BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ISMET CATIC,		
Claimant,		File No. 5065604
vs.		A R B I T R A T I O N
TYSON FOODS, INC.,		D E C I S I O N
Employer,		
Self-Insured,		Head Notes: 1108, 1801, 1802, 1803,
Defendant.		1804, 4100, 1703

STATEMENT OF THE CASE

Claimant, Ismet Catic, filed a petition seeking worker's compensation benefits from Tyson Foods, Inc., a self-insured employer. The hearing was held in Waterloo, Iowa on May 9, 2018 and considered fully submitted on May 30, 2018 upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-11, Claimant's Exhibits 1-9 Defendant's Exhibits A-P along with the testimony of the claimant, Robert Gordon, M.D., Vicki Hoftender and Alvedin Buljubasic.

ISSUES

1. Whether claimant sustained an injury on April 21, 2016, which arose out of and in the course of employment;

2. Whether the alleged injury is a cause of temporary disability and, if so, the extent;

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

4. The extent of claimant's industrial disability;

5. The commencement date of permanent disability benefits, if any are awarded;

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

7. Whether claimant is entitled to an independent medical examination pursuant to Iowa Code section 85.39;

8. Whether defendant is entitled to a credit of 175 weeks of compensation paid at the rate of $290.16 prior to the hearing;

9. Whether defendant is entitled to credit under Iowa Code section 85.38 for the payment of disability income in the amount of $3564.48;

10. The appropriate assessment of costs.

STIPULATIONS

The parties filed a hearing report at the commencement of the arbitration hearing. On the hearing report, the parties entered into various stipulations. All of those stipulations were accepted and are hereby incorporated into this arbitration decision and no factual or legal issues relative to the parties' stipulations will be raised or discussed in this decision. The parties are now bound by their stipulations.

Parties agree that at all material times hereto the claimant was an employee.

They agree that if an injury is found to be the cause of a permanent disability, the disability is industrial in nature.

At the time of the alleged injury, the claimant's gross earnings were $651.90 per week. He was married and entitled to four exemptions. Based on the foregoing, the weekly benefit rate is $447.25.

For the medical expenses, the parties agree that the fees and prices charged by the providers are fair and reasonable and that while the charges are disputed, the medical providers would testify as to the reasonableness of their fees and/or treatment set forth in the list of expenses. The defendant is not offering contrary evidence. The parties further agree that although the causal connection of the expenses to the work injury cannot be stipulated, listed expenses are at least causally connected to the medical conditions upon which the claim of injury is based.

FINDINGS OF FACT

Claimant was a 53-year-old person at the time of the hearing. Claimant attended school in Bosnia. He does not have any postsecondary education.

His past work experience in Bosnia included construction, service in the Army, and geological work surveying and looking for coal. In 1997 he began working for Tyson where he was employed until December 30, 2016 when he left due to pain and discomfort.

On or about April 21, 2018, the Social Security Administration deemed claimant to be fully disabled commencing on December 30, 2016. (Ex. 8)

Claimant's past medical history includes an injury approximately 15 years ago while claimant was hanging hogs. The care he received from the defendant employer was unsatisfactory, and claimant sought out treatment from the Mayo Clinic on his own. He received approximately six epidural shots, which enabled him to return to full-duty work without restrictions. (JE 1:12)

On December 12, 2000, claimant underwent a nerve conduction test which showed mild to moderate right carpal tunnel syndrome with median nerve entrapment at the wrist, mild right ulnar neuropathy at the wrist and right cubital tunnel syndrome. (Ex. J:2) Claimant had the same findings in the left arm, which was asymptomatic. Id.

Beginning before August 12, 2002 and continuing into September 2004 claimant developed a cumulative work injury to his neck and thoracic region. (Ex. A:9) On October 29, 2003, claimant was diagnosed with right upper extremity overuse syndrome, with pain primarily in the right shoulder and right arm. (Ex. C:1) Claimant does have a 5 mm metallic shrapnel fragment in the supraclavicular soft tissue, presumably obtained during the war. (Ex. B:1) There was a finding claimant sustained a 35 percent whole person impairment as a result of the 2002 injury. (Ex. A:14)

On January 27, 2004 claimant underwent an EMG which showed acute or progressive right C5 or C6 cervical radiculopathy, minimal or borderline right carpal tunnel syndrome, and minor nonspecific right ulnar neuropathy. (Ex. J:14) A follow-up EMG was conducted of the right upper extremity and the results were essentially normal. (Ex. J:7)

