request of the defendants claimant was evaluated by Dr. Tranel at the UIHC where he underwent a neuropsychological assessment. Dr. Tranel felt that Mr. Omerhodzic did have a Somatic Symptom Disorder. However, he did not feel that the disorder was caused by or attributable to the work injury.

At the request of his own counsel, claimant was seen by Dr. Christiansen who opined that he had a moderately severe major depressive disorder, panic disorder with agoraphobia, and pain disorder. She felt that the work injury was a significant factor in bringing about or worsening the diagnosis. However, in reaching this conclusion it appears that Dr. Christiansen based her opinion on the assumption that Mr. Omerhodzic had sustained an injury to his right shoulder and that his job loss was due to his work injury. However, the evidence in this case does not support these assumptions and therefore, her opinions are based on incorrect information and cannot be relied upon.

This is also true for the opinion of Dr. Olson. Although Dr. Olson provided treatment to Mr. Omerhodzic and he was able to see him on numerous occasions it appears that his opinions are also based on the assumption that the patient sustained physical injury beyond his thumb and that his job loss was caused by the work injury. However, as previously noted claimant's own testimony does not support his contention that his termination was related to the work injury. Claimant's testimony actually supports defendants' contention that he was terminated due to absences related to missed work for a cold; not for any reason related to his right hand or arm. I find claimant has failed to show that the termination of his employment at Pitney Bowes, Inc. was related to his work injury.

Numerous providers have found signs of malingering and have been unable to find evidence of any mental health condition. Of the providers who do find or diagnose a mental health condition they do not agree on his condition(s). It is not clear what, if any, mental health condition claimant has been diagnosed with. Further, there is a lack of a reliable expert opinion to support claimant's contention that any mental health condition he may have is related to his work injury. Claimant has failed to show that he has sustained a physical-mental injury. Therefore, I find claimant has failed to carry his burden to show by a preponderance of the evidence that he sustained a physical-mental injury as a result of the work injury.

As noted above, claimant has failed to prove he sustained a compensable physical injury beyond his thumb. Although he has reported numerous symptoms and has undergone significant diagnostic testing the preponderance of the evidence does not support his claim. Because I have found he did not sustain an injury beyond his right hand I also find claimant has failed to show that he sustained an injury to his body

as a whole. Because claimant has not sustained an injury to his body as a whole the issue of odd lot is moot.

Based on the evidence as a whole I find Mr. Omerhodzic sustained 3 percent permanent impairment to his right thumb which is the equivalent of 1 percent of the hand. The hand is worth 190 weeks; thus claimant has shown entitlement to 1.9 weeks of permanency.

The next issue to be determined is the appropriate weekly workers' compensation rate for Mr. Omerhodzic. Claimant contends that his gross weekly wage is \$392.00 and his weekly workers' compensation rate is \$280.80. (Ex. 83) Defendants contend his gross weekly wage is \$360.10 and his weekly workers' compensation rate is \$258.73. (Ex. V) The dispute appears to center around whether the week of September 12, 2009 to September 18, 2009 should be included in the rate calculation. Claimant asserts this week should be excluded because claimant is paid on a biweekly basis, and only the five full pay periods prior to the date of injury should be used. Based on my review of Exhibit 83 it appears that claimant's assertion is correct. The pay period which contains the week of September 12, 2009 to September 18, 2009, also contains the date of injury and therefore, should not be used. Therefore, I find that claimant's rate calculation is correct and further find that claimant's gross weekly wage is \$392.00 and his weekly workers' compensation rate is \$280.80.

Next, claimant is seeking payment for past medical expenses as set forth in his itemization of medical expenses. (Ex. 82) As previously noted claimant has failed to prove he sustained an injury beyond his right hand. The expenses claimant is seeking to recover are for his reported pain in his right arm, shoulder, and psychological conditions. The medical expenses claimant is seeking to recover appear to be related to conditions which were not found to be related to the work injury of September 22, 2009. Because the treatment was for conditions that are not causally connected to the work injury I find that defendants are not responsible for the medical expenses sought by claimant.

Claimant is seeking reimbursement for his independent medical evaluation with Dr. Bansal in the amount of \$2,975.00. It appears the conditions of Iowa Code section 85.39 were met prior to claimant seeking his IME. There is no evidence that defendants have already paid for another IME. Therefore, I find that claimant has proven he is entitled to reimbursement pursuant to Iowa Code section 85.39, in the amount of \$2,975.00 for the IME performed by Dr. Bansal.

Claimant is also seeking recovery of costs in this matter pursuant to 876 IAC 4.33. Costs are to be assessed at the discretion of the deputy commissioner. Because claimant was successful in at least a portion of this matter I exercise my discretion to award appropriate costs. I find that the filing fee (\$100.00) and service costs (\$12.22) are appropriate costs under 4.33(3 & 7). Therefore, defendants shall reimburse claimant in the amount of \$112.22.

Claimant is also seeking reimbursement for the deposition transcript in the amount of \$183.42. I find this is an appropriate cost under 4.22(2). Therefore, defendants shall reimburse claimant in that amount.

