

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

MICHAEL KALLANSRUD,

Claimant,

vs.

PRESTAGE FOODS OF IOWA, LLC,

Employer,

and

SAFETY NATIONAL CASUALTY CORP.

Insurance Carrier,
Defendants.

File No. 21005518.01

ARBITRATION DECISION

Head Note Nos.: 1108, 1108.5, 1800,
1803, 2500, 3000

STATEMENT OF THE CASE

Claimant, Michael Kallansrud, has filed a petition for arbitration seeking workers' compensation benefits against Prestage Foods of Iowa, LLC, employer, and Safety National Casualty Corp., insurer, both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on November 3, 2022, via Zoom. The case was considered fully submitted on November 30, 2022, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-12, Claimant's Exhibits 1-4, Defendants' Exhibits A-H, along with the testimony of claimant.

ISSUES

1. The nature of claimant's work-related injury;
2. The extent of claimant's permanent partial disability;
3. The application of Iowa Code section 85.34(2)(v), if any;
4. Entitlement to future medical care;
5. Rate;

6. Credit;

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.

The parties agree claimant sustained an injury to his left shoulder arising out of and in the course of his employment on March 5, 2021. The commencement date for permanency benefits is April 6, 2022.

At the time of his injury, claimant was married and entitled to two exemptions.

Prior to the hearing, claimant was paid 20 weeks of permanent partial disability benefits at a rate of \$1,198.41.

FINDINGS OF FACT

Claimant, Michael Kallansrud, was a 46-year-old man at the time of the hearing. His educational background included average grades in high school with a diploma earned in 1994. Following high school, claimant obtained a two-year degree in welding from Iowa Central Community College in 1996. (Transcript, page 11; Defendants' Exhibits C:16) His work history includes body shop work, assembly line work, supervision of assembly line work, and his job at Prestage Foods for defendant employer. (Claimant's Exhibit 1:2-3) At all times relevant hereto claimant was married with one child. (DE C:16) Claimant separated in 2018 with divorce finalized in June 2022. (Id.)

Claimant began working for defendant employer on November 2018. (Ex. 1; Testimony) At the time of his injury, claimant was working as a utility lead earning \$32.75 per hour. (DE F:41) He described the utility lead as "training of the new employees and help out in the ammonia system, boiler area, air compressors, water." (Tr. p. 15) Claimant did not have a full thirteen weeks of work leading up to his injury and there was no evidence of similar situated workers introduced into the record. (See DE F) His hours varied according to the amount of overtime worked. In the week prior to his injury, he worked 40 regular hours and 10.85 hours of overtime twice, 21.98 hours of overtime, and .79 hours of overtime. (DE F:41) The week where claimant was on vacation and had no overtime is deemed nonrepresentative. Claimant stated without rebuttal that he always worked alternating weeks of 50 hours one week and 58 hours the next week with an 8-hour Saturday every other week. This is generally consistent with the pay records as the one week in which claimant worked only .79 hours of overtime, he was paid 8 hours of vacation for a total of 48.79 hours.

His wages varied between \$1,610.81 on the low end for weeks with overtime and \$2,462.74 for the high end. (DE F:41) It is found that the representative weeks include both the .79 hours of overtime and the 21.98 hours of overtime. Based on this factual finding, the average gross weekly wages would be $\$1,610.81 + \$2,462.74 + \$1,899.29 + \$1,899.29/4 = \$1,968.03$.