There are also medical reports in 2006 where claimant reported pain with repetitive reaching and gripping overhead with the knife, pain in the left groin, and pain in the neck. (Ex. B:1) In 2007 he reported pain in the left upper extremity (Ex. B:1) In 2011, claimant reported bilateral pain in the shoulders and in the right arm extending to the elbow. He received three trigger point injections, which largely resolved the pain. Claimant was discharged at maximum medical improvement (MMI) with progression to full duty on or around November 15, 2011. (Ex. B:2)

Claimant has worked various jobs for the defendant employer, but at the time of his injury, he was working the Trim Jawbones position. In that position, he was responsible for removing the temple meat from jawbones. According to the job analysis summary, the jawbone enters the workstation on slide bars from the snout remover/job puller machines. The team member is to grasp the attached meat while the jawbone is still on the slide and remove each piece using one small cut from the Whizard knife. The temple meat is then dropped through a hole into a tub located below the workstation. On occasion, the jawbones may not slide all the way down the workstation and the worker must use a hook to capture the jawbones and pull them forward. (Ex. 9:1) Physical demands and requirements of the job include lifting approximately 1 pound,

low force pushing and occasional low force pulling, reaching to trim the jawbones and use of the hook to move the jawbones down a slide, repetitive grasping, prolonged standing and the use of both hands. (Ex. 9)

According to the defendant's documents, claimant has had problems with meat moving down the slide. The hook that is used to pull the meat forward was designed by the claimant. (JE 1:6) The slides are made of metal and are welded together at certain spots. These welded areas create an impediment to the smooth movement of meat down the slides, particularly when the slide dries out. Claimant testified there was a fan that repeatedly dried out the slide. Claimant reported that in 2016, he was using the hook roughly 20 times a day, once every 30 minutes. (JE 1:6)

The accident investigation report, conducted after claimant reported his injury on April 21, 2016, noted that the claimant was observed performing his job at a leisurely pace, using his hook if necessary and not getting behind. (JE 1:6)

Claimant physically demonstrated his job during the hearing. At no time did he raise his arms over his head. Defendant offered Exhibit P which showed a female employee performing the job for approximately 5 minutes. (Ex. P)

On April 14, 2016, claimant reported his injury to the employer, complaining of pain in his entire upper trunk including bilateral shoulders, arms, wrists, hands and thoracic back. (JE 1:1) He associated this with overuse of the Whizard knife. Id.

Claimant was initially seen by Dr. Gordon on May 11, 2016. (JE 2:1) Dr. Gordon testified live at trial. He portrayed himself as an impartial medical provider; however, 30 percent of his practice is devoted to the care and treatment of the defendant's employees. Further, the remaining percentage of his practice is servicing other corporate clients. Dr. Gordon was skeptical that claimant's injuries and symptomatology was related to his work, which Dr. Gordon described as low impact. It is Dr. Gordon's opinion that a worker can only be injured if the repetitive motion is combined with some actuated force. (Transcript, p. 76)

> I know a lot of times people discuss repetition or frequency. But for frequency, repetition to be a true factor, there has to be concomitant forces and also kinematics involved. In other words, for instance, if we're writing utilizing a pencil right now, we may be writing in a repetitious fashion, if you will. But that's not going to cause a shoulder disorder. So, again, for repetition to be relevant, it has to be a job that also shows kinematic and forceful deleterious physical activities.

(Trans. p. 76)

During the May 11, 2016 evaluation, claimant explained that he was injured while performing the Trim Bone job due to grasping the meat with one of his hands, cutting meat product with a knife in his right hand, and moving the meat down a conveyor with

his left. Claimant explained the need for use of the hook. (JE 2:6) On examination, claimant had slow but full range of motion in the neck, diffuse tenderness about the entirety of the bilateral shoulder girdle region. (JE 2:7) Dr. Gordon testified that he observed the claimant to be moving about without apprehension while demonstrating how he undertook his physical tasks. (JE 2:7) Further, Dr. Gordon characterized claimant's pain complaints as exaggerated and/or nonspecific. (Ex. 2:7) While claimant complained of pain in his bilateral wrist, Dr. Gordon felt that claimant had full range of motion in the wrists and arms. (JE 2:7 – 8) Claimant did have tenderness of the paraspinal musculature in the thoracic region but no observable or objective problems in the lumbar region. (JE 2:8) Dr. Gordon ordered x-rays and imposed work restrictions. He also recommended a job site evaluation. Id.