Claimant is also seeking \$481.00 for Mitchell Rehabilitation Services vocational evaluation. In the present case, claimant failed to show entitlement to industrial disability; therefore, I did not find the vocational evaluation to be helpful. I exercise my discretion and do not award this as a cost.

Claimant is also seeking payment in the amount of \$950.00 for a psychological evaluation by Eva Christiansen, Ph.D. Because claimant did not prevail on his physical/mental claim I exercise my discretion and find that this is not an appropriate cost. Further, rule 4.33(6) allows for the cost of obtaining no more than two doctors or practitioners' reports. This cost is not for a report but rather for an evaluation; therefore, I further find this is not an appropriate cost under the rules. Thus, defendants are not liable for the \$950.00 charge from Dr. Christiansen.

CONCLUSIONS OF LAW

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

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

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).

Under Iowa law a worker is entitled to workers' compensation benefits if he suffers a psychological injury which resulted from a work-related physical trauma. Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 16 (Iowa 1993) (citations omitted). In such a physical-mental case the courts have not required a separate determination be made for medical causation and legal causation. *Id.* at 16. Rather, the claimant's burden is to show that the injuries arose out of and in the course of employment. See Menard, Inc. v. Schneberger, No. 14-0682, (Iowa App. Feb. 11, 2015). In other words, the claimant must be able to show that his or her mental disability arose out of and in the course of employment as a result of the initial physical injury.

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).

In the present case claimant failed to establish by a preponderance of the evidence that he sustained a mental health condition that arose out of and in the course of his employment as a result of the initial physical injury. Therefore, I conclude claimant has failed to show he sustained a compensable physical/mental injury.

I conclude that claimant has not sustained any injury beyond his right hand injury. 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). The operative report indicates the incision was made over the A-1 pulley of the thumb. (Ex. 2, p. 2) Because the procedure involved the hand I find claimant's injury shall be compensated as a hand injury. In the present case, I conclude that Mr. Omerhodzic sustained 3 percent permanent partial disability to his right thumb which is the equivalent of 1.9 percent of the hand. According to Iowa Code section 85.34(2)(1), the

loss of a hand is the equivalent to 190 weeks of compensation. Therefore, Mr. Omerhodzic is entitled to 1.9 weeks of permanent partial disability benefits. These benefits shall commence on the stipulated commencement date of February 23, 2010.

Claimant has asserted the odd-lot doctrine. However, in the present case claimant failed to show that he sustained an injury to his body as a whole. He has not shown entitlement to industrial disability in this case. This agency has held that the odd-lot doctrine only applies to cases of industrial disability. See Iowa Practice Series Vol. 15, section 13.7, (citing) Vithayasab v. IBP, Inc., File No. 1052966 (arb. 1995).

Section 85.36 states the basis of compensation is the weekly earnings of the employee at the time of the injury. The section defines weekly earnings as the gross salary, wages, or earnings to which an employee would have been entitled had the employee worked the customary hours for the full pay period in which the employee was injured as the employer regularly required for the work or employment. The various subsections of section 85.36 set forth methods of computing weekly earnings depending upon the type of earnings and employment. If the employee is paid on a daily or hourly basis or by output, weekly earnings are computed by dividing by 13 the earnings over the 13-week period immediately preceding the injury. Any week that does not fairly reflect the employee's customary earnings is excluded, however. Section 85.36(6).

Based on the above findings I adopt claimant's rate calculation. I conclude claimant's gross weekly wages to be \$392.00 and his weekly workers' compensation rate is \$280.80. Claimant's weekly workers' compensation benefits shall be paid at the rate of \$280.80.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. In the present case I found that the requirements of the code were met. Therefore, I conclude defendants shall reimburse claimant in the amount of \$2,975.00.

Claimant seeks an assessment of his costs associated with this case. Assessment of costs is a discretionary function of this agency. Iowa Code section 86.40. Because claimant was at least partially successful in his claim I found it reasonable to access appropriate costs. Therefore, defendants shall be responsible for the appropriate costs as listed above.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant one point nine (1.9) weeks of permanent partial disability benefits at the weekly rate of two-hundred eighty and 80/100 dollars (\$280.80) commencing on the stipulated date of February 23, 2010.

Defendants shall be entitled to a credit for all benefits paid to date.

Defendants shall pay any underpayment of the weekly rate on benefits previously paid to claimant.

All accrued benefits shall be paid in a lump sum.

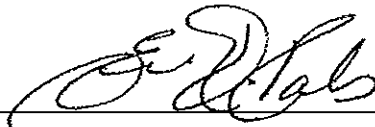
Defendants shall pay interest pursuant to Iowa Code section 85.30 on any benefits paid after they became due.

Defendants shall reimburse claimant's IME costs in the amount of two thousand nine hundred seventy-five and 00/100 dollars (\$2,975.00).

Defendants shall pay costs in the amounts set forth above.

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

Signed and filed this 13th day of July, 2015.


ERIN Q. PALS
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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