

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

LESTER GEORGE,

Claimant,

vs.

JBS USA HOLDINGS, INC./JBS USA,  
LLC/SWIFT PORK CO.,

Employer,

and

AMERICAN ZURICH INSURANCE  
COMPANY,

Insurance Carrier,  
Defendants.

**FILED**

APR 10 2018

WORKERS COMPENSATION

File No. 5063157

ARBITRATION DECISION

Head Note Nos.: 1802, 1803,  
2500

**STATEMENT OF THE CASE**

Lester George, claimant, filed a petition in arbitration seeking workers' compensation benefits against JBS USA Holdings, Inc., employer, and American Zurich Insurance Company, insurer, for alleged work injuries dated March 19, 2015.

This case was heard on February 6, 2018, in Des Moines, Iowa. The case was considered fully submitted on February 27, 2018 upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-8, Claimant's Exhibits 1-3, Defendants' Exhibits A-F, and testimony of the claimant.

**ISSUES**

Whether claimant is entitled to a running healing period award beginning January 3, 2018; or

Whether claimant refused suitable work under Iowa Code § 85.33(3);

The appropriate commencement date of permanent partial disability benefits, if any are awarded;

Rate;

Whether claimant is entitled to reimbursement of medical expenses itemized in Exhibit 2;

Whether claimant is entitled to an order of further care in Delaware;

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

The extent of claimant's disability; and

The assessment of costs.

### **STIPULATED FACTS**

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.

The parties agree the claimant sustained an injury on November 18, 2015. They further agreed that the claimant was single and entitled to one exemption. Defendants agree that the fees or prices charged by providers included in Exhibit 2 of the claimant's exhibits are fair and reasonable and that the listed expenses are causally connected to the medical condition upon which the claim of injury is based.

### **FINDINGS OF FACT**

Claimant was a 41-year-old person at the time of the hearing. His educational background includes college with a degree in Public Administration. He immigrated from Liberia in 2014 and began employment with defendant employer in 2015. At all times material hereto, claimant was single and entitled to one exemption.

His past work experience included stock work at a Sheraton hotel, material handler in Monrovia, Liberia and a stocker at a supermarket in Monrovia, Liberia.

Claimant began work for defendant employer in a meat processing plant on or about July 13, 2015. His work required repeated movements with his hands. The meat moved down a conveyor belt and his position required him to grab a carcass of a hog and hold the spine with one hand and use the other hand to cut a vein. On or about November 18, 2015, claimant reached inside the carcass and subsequently felt a pain in his left wrist prior to November 18, 2015. Claimant either hit the carcass with his left wrist or hurt something while pulling or cutting a vein. Claimant did have numbness and tingling in his right thumb and his left wrist. On November 23, 2015, he reported left wrist pain and was sent to the company nurse. (Joint Exhibit 2:2) The nurse recorded that claimant was tender to palpation at the ulnar deviation, had positive Finkel's test, and a small non-movable nodule on the radial aspect of his left wrist. She recommended ice, medication, and a massage. (JE 2:2) Claimant continued to receive conservative treatment through the rest of November. (JE 2)

On December 9, 2015, claimant was seen by Gregory E. Klem, M.D., who diagnosed claimant with de Quervain's syndrome on the left. Dr. Clem treated claimant's injury primarily with medication from December through January. (JE 3:5-7)

On February 3, 2016, Dr. Klem added physical therapy and placed claimant on restrictions of no use of the left arm and wrist. (JE 3:8) By March 9, 2016, claimant had achieved only about 50 percent relief. Dr. Klem referred him to an orthopedic hand specialist. (JE 3:9)

ZeHul Han, M.D. saw claimant for the first time on March 24, 2016. (JE 4:10) In the medical notes, Dr. Han recorded left wrist pain and right ring finger pain. (JE 4:10) Claimant explained that the left wrist problem dated back four months but the right ring finger pain was new. Id. Claimant testified that he believed that he struck the hog with his right hand while overcompensating for the lack of use on the left.