A jobsite evaluation was performed by John Kruzich. Mr. Kruzich documented that claimant's job tasks require constant lifting, pulling, reaching, and grasping with his bilateral hands and arms along with lateral pinching on the left. (JE 3:2)

Both Dr. Gordon and Mr. Kruzich rely on the theory that the most common forms of injuries to the bilateral shoulders are a combination of risk factors including sustained awkward postures, repetition, and force in combination with repetition or force in combination with posture. (JE 3:4) Mr. Kruzich did write that "there is some evidence that highly repetitive work alone" may lead to the development of shoulder symptoms but he did not see any of that type of work performed by claimant. (JE 3:4) Mr. Kruzich does not define what would qualify as highly repetitive work, but did document that lifting, pulling, reaching and grasping was done over 66 percent of the time in claimant's job. (JE 3:2)

Regarding injury to the lumbar spine, risk factors include load, posture, frequency, duration, and static positions, Mr. Kruzich felt that the "estimated back compressive forces for this position are considered to be well within the generally accepted limit for safety." (JE 3:5) Mr. Kruzich also documented that claimant would stand constantly during the execution of his job duties. (JE 3:2)

Based on the evaluation by Mr. Kruzich, Dr. Gordon concluded there were no routine activities that would cause, precipitate, aggravate, or accelerate pathological disorders about the bilateral shoulders, bilateral upper extremities, bilateral hands, cervical region, and lumbar region. (JE 3; 2:9)

During claimant's follow-up appointment on May 25, 2016, claimant reported no improvement despite his light-duty work restrictions. (JE 2:9) Dr. Gordon informed the claimant that his x-rays were normal. Id. Dr. Gordon believed that claimant was moving more freely than he had in the previous visit, that he had full range of motion in the C-spine, bilateral shoulders, lumbar region, bilateral elbows and wrists. (Ex. 2:10) Claimant complained of pain in the cervical and thoracic region as well as in the bilateral shoulder girdle region, wrist, arm and forearm. (JE 2:10) Dr. Gordon attributed the pain to a myofascial condition. Id. Dr. Gordon decided to go out on the production floor himself to assess the biomechanical demands of the job. (JE 2:11)

Dr. Gordon testified at hearing that there was nothing about the claimant's position that would lead to any type of injuries to his cervical, thoracic, or bilateral shoulders, arms, wrists, or hands. He expressed this opinion to the claimant during the medical follow-up visit on June 8, 2016. (JE 2:13) Dr. Gordon wrote in his opinion and testified at hearing the claimant worked at a comfortable pace and that claimant's body was not placed in any awkward or sustained position in executing his work duties. Id. Despite his opinion claimant's injuries were not work related, Dr. Gordon continued to treat claimant.

Claimant requested trigger point injections in the bilateral shoulder girdle region posteriorly due to success with those types of treatments in the past. Dr. Gordon agreed with this. (JE 2:15)

Claimant underwent those trigger point injections with Dr. Hawkins on June 15, 2016. (JE 4) On June 29, 2016, claimant reported to Dr. Gordon that these trigger point injections were helpful; however, claimant continued to have pain in his medial and lateral epicondylar regions bilaterally along with his bilateral wrists. Claimant also noted numbness and tingling intermittently down his upper extremities and into his hands. (JE 2:16)

Dr. Gordon recommended the claimant continue with physical therapy and ordered claimant to return. (JE 2:18)

Claimant was seen again by Dr. Gordon on July 13, 2016. (JE 2:19) Claimant continued to report pain in the shoulder region, and lumbar region and tightness, numbness, and tingling from his elbows into his hands bilaterally. (JE 2:19) Dr. Gordon ordered right upper extremity electrodiagnostic studies and continued claimant on light-duty work. (JE 2:21)

On August 8, 2016, claimant was seen by Brian O'Shaughnessy, M.D. for electrodiagnostic studies of his right upper extremity. The EMG tests were negative except for mild irritation of the radial nerve/posterior cord proximal to the takeoff of the axillary nerve and radial nerve branch of the triceps muscle. (Ex. I:4) Dr. Gordon referred claimant to a specialist based upon this report. (JE 2:23)

On October 31, 2016, claimant was seen by Peter Pardubsky, M.D. (JE 5:1) Dr. Pardubsky is a hand specialist. He focused on claimant's right-sided upper extremity complaints. (JE 5:1) Claimant had tried activity modification, medication, and trigger point injections without significant relief. (JE 5:1) On examination, claimant demonstrated positive provocative maneuvers over the median nerve at the wrist including positive Phalen's test and positive Tinel's sign. He had mild pain with palpation over the proximal medial triceps and mild pain over the radial tunnel without provocative radial nerve compression at the limits of pronation and wrist flexion or resisted forearm supination. (JE 5:2-3) Based on the clinical evidence of carpal tunnel syndrome with nocturnal complaints, localized bindings and slightly positive EMG studies, Dr. Pardubsky recommended carpal tunnel release. (JE 5:3)