As of October 2022, since returning to work from his unrelated back surgery, claimant has been working essentially a data entry position for defendant employer. (Tr. pp. 15-17, 62-65) He works 7:00 a.m. until 3:00 p.m. He earns a dollar more per hour now (\$33.75 per hour) versus the time of his March 5, 2021, (\$32.75 per hour) work injury. (Tr. pp. 29-30) However, his overall wages are not the same. Prior to his injury, he was earning \$1,900.00 per week, and since his return to work in 2022, he has been earning \$1,434.31 per week including an attendance bonus. (Tr. pp. 65-68, 70-74) His hours have been reduced in part because of a choice made by defendant employer to reduce his weekly hours and in part due to claimant's need to leave at 3:00 p.m., for childcare issues. (Tr. pp. 17- 22, 58-60, 64-66, 69-73, Hearing Report) Claimant would like to work more hours but has not been allowed to do so. (Tr. 73)

His past medical history includes treatment for left-sided shoulder pain arising out of a fall injury on February 6, 2018. (Joint Exhibit 2:1) He reported severe pain of 7 on a 10 scale with no history of prior surgeries and decreased range of motion on the left. (JE 2:1-3)

He began treatment at Huseman Chiropractic Clinic on or about February 3, 2016, for lumbar pain which was aggravated by activity. (JE 1:1) He continued to receive sporadic treatment until November 2016. (JE 1:8) He returned on July 14, 2018, with complaints of pain in the thoracic region. (JE 1:9) After a couple of treatments, he did not visit the clinic again until February 11, 2019. (JE 1:13) Claimant had approximately three visits in 2019 for bilateral lumbar and sacroiliac pain, low thoracic pain and pain in the neck in February (JE 1:13); rib pain during a June 3, 2019, visit (JE 1:16); and lumbar and sacroiliac pain on August 21, 2019. (JE 1:17) In 2020, there were a few treatment visits primarily concentrated in June for lumbar and thoracic pain. (JE 1:19-22)

On or about March 5, 2021, claimant slipped on ice while on the roof of the defendant employer's plant, injuring his left side including his lower neck, shoulder, elbow, bicep. Defendants accepted the March 5, 2021, injury as work related and authorized care.

On March 8, 2021, claimant presented to Iowa Ortho and was evaluated by Timothy Vinyard, M.D. (JE 3:1-4) Claimant complained of "sharp, aching, burning pain over the anterolateral aspect of his shoulder." (JE 3:1) X-rays were negative for fracture or degenerative changes. (JE 3:1) Dr. Vinyard diagnosed claimant with instability and acute pain in the left shoulder and was concerned claimant had torn his labrum. (JE 3:3) Dr. Vinyard assigned a left side lifting restriction of two pounds and noted to "avoid repetitive grasping, lifting, pulling, pushing, climbing, reaching above head, and work

above shoulder level.” (JE 3:4) The subsequent MRI conducted on March 16, 2021, revealed a circumferential tearing of the labrum. (JE 3:8)

On March 16, 2021, Mr. Kallansrud was treated by Thomas Klein, D.O., at Iowa Ortho for a left shoulder arthrogram. (JE 4:1-2; JE 5) Kraig Kirkpatrick, D.O. interpreted the MRI arthrogram with an impression of “circumferential tearing of the labrum with no para labral cyst.” (JE 5)

At the recommendation of Eric K. Hedrick, PA-C, in consultation with Dr. Vinyard, claimant agreed to arthroscopic repair. (JE 3:8)

On April 20, 2021, Dr. Vinyard performed a left shoulder arthroscopic labral repair and capsulorrhaphy at Mercy River Hills Surgery Center. (JE 3:10-11)

On April 27, 2021, claimant began physical therapy. (JE 7:1) He attended 50 appointments from April 27, 2021, to September 10, 2021. (JE 7:1, JE 7:166) During the initial April 2021, appointment, claimant reported pain and difficulty with reaching overhead, dressing, and washing his hair and numbness in his thumb up to his shoulder. (JE 7:3) PT Echer stated, “pt demonstrates decreased ROM and strength and will benefit from skilled PT to allow pt to return to full duty work and PLOF.” (JE 7:2) Throughout the early visits, claimant consistently reported numbness in this thumb traveling up into his arm and shoulder although not at every visit. (See e.g., JE 7:5, 14, 58, 70, 73, 91, 99) Toward the latter part of his treatment, around August, he began to report only localized shoulder pain. (JE 7:123) There is no reference of any neck/cervical problems or any left bicep tendonitis diagnoses in his physical therapist’s records. (See infra JE 7)