The examination showed normal nerve and sensation in both wrists. Id. Dr. Han diagnosed claimant with de Quervain's tenosynovitis on the left and trigger ring finger of the right hand. (JE 4:12) Injections were recommended for both the wrist and the finger. After the left wrist injection was administered, claimant refused the right ring finger injection because the left wrist injection was painful. (JE 4:12) Claimant returned to work. On April 21, 2016, the medical records noted claimant reported significant improvement after the injection but he was still having pain. (JE 4:14) At hearing, claimant maintained the injection did not alleviate his pain. During the April 21, 2016, visit, he was able to make a composite fist with full extension but had mild pain. There was no mention of the right ring finger pain. Claimant was ordered to return to regular work with no restrictions and follow up in four weeks. (JE 4:15) On May 19, 2016, Dr. Han found claimant at maximum medical improvement. Claimant was still having pain in both hands, but Dr. Han felt that claimant's de Quervain's symptoms had resolved. (JE 4:18)

On May 20, 2016, claimant was terminated due to his temporary work permit having been expired. (Claimant's Exhibit 1:4) Claimant testified that he was not provided the proper paperwork to fill out. In any event, claimant did not return to work for defendant employer.

Dr. Han issued an opinion letter on June 19, 2016, opining that the claimant sustained de Quervain's tendinitis on the left and trigger finger on the right. (JE 4:21) Dr. Han placed the claimant at maximum medical improvement and closed the case. Because the claimant had full range of motion of the bilateral wrist in the bilateral hands, Dr. Han assigned a zero percent impairment rating. (JE 4:21)

In June 2016, claimant began working for TPI as a Manufacturing Associate. His duties, per the application, included good communication, ability to lift and move objects up to 50 pounds consistently with heavier lifting at times. (Defendants' Ex. C:18) The application also said that the position "could involve sitting, standing, bending, reaching, kneeling, walking and lifting for long periods of time throughout the day." (Ex. C:18) On the TPI application, there were several inaccurate affirmations made. For instance,

claimant wrote that he had missed no days of work in the past year. (Ex C:16) The employee attendance records from the defendant employer indicated three missed days in early 2016. (Ex. B:14) He maintained he had never been terminated from a job or been involved in a conflict at work that resulted in verbal or written warning. (Ex. C:20) Claimant had one disciplinary action record for unauthorized use of cell phone. (Ex. B:13) As for his physical condition, claimant indicated he had no range of motion limitations that would prevent him from standing long periods, bending, stretching, pushing, pulling or continually using his wrist and fingers. (Ex. C:19) He affirmed that he would be able to lift up to 15 to 25 pounds and stand on his feet for long periods of time. (Ex. C:19)

Claimant testified at hearing that his job at TPI required him to do very little lifting and that his job primarily involved putting a fuse into a glass and wrapping wire around a glass. He performed this position for approximately eight months. Claimant testified that he quit because of the pain. However, he told TPI that he was returning to school. (Ex. C:30) At no time during his employment with TPI did he indicate that he was unable to perform his work due to pain and discomfort in his wrist and hand.

On June 22, 2016, claimant was seen by a UnityPoint nurse practitioner by the name of Jessica Tiernan for issues unrelated to claimant's wrist or hand problems. (JE 5) During the two week treatment period with Ms. Tiernan, there was no record of any complaint regarding his painful wrist or fingers. (JE 5) Claimant testified at hearing that he reported the wrist issue.

Defendants point to these records as evidence claimant had access to medical care, used it for issues that were causing him pain and discomfort but did not seek additional care for pain in the wrist and finger because there was no pain in those areas.

In early 2017, claimant requested follow-up care and was allowed to see Dr. Han on March 21, 2017. (JE 4:22) Claimant testified he was not examined by Dr. Han, but the medical records suggest otherwise. During the physical examination, the claimant exhibited tenderness on the first dorsal compartment and the Finkelstein test was positive. (JE 4:23) Dr. Han diagnosed claimant with recurrent de Quervain's tendinitis. (JE 4:24) Dr. Han offered claimant the option of a steroid injection or surgical release. Because the claimant was living in a different state, he refused any immediate treatment. Dr. Han placed no restrictions on the claimant and felt that claimant could do full duty regular work. (JE 4:24)

Dr. Han was deposed on February 1, 2018. (JE 8:57) During the deposition, Dr. Han stated that he did not believe that claimant's 2017 de Quervain's tendinitis was due to his work for defendant employer:

A. I want to state it very clear that de Quervain tendinitis, if the patient - - if the patient has stopped working for this company since the - - what's the last date? I remember it was about - - let me see. Give me one second.