Dr. Pardubsky did not believe that the surgery would improve claimant's proximal arm complaints. Dr. Pardubsky further advised it was possible that after the carpal tunnel release, claimant would not be able to continue in a position that required right arm and shoulder repetitive motion. (JE 5:3)

On November 2, 2016, Dr. Gordon made a chart note that when he had last evaluated claimant, the two had discussed the symptoms and exam findings that go along with the carpal tunnel syndrome. (JE 2:25) Dr. Gordon felt that the claimant's clinical presentation had changed and therefore agreed that claimant should undergo a right carpal tunnel release. (JE 2:25)

The surgery took place on November 29, 2016. (JE 9)

On December 1, 2016, claimant consulted with Arnold Delbridge, M.D., for pain in both shoulders, bilateral arms, hands and upper and lower back. (JE 6) Dr. Delbridge prescribed Naprosyn and ordered claimant to return in follow up. (JE 6:3) When claimant's complaints did not abate, Dr. Delbridge sent claimant to therapy. (JE 6:4)

Claimant attempted to return to work on December 30, 2016 but was unable to complete more than two hours of his shift. He went home and has not returned to work since that date.

Claimant returned to Dr. Pardubsky on January 5, 2017 for a postsurgical checkup. Claimant's pain and discomfort had returned with use of his Whizard knife. (JE 5:5) Claimant had not been working due to his neck and shoulder problems. (JE 5:5)

On February 16, 2017, claimant returned reporting marked improvement in the finger and hand with almost all tests confirming normal results. (JE 5:8) Dr. Pardubsky found claimant to be at MMI with no measurable impairment. (JE 5:9)

Claimant continued to treat with Dr. Delbridge who recommended surgical relief of the left carpal tunnel. This surgery was performed on February 23, 2017. (JE 10)

March 9, 2017, radiographs ordered by Dr. Delbert showed some mild degenerative joint changes in claimant's glenohumeral joint and a little cystic change of the greater tuberosity on the left, but neither shoulder showed much arthritis or degeneration. (Ex. 6:7) On April 4, 2017 claimant underwent a right shoulder MRI which revealed only minimal degenerative changes including a small degenerative tear of the inferior labrum, tendinopathy supraspinatus and subscapularis tendon, as well as the shrapnel. (JE 11:1)

Claimant underwent a second set of injections on April 9, 2017 but saw no change in his symptoms. (JE 11:2) Another set of injections was performed on June 13, 2017 to treat the claimant's bilateral epicondylitis. (JE 11:3)

Dr. Delbridge began prescribing narcotic medication to treat claimant's pain.

MRI was conducted on August 14, 2017, on his neck which showed C5–C6 right disc protrusion with compression of the thecal sac and cord. (JE 11:4) On September 5, 2017, claimant underwent an MRI of the left shoulder which showed a small interstitial tear of the biceps tendon in the bicipital groove and supraspinatus tendinopathy without evidence of rotator cuff tear. (JE 11:5) Dr. Delbridge referred claimant to Iowa City who placed claimant in a neck brace. Claimant was not happy about his treatment at Iowa City due, in part, to their conclusion that his neck pain was not work related. (JE 6:20)

On March 6, 2018, an MRI was conducted of the lumbar spine which showed the following:

IMPRESSION:

1. Degenerative disc disease at L5-S1 with grade 1 spondylolisthesis of L5 over S1 with possible bilateral pars defects. Asymmetric disc bulge to the right extending into the right L5-S1 neural foramina with radial fissure. Moderately severe neural foraminal stenosis on the right without compression of the exiting right L5 nerve root. Mild to moderate neural foraminal stenosis on the left without compression of the exiting nerve roots.

2. Lipoma of the filum terminale extending to S1.

(JE 11:6)

On or about April 17, 2018, claimant returned to Dr. Delbridge complaining of ongoing neck pain, shoulder pain and back pain. (JE 6:22) Dr. Delbridge concluded that there was not much that he could do to alleviate claimant's symptoms including therapy or surgical relief. (Ex. 6:24)

Claimant underwent an independent medical evaluation on February 14, 2018 with Farid Manshadi, M.D. Dr. Manshadi is a physical medicine and rehabilitation specialist. (Ex. 4)

On the date of the examination, claimant reported pain in the neck, bilateral shoulders, arms and forearms and upper and low back. He reported numbness and tingling in both hands along with poor grips. (Ex. 4:2)

His current medications included oxycodone, diclofenac, omeprazole, atorvastatin, mirtazapine, and triamcinolone cream. (Ex. 4:3)