Claimant testified at hearing and in his deposition that he reported neck problems to Dr. Vinyard prior to April 20, 2021. (DE H, depo p. 10) In response, claimant testified that Dr. Vinyard said it was swelling from the fall. (DE H, depo p. 15) Claimant acknowledged he did not ask for a referral for care of the neck from Dr. Vinyard, his employer or family doctor and that as of the current date, his only symptom is stiffness in the neck. (DE H, depo p. 16)

A few weeks after the April 2021 surgery, claimant fell at work and re-injured his left shoulder. (JE 3:48)

At the June 7, 2021, follow up, claimant reported increased pain with physical therapy and was concerned with popping of the left shoulder with movement. (JE 3:15) His pain, range of motion, and strength were slowly improving but Dr. Vinyard stated, “[h]e did tell me that at his place of employment, the stairs are quite steep and he needs to use his arms to go up and down the stairs. Therefore, in order to be overprotective, I will restrict him from repetitively going up and down steep stairs.” (JE 3:16) Dr. Vinyard also recommended additional physical therapy at this appointment. (Id.)

In claimant’s June 8, 2021, physical therapy assessment note, PT Thilges stated, “patient has significant palpable tightness with tenderness felt in left pec and biceps musculature today.” (JE 7:57) On the June 11, 2021, visit, claimant reported a “large

pop in the shoulder that traveled across his shoulder blade when using the pool last night.” (JE 7:61) At his June 14, 2021, physical therapy appointment, claimant reported that he “still has pain with lifting and carrying groceries or other items,” and he “occasionally requires assist from his right arm to help raise his arm for overhead activity.” (JE 7:64)

Claimant returned for a follow-up appointment with PA-C Hedrick on July 12, 2021, with greatly improved range of motion but concerns over the ongoing popping and increased warmth in the shoulder. (JE 3:19) A corticosteroid injection was offered which claimant refused. (JE 3:20) Claimant was encouraged to work hard at physical therapy and follow his home exercise program. (JE 3:20) Restrictions were modified to a 10-pound lifting restriction. (JE 3:20) At the July 19, 2021, therapy appointment he reported increased pain in the left shoulder since the preceding week with no definite onset. (JE 7:100) At the July 30, 2021, visit, he had decreased pain in the shoulder and demonstrated increased strength as well as a mild increase in active range of motion. (JE 7:119)

In various physical therapy notes during August and September, claimant’s complaints about warmth in his shoulder with use were documented (JE 7:123-166). Claimant reported “warmth in his shoulder when using it while driving. He still has similar soreness across upper lateral arm/shoulder noted that has improved slightly with soft tissue massage last visits. He notes that when not using his left arm to drive here today his shoulder felt cooler (not as warm).” (JE 7:123)

On August 9, 2021, claimant presented to PA-C Hedrick and while he was working hard with physical therapy and his pain, range of motion and strength were improving, he continued to have mild popping with motion along with ongoing warmth in the shoulder. (JE 3:23) He was offered and received a corticosteroid injection. (JE 3:24-26) PA-C Hedrick noted, “[w]e discussed that we will likely take him off [his] restrictions and place him at maximal medical improvement (MMI) at his next visit.” (JE 3:25) Claimant was placed on a 25-pound lifting restriction on the left side. (JE 3:26)

At claimant’s August 16, 2021, physical therapy appointment, claimant demonstrated “increased functional return to work lift testing but remains below work requirements.” (JE 7:137) The left shoulder pain stayed localized in the top of the shoulder. (JE 7:151) At the September 9, 2021, visit, claimant continued to report warmth in the shoulder, soreness across the upper lateral arm and shoulder with improvement from the soft tissue massage. (JE 1:63) Pain medications were also helping. (Id.) He also reported crepitus in his arm with just walking and swinging his arm. (Id.) His last therapy visit for this round was on September 10, 2021. (JE 7:166-168)