If the last working date for this patient was May 21st of 2016 - - and you are very correct on the May - - March, April, May of 2016, I evaluate the patient for a de Quervain tendinitis and a trigger finger. That time the patient was working for the company. That time the diagnosis for this patient was work related.

And after May 21st, you quit the job for year and a half and on May 21st of 2016 to August of 2017, that's one year and two months, if you're not working for this company in one year and two months, you have a recurrent [*sic*] of de Quervain tendinitis. And you want to put this one to the continuation of that original workman's [*sic*] comp case, it is not.

So you are correct, very clearly stated on the May - - March, April, May 2016, his de Quervain tendinitis/trigger finger clearly was a work-related case.

But after year and two months, you never work for this company, you can have a lot of activities for other things. That's why if you want to continue connecting it to a year and two months before that conditions [*sic*], that's not. That's a time factor. That's - - it means you have a workman-related company - related condition in 2016, and you developed the condition without any symptoms for year and two months and at this time you want to see that condition, it's still a continuation even without - - asymptomatic for year and two months, no.

Q. When was Mr. George terminated?

A. Terminated from - - even from the May 21st of 2016. This is from the doctor in Delaware's recording. I remember he worked over there for three months, but if you want to ask me that exactly which date he terminated, it's not in my head. I have to check the record.

(JE 8:62)

Claimant began care with Pain Management & MRI, a chiropractic clinic, in Delaware County on January 3, 2018. (JE 7:30) He reported constant left wrist and hand pain with weakness, numbness, and tingling into his fingers as well as right ring finger pain with decreased motion. (JE 7:38) During the examination he had decreased flexion, extension, ulnar and radial deviation on the left with pain on movement. (JE 7:39) He had a positive Phalen's Sign, Tinel's Sign, and Finkelstein Sign. He had reduced grip strength on the left. There was pain primarily along the radial aspect of the wrist and along the extensor tendon of the thumb upon palpation. (JE 7:39) Conservative treatment such as electric muscle stimulation, ice packs, manipulation, and lower level laser therapy were applied to his left wrist and right ring finger. An MRI was also ordered. (JE 7:39)

The MRI conducted on January 9, 2018 showed a subtle bone condition and bone bruise of the distal ulnar. (JE 6:36) After a month of conservative treatment at the pain clinic, claimant was referred to Dr. Osterman, a bone specialist, for evaluation. (JE 7:65) Claimant testified at hearing that he has continual pain in his left wrist. There is a bump in his left wrist that was originally noticed by the workers' compensation nurse on November 25, 2015. (JE 2:3) He is using a brace which is helping to alleviate the pain, but it still exists primarily at the top of the wrist and the right ring finger. He does not believe that he can work with the pain in his left hand and right ring finger.

Defendants argue that claimant is not credible, pointing to the TPI application inconsistencies, his lack of medical complaints from his release from Dr. Han May 19, 2016, until early 2017. Claimant's testimony at hearing did slightly deviate from the medical records and it was a challenge to discern how much of the variations were from confusion and how much were from an unreliable witness. His demeanor at hearing did not suggest a lack of credibility. He did not avoid eye contact. He was consistent in describing how the injury occurred. He did not avoid questions on cross-examination, although, his answers were, at times, inconsistent with previous testimony. His inconsistent answers do suggest that his contemporaneous accounts and actions recorded in the documents is more reliable than the hearing testimony. To the extent that the hearing testimony deviates from the documentation, the documentary evidence is given greater weight.

Claimant testified that he applied for colleges in May 2017 but was not qualified. He has done limited agricultural work through a temporary agency since his move to the East Coast.

### **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 Rule of Appellate Procedure 6.14(6).

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).