During examination, his neck range of motion was within normal limits except for extension which was limited to 35 degrees. Lateral bending to the right was limited to 25 degrees. He exhibited tenderness to palpation over the arms and forearms bilaterally as well as over the brachioradialis, biceps and triceps bilaterally. He had good and symmetrical reflexes. (Ex. 4:3)

Range of motion was limited in both shoulders, but there was no evidence of any atrophy. Resisted abduction was painful and he had positive signs of Neer and Hawkins. (Ex. 4:3) He had slightly reduced range of motion in the wrist and reduced grip strength on the right as opposed to the left. There were positive signs of Tinel's in both wrists. Sensory examination was intact in the hands and the fingers. Id. He had full range of motion, strength 5/5 and normal sensation in the low back and lower extremities.

Based on the medical records, radiographic reports, and claimant's history, Dr. Manshadi opined the following:

> As such, I believe Mr. Ismet Catic has had cumulative work injuries involving his neck and shoulders, bilateral elbows and both wrists. I believe these cumulative work injuries have causes [sic] the neck injury with a C5-C6 disc herniation on the right side. He also has evidence of bilateral impingement syndrome and, at least on the right side, there is evidence of tendinopathy of the rotator cuff, according to the latest MRI. Also on the left side, it does show evidence of such as well, but the left side apparently appears to be less severe than the right side. He also has clinical syndrome with weakness of the bilateral abductor pollicis brevis muscles, as well as reduced sensation involving the median digits bilaterally.

(Ex. 4:5)

He agreed the claimant was at MMI for his neck injury and bilateral carpal tunnel, but that both shoulders and bilateral elbow conditions needed more treatment. (Ex. 4:5) He also opined that claimant needed further treatment for his low back pain because while there were no deficits clinically, he did have musculoskeletal pain. (Ex. 4:6)

For the neck injury, Dr. Manshadi assigned 7 percent impairment of the whole person due to evidence of the disc herniation. For the bilateral carpal tunnel syndrome and bilateral carpal tunnel releases, he assigned 3 percent impairment to each upper extremity due to continued weakness and reduced sensation.

For permanent restrictions, he advised claimant to avoid any activities which required repetitious flexion or extension or turning of his neck. Claimant was to avoid any activity which required repetitious gripping activities and sustained gripping as well as use of vibratory tools. For his back, he was to avoid any activity which required repetitious bending, stooping or twisting. (Ex. 4:6) Dr. Manshadi charged $300 for the examination and $1400 for the report. (Ex. 4:7)

At the request of the claimant's attorney, Dr. Delbridge issued a summary of the medical treatment he provided to the claimant as well as an opinion regarding claimant's injuries, causation, impairment and restrictions. (Ex. 5:6 to 9)

Dr. Delbridge concluded the claimant's shoulder, upper extremities and hands were materially aggravated by the work claimant performed for the defendant employer. (Ex. 5:6) During the period of treatment, claimant exhibited reduced range of motion in the right shoulder for an approximate 11 percent impairment of the right upper extremity and loss of shoulder motion on the left equal to approximately 10 percent impairment of the left upper extremity. (Ex. 5:6)

Dr. Delbridge also opined that claimant's longtime repetitive motion and strain on his neck over many years was recently aggravated in the spring of 2016 and resulted in a permanent impairment of the cervical spine of approximately 5 percent due to pain radiating up into both sides of the neck, involving both shoulders and shoulder blades along with some limited range of motion in the cervical spine. (Ex. 5:7)

> It is my conclusion that a repetitive motion injury is appropriate here because he had multiple problems over multiple years, he was repeatedly sent back to the same job that caused the problems and then he would have them again and again and again. Eventually, he could no longer do the job and he has objective findings on MRI as well as physical exam of his extensive difficulties.

(Ex. 5:9)

Due to ongoing reduced grip strength, Dr. Delbridge assigned a 4 percent impairment of the right upper extremity due to the right carpal tunnel and 2 percent to the left upper extremity. (Ex. 5:8)

Dr. Delbridge did not assign any work-related loss for the pain and discomfort in the lumbar region. (Ex. 5:8)

Dr. Delbridge finally concluded that claimant would not be able to engage in the work he did in the past for the defendant. There are very few jobs at claimant's employment that would not result in further difficulty over time. His shoulders, in particular have marked tendinopathy in both sides. (Ex. 5:9)

Claimant maintained that prior to 2016 he was able to do everything asked of him, and now he can do nothing. He testified that he cannot sit for a long period of time nor stand for a long period of time. He sleeps at most two hours a day. He testified that his hands are swollen and his arms grow numb.