The following represents the changes in range of motion for the claimant at the beginning of therapy to the end. (JE 7:1, 7:166)

Range of Motion	LEFT AROM	LEFT PROM
Flexion	80 160	110 158
Abduction	80 158	110 160
External Rotation	17 71	30 80
Internal Rotation	55 WNL	55 84

At the September 12, 2021, visit, PA-C Hedrick stated, claimant “feels like he has not made much progress since his last visit. The last corticosteroid injection did not work. He still complains of some warmness and decreased strength. Does have some mild pain with some mild popping.” (JE 3:28) As a result, PA-C Hedrick ordered another MRI. (JE 3:32) The left shoulder arthrogram was conducted on October 18, 2021. (JE 8)

At his October 21, 2021, follow up with Dr. Vinyard, the MRI of left shoulder was discussed. At the visit, claimant complained of some warmness and decreased strength, along with increased pain with some mild popping. (JE 3:33) Claimant noted that he did not make any progress since his last visit and the last injection was not helpful. (Id.) Dr. Vinyard opined the following,

According to the radiologist it does look like he might have some tearing of the anterior and posterior labrum. He is having significant symptoms. His motion and strength are okay. We discussed the pros and cons of a range of treatment options. Ultimately, he elected to proceed with a repeat surgery. I was very honest with the patient. I told him that there is a chance that I may not actually end up doing much of the surgery. There is a chance that surgery may not help alleviate his symptoms. He did ask for a sling and I gave him one. I did lower his restrictions. He also asked about something stronger for pain.

(JE 3:34)

On November 16, 2021, claimant underwent a left shoulder arthroscopic revision labral repair performed by Dr. Vinyard at Mercy River Hills Surgery Center which revealed a re-tear of the anterior labrum. (JE 3:37) Dr. Vinyard noted that the remaining tissue did not appear healthy and the sutures appeared to be loose. (JE 3:37) Following the surgery, Dr. Vinyard restricted Mr. Kallansrud to no use of the left upper extremity and stated, “must be able to sit, stand, rest, ice, & take meds as needed.” (JE 3:39)

On November 29, 2021, claimant presented to Iowa Ortho with sharp, moderate pain in the left shoulder due to a recent fall at work. (JE 3:40) PA-C Hedrick discussed with claimant that he had a small chip fracture of the left glenoid and restricted claimant to “no use of the left upper extremity while in the sling.” (JE 3:41) On January 3, 2022, PA-C Hedrick increased claimant to an 8-pound lifting restriction and discontinued the use of the sling. (JE 3:44)

In 2021, claimant sought treatment twice from Dr. Huseman for lumbar pain and left lower rib pain. (JE 1:24-25) Neither visit mentioned shoulder or neck pain and there was no reference to his fall on March 5, 2021.

Claimant returned to Iowa Ortho on March 9, 2022, and was seen by PA-C Hedrick. Claimant reported his pain, range of motion, and strength were no longer improving and he complained of ongoing popping. (JE 3:45) Claimant had slightly decreased range of motion since the January visit but reported that his strength was “really good.” (JE 3:45) PC-A Hedrick felt claimant was not giving full effort during the examination and placed claimant on a 20-pound weight restriction. (JE 3:46) If he improved, he would be taken off restrictions and placed at MMI, but if the symptoms stayed the same or did not improve, an FCE would be ordered. (JE 3:46)