The parties do not dispute that claimant sustained an injury to his left wrist, hand and fingers. There is a dispute over whether the right trigger finger injury is work-related. Dr. Han diagnosed claimant with left de Quervain's tendinitis and right trigger finger. (JE 4:21) As to the left upper extremity, the parties disagree as to whether the injury resolved or lingered, and if it still exists, to what extent is claimant permanently disabled. Claimant maintains that he is entitled to a running award commencing on January 1, 2018, until such time as one of the factors of Iowa Code section 85.34(1) is met for both the left wrist and right trigger finger injury.

Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until (1) the worker has returned to work; (2) the worker is medically capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. The healing period can be considered the period during which there is a reasonable expectation of improvement of the disabling condition. See Armstrong Tire & Rubber Co. v. Kubli, Iowa App. 312 N.W.2d 60 (1981). Healing period benefits can be interrupted or intermittent. Teel v. McCord, 394 N.W.2d 405 (Iowa 1986).

A determination on the issue of healing period benefits requires a finding on causation.

At the time of claimant's discharge from the defendant employer, he was working without restrictions. He went on to work a new job at TPI using his fingers and hands. He did this job without complaint and without restrictions. In his job application, he averred that he would have no problems meeting the physical requirements of the position including, but not limited to, the ability to lift and move objects up to 50 pounds consistently, sitting, standing, bending, reaching, kneeling, walking and lifting for long periods through the day. While claimant testified that he did little lifting, he did describe a position that required the use of his hands and fingers.

Claimant then left that job. At the time, he informed his employer that he was going to seek out educational assistance. At hearing, he testified that he quit because of pain.

In a 2017 examination, Dr. Han, a hand surgeon, did find that claimant had tenderness on the first dorsal compartment and the Finkelstein test was positive. Dr. Han diagnosed claimant with recurrent de Quervain's tendinitis. 2018 medical visits and radiographs showed a bone condition and bone bruise. Claimant testified that he had continual pain in his left wrist.

The only expert opinion in the record is provided by Dr. Han. While claimant maintains that Dr. Han's 2017 report provides a causal link from diagnosis of recurrent de Quervain's tendinitis to the work injury in November 2015, Dr. Han disavows this. (JE 8:68) The deposition testimony and the March 2017 report are not inconsistent. There is no mention of causation in the March 2017 report. The use of the word "recurrent" is not the same as stating that the diagnosis in March 2017 is derived from the same work incident that caused the original injury.

It is therefore found that claimant sustained a work injury to his left wrist and hand and right trigger finger that resulted in a temporary injury which resolved without permanency on May 19, 2016.

No permanent disability is found arising out of the work injury of November 18, 2015. The medical bills in Claimant's Exhibit 2 pertain to pain management treatment in 2018 and those bills are found to be for treatment to an injury that is not work related. Therefore, claimant is not entitled to any further benefits as it relates to his left wrist and hand, including future care.

Claimant also seeks benefits for a right trigger finger injury. This trigger finger injury began on or about March 24, 2016. As with his left wrist and hand, claimant did not seek treatment nor did he complain of pain or discomfort after May 2016, through January 3, 2018. During that period of time, claimant worked for another employer and did odd jobs.

Claimant failed to meet his burden that his current right hand pain arises out of and in the course of his employment.

To the extent that claimant did have a past right trigger finger injury, it is determined that it was temporary in nature and resolved without permanency on May 19, 2016.

As a result of these findings the remaining issues are moot. The parties shall be responsible for their own costs.

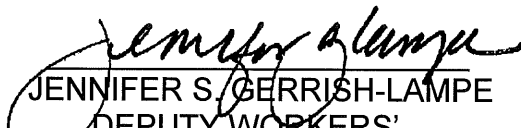
**ORDER**

THEREFORE IT IS ORDERED,

Claimant shall take nothing.

Each party shall be responsible for their own costs.

Signed and filed this 10<sup>th</sup> day of April, 2018.

  
JENNIFER S. GERRISH-LAMPE  
DEPUTY WORKERS'  
COMPENSATION COMMISSIONER



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JGL/srs

**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.