Dr. Gordon opined that there was no medical explanation for claimant's continued shoulder pain, particularly after the alleged aggravating cause was eliminated. (Trans. pp. 80-84) Dr. Gordon also pointed out that if claimant did have tendinopathy or rotator cuff tears, the injections performed by Dr. Delbridge would have improved claimant's condition. Id.

The only injury that Dr. Gordon would ascribe to claimant's work was a disorder related to the right elbow, either injury to the musculature or the tendons resulting in medial and/or lateral epicondylar pain in the forearm, wrist and hand. (Trans. p. 92)

Alvedin Buljubasic testified at hearing on behalf of the claimant. He was an acquaintance of claimant for approximately 20 years. He had worked at the same plant employed by defendant employer from approximately 1997 to 2004. At times he would work as an interpreter at the health services department and would see claimant approximately 2 to 3 times per week. Claimant would report upper extremity, back and neck pain. He was aware the claimant was having difficulty with his grip and gave an example of milk dropping from the claimant's grip and breaking on the street. Mr. Buljubasic left the employ of defendant employer due to a worker's compensation injury.

Vicki Hoftender is an industrial engineer at the defendant employer. She has worked there for 22 years. Her current position is an ergonomic liaison. She explained that over-the-shoulder work can be misinterpreted. For example, when her hand is over her shoulder but her elbow is not, that is not considered to be over-the-shoulder work.

She recorded many of the positions for the defendant employer but did not recall if she did the video which was defendant's Ex. P. She believed the video was generally representative of the work that the claimant performed. She acknowledged that the slides have been changed frequently and that the fan was removed. She agreed that she had a discussion with the claimant regarding the problems the fan was causing. She further acknowledged that jawbones routinely get stuck and catch on the metal slide, which is why there are hooks available.

Prior to 2010, the position that the claimant was performing was considered a two-person job. In 2010 it transitioned to a one-person job. At full production, an employee will go through 9000 or more heads. The video was approximately five minutes long. (Ex. P) The worker used the hook around the 1:40 mark. The worker in the video handled 59-60 jaw bones, which works out to approximately10 per minute or 600 per hour. This number is roughly half to two-thirds of what both claimant and Ms. Hoftender testified a worker would perform at full production. Thus, the video serves only to provide a general example of the type of work performed by claimant and not an accurate or fair depiction of the work at full production

CONCLUSIONS OF LAW

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

The claimant has the burden of proving by a preponderance of the evidence that the 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).

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).

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 Iowa court has adopted the full-responsibility rule. Under that rule, where there are successive work-related injuries, the employer liable for the current injury also is liable for the preexisting disability caused by any earlier work-related injury if the former disability when combined with the disability caused by the later injury produces a greater overall industrial disability. Venegas v. IBP, Inc., 638 N.W.2d 699 (Iowa 2002); Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258, 265 (Iowa 1995); Celotex Corp. v. Auten, 541 N.W.2d 252, 254 (Iowa 1995). The full-responsibility rule does not apply in cases of successive, scheduled member injuries, however. Floyd v. Quaker Oats, 646 N.W.2d 105 (Iowa 2002).

Claimant seeks a finding that he sustained multiple cumulative work injuries arising out of his Trim Jaw Bone position. Claimant had a previous worker's compensation claim involving his neck, right shoulder and thoracic back. He was found to have suffered a 35 percent loss of earning capacity. Claimant asserts that the present claim includes new injuries as well as aggravation of a pre-existing work injury.

According to the official job description, the Trim Jawbone position includes low force pushing, low force pulling, reaching from waist to chest level, occasionally using a hook at chest level, whole hand grasping, finger to thumb grasping, and prolonged standing. A physical therapist, who was employed by the defendant employer to perform a job analysis, concluded that the Trim Jawbone position required constant right unilateral lifting, left unilateral lifting, right unilateral horizontal pole, left unilateral horizontal pole, forward reaching, grasping with the right and left hand and lateral pinching of the left hand. The position also required constant standing.

It was also undisputed that prior to 2010, this position was handled by two individuals. From 2010 to 2016, claimant performed this position by himself. Based on the testimony of the defendant employer's industrial engineer, claimant would handle an estimated 9000 jawbones each day.

There is a video of the job being performed; however, the video shows only 50-60 jawbones processed in 5 minutes. At 9000 jawbones during an eight-hour shift, over 550 jawbones would need to be processed each half hour or nearly 19 jawbones a minute.

It is difficult to conceive how claimant could handle 19 jawbones a minute or process 9000 jawbones a day and still have time during which there would be no jawbones, as Dr. Gordon described.

Dr. Gordon's conclusions rest on flawed and inaccurate information. Dr. Gordon also mentioned that no repetitive work without force and kinetics could result in injury. Further, he underestimated the speed at which claimant worked and the volume that he handled. Based on the foregoing, Dr. Gordon's opinions are given lower weight.

Dr. Pardubsky focused solely on claimant's right carpal tunnel issues. Dr. Pardubsky did not impose any permanent restrictions or assess any impairment as a result of the right carpal tunnel.

Claimant did attempt to return to work on December 30, 2016, but was unable to. He continued to complain of pain in both his right and left hands and wrist even following Dr. Pardubsky's surgery.

Dr. Delbridge, claimant's current training physician, and Dr. Manshadi, both concluded the claimant had sustained injuries, either new or aggravations, to his shoulder, neck, bilateral arms, and hands.

Defendant takes issue with Dr. Manshadi's opinion based upon his admission that he did not review all of the records and relied instead upon a summary prepared by the claimant's attorney. Standing alone, Dr. Manshadi's opinions would not be given as much weight due to those factors, but as his opinions and conclusions are buttressed by Dr. Delbridge who has treated claimant for nearly a year and reviewed the video evidence, Dr. Manshadi's opinions are given deference over that of Dr. Gordon.

Based on Dr. Delbridge and Dr. Manshadi's opinions, it is determined the claimant did sustain cumulative work-related injuries arising out of and in the course of his employment. These injuries include pain in claimant's neck, bilateral shoulders, bilateral arms, forearms, wrists and hands, and low back.

While claimant's injuries appear to be more myofascial in nature, they are still injuries causing him ongoing pain and discomfort which prevent him from returning to his previous position.

Dr. Manshadi did not find claimant to be at MMI due to lack of treatment to his shoulders. While the workup on claimant's shoulders does not appear to be extensive, Dr. Delbridge did provide injections and ruled out further therapy or surgery as being helpful.

There's no medical evidence to suggest that claimant could improve with more treatment. It is determined the claimant is at maximum medical improvement.

Since claimant has an impairment to the body as a whole, an industrial disability has been sustained. Industrial disability was defined in Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935) as follows: "It is therefore plain that the legislature intended the term 'disability' to mean 'industrial disability' or loss of earning capacity and not a mere 'functional disability' to be computed in the terms of percentages of the total physical and mental ability of a normal man."

Functional impairment is an element to be considered in determining industrial disability which is the reduction of earning capacity, but consideration must also be given to the injured employee's age, education, qualifications, experience, motivation, loss of earnings, severity and situs of the injury, work restrictions, inability to engage in employment for which the employee is fitted and the employer's offer of work or failure to so offer. McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Olson v. Goodyear Service Stores, 255 Iowa 1112, 125 N.W.2d 251 (1963); Barton v. Nevada Poultry Co., 253 Iowa 285, 110 N.W.2d 660 (1961).

Compensation for permanent partial disability shall begin at the termination of the healing period. Compensation shall be paid in relation to 500 weeks as the disability bears to the body as a whole. Section 85.34.

Total disability does not mean a state of absolute helplessness. Permanent total disability occurs where the injury wholly disables the employee from performing work that the employee's experience, training, education, intelligence, and physical capacities would otherwise permit the employee to perform. See McSpadden v. Big Ben Coal Co., 288 N.W.2d 181 (Iowa 1980); Diederich v. Tri-City R. Co., 219 Iowa 587, 258 N.W. 899 (1935).

A finding that claimant could perform some work despite claimant's physical and educational limitations does not foreclose a finding of permanent total disability, however. See Chamberlin v. Ralston Purina, File No. 661698 (App. October 1987); Eastman v. Westway Trading Corp., II Iowa Industrial Commissioner Report 134 (App. May 1982).

In Guyton v. Irving Jensen Co., 373 N.W.2d 101 (Iowa 1985), the Iowa court formally adopted the "odd-lot doctrine." Under that doctrine a worker becomes an odd- lot employee when an injury makes the worker incapable of obtaining employment

in any well-known branch of the labor market. An odd-lot worker is thus totally disabled if the only services the worker can perform are "so limited in quality, dependability, or quantity that a reasonably stable market for them does not exist." Id., at 105.

Under the odd-lot doctrine, the burden of persuasion on the issue of industrial disability always remains with the worker. Nevertheless, when a worker makes a prima facie case of total disability by producing substantial evidence that the worker is not employable in the competitive labor market, the burden to produce evidence showing availability of suitable employment shifts to the employer. If the employer fails to produce such evidence and the trier of facts finds the worker does fall in the odd-lot category, the worker is entitled to a finding of total disability. Guyton, 373 N.W.2d at 106. Factors to be considered in determining whether a worker is an odd-lot employee include the worker's reasonable but unsuccessful effort to find steady employment, vocational or other expert evidence demonstrating suitable work is not available for the worker, the extent of the worker's physical impairment, intelligence, education, age, training, and potential for retraining. No factor is necessarily dispositive on the issue. Second Injury Fund of Iowa v. Nelson, 544 N.W.2d 258 (Iowa 1995). Even under the odd-lot doctrine, the trier of fact is free to determine the weight and credibility of evidence in determining whether the worker's burden of persuasion has been carried, and only in an exceptional case would evidence be sufficiently strong as to compel a finding of total disability as a matter of law. Guyton, 373 N.W.2d at 106.

Claimant has pled he is permanently disabled under the odd-lot doctrine. Both Dr. Delbridge and Dr. Manshadi have concluded that claimant is not likely to be able to return to his previous employment with the defendant employer. Claimant's entire relevant work history is working at defendant's meat processing plant. He has limited English skills and very few, if any, transferable work skills. He does not appear to be able to find new employment though retraining. He has not shown efforts at seeking out new employment.

However, Dr. Delbridge opined that there were very few jobs that would not result in further difficulty for the claimant over time. Claimant has also been found permanently disabled by the Social Security Administration. There is no evidence in the record of employment claimant could do with his current pain and restrictions.

Based on the foregoing, it is found the claimant is an odd-lot worker entitled to an award of permanent total disability.

Claimant seeks an award of medical expenses 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. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

In the brief, the defendant argued that there should be an affirmative finding that the medical expenses requested are clearly linked to the injury. However, the defendant stipulated that while causal connection of expenses to a work injury cannot be stipulated, the list expenses are at least causally connected to the medical conditions upon which the claim of injury is based. (Hearing report) Defendant cannot now change its mind after the record is closed and the hearing has been conducted.

Further, no authorization defense can be brought when the defendant denied responsibility for claimant's neck, back, shoulders, arms, left wrist and hands.

Claimant is entitled to an award of medical expenses including mileage and any future medical care arising out of his work injuries to his neck, bilateral shoulders, arms, forearms, wrists, hands and lower back, as itemized in claimant's exhibits 2 and 3.

Pursuant to Dart v. Young, claimant is also entitled to reimbursement of the examination portion of the independent medical examination. Des Moines Area Reg'l. Transit Auth. v. Young, 867 N.W.2d 839 (Iowa 2015). Accordingly, claimant is entitled to a reimbursement of $300.

Finally, we address the issue of credit. Prior to the hearing the claimant was paid $3564.48 for short-term disability and 35 percent industrial disability arising out of a previous worker's compensation claim. However, because there is a finding that claimant is permanently and totally disabled, there is no apportionment under Iowa Code section 85.37(7). See Drake University v. Davis 769 N.W.2d 176, 185 (Iowa 2009). Further, because the short-term disability applies to non-permanent benefits, a credit of that amount cannot be given against any permanent total award.

Claimant also seeks assessment of costs. One of the costs is the report of Dr. Delbridge. Dr. Delbridge is not an independent medical examiner, but rather a treating physician.

Reports are covered in IAC rule 876 4.33 wherein the claimant can request that costs be taxed by the deputy to a prevailing party.

Expenses and fees of witnesses or of obtaining doctors' or practitioners' reports initially shall be paid to the witnesses, doctors or practitioners by the party on whose behalf the witness is called or by whom the report is requested.

The costs, including Dr. Delbridge's report, as itemized in Exhibit 1, are awarded.

ORDER

THEREFORE, it is ordered:

That defendant is to pay unto claimant permanent total disability benefits at a rate of four hundred forty-seven and 25/100 dollars ($447.25) commencing December 16, 2016, continuing during the period of permanent total disability.

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

That defendant shall pay medical expenses as itemized in claimant's Exhibits 2 and 3.

That defendant shall pay three hundred and 00/100 dollars ($300.00) pursuant to Iowa Code section 85.39.

That defendant shall pay the costs of this matter excluding the fees of Dr. Manshadi which are addressed above pursuant to Iowa Code section 85.39.

That defendant shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30. Defendant shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Deciga Sanchez v. Tyson Fresh Meats, Inc., File No. 5052008 (App. Apr. 23, 2018) (Ruling on Defendants' Motion to Enlarge, Reconsider or Amend Appeal Decision re: Interest Rate Issue).

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

Signed and filed this 10th day of August, 2018.

JENNIFER S. GERRISH-LAMPE
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.