At the April 6, 2022, visit, an FCE was ordered. (JE 3:49) Claimant had limited active range of motion but near full passive range of motion. (JE 3:49) There were no references to neck or left biceps discomfort. Dr. Vinyard did not believe claimant had a frozen shoulder and offered manipulation under anesthesia which claimant declined. (JE 3:49) Dr. Vinyard also offered another MRI which claimant declined. (JE 3:49) The pros and cons of further injections, more medications or therapy were discussed but it was decided that the claimant would proceed with the FCE. Dr. Vinyard also noted, “He elected to proceed with the FCE. I was very clear to the patient that if his FCE is deemed valid, I will place him on permanent restrictions. If his effort is not consistent or invalid, I will not be able to place him on permanent restrictions. I have placed him at MMI. He does not need to return to see me for any further treatment.” (JE 3:49)

At the request of Dr. Vinyard, on April 19, 2022, claimant participated in a Functional Capacity Evaluation performed by John Kruzich, OTR/L, affiliated with Athletico Physical Therapy. (JE 9) The FCE lasted approximately 3.25 hours. (JE 9:8) Claimant’s performance was consistent, and Mr. Kruzich stated, “overall test results are a valid representation of client’s functional abilities based on client demonstrating consistent effort. Data obtained is near to equal to subjective’s true status. The evaluator is confident in projecting full time abilities and limitations.” (JE 9:1) Mr. Kruzich noted that Mr. Kallansrud demonstrated capabilities and functional tolerances to function within the Medium physical demand level. (JE 9:2) Mr. Kruzich opined, “main limiting factors include lengthy time in patient role, nature and/or extent of injury, decreased left shoulder active range of motion, decreased proximal left upper extremity strength/stamina for functional activities, and self perceived left shoulder area discomfort with specific activities.” (Id.) The range of motion in the shoulder was measured as follows:

Shoulder AROM	AMA Norms	Left	Right	NT
Flexion	180	128	156	NT
Extension	50	32	48	NT
Abduction	170	124	163	NT

Ext. Rot @ 90	80	68	78	NT
Int. Rot	>60	38	62	NT

(JE 9:4) Claimant exhibited normal wrist strength and range of motion and normal elbow range of motion.

Mr. Kruzich proposed the following activity limitations:

- Floor to waist lifting - 50 lbs., occasionally
- Waist to shoulder lifting - 30 lbs., occasionally
- Waist to overhead lifting - 20 lbs., occasionally
- Bilateral carrying - 50 lbs., occasionally
- Horizontal pushing/pulling - 55 lbs. of force, occasionally
- Sitting - Frequently, with positional changes as required
- Left unilateral sustained forward reaching - Frequently
- Left unilateral repetitive overhead reaching - Occasionally, within available active range of motion
- Left unilateral sustained overhead reaching - Occasionally, within available active range of motion

(JE 9:1)

In a letter dated May 5, 2022, Dr. Vinyard adopted the functional capacity recommendations including the work restrictions and opined that “[t]he patient would qualify for a 5% upper extremity impairment rating” for the left shoulder. (DE A:1) Dr. Vinyard further stated that he did not recall any complaints of neck symptoms and if there were, Dr. Vinyard would have referred claimant to a specialist. (DE A:3) Dr. Vinyard recommended no further treatment as claimant had refused the previous treatment suggestion during their last visit together such as the MRI, manipulation under anesthesia, and further injections or therapy. (DE A:4; JE 3:49)

On May 17, 2022, claimant reported to his family practice clinic at UnityPoint Health that he had concerns of back pain following a drive home from Okoboji. (JE 6:22) Claimant had been fishing over the weekend, an activity he undertook about every Friday. (DE H, depo p. 25) Notes documented that claimant had seen a chiropractor, Jason Laird, D.C., multiple times. (Id.) He was instructed to take prednisone followed by meloxicam. (JE 6:25) No further restrictions were imposed as he “already has work restrictions because of his shoulder.” (JE 6:25)

On May 23, 2022, he returned to UnityPoint with continued pain in the low back, radiating down into the right calf. (JE 6:27) He was off work and did not feel he would be able to function at his job due to the pain. (Id.) Joseph Larson, D.O., agreed to keep claimant off work. (Id.) On May 31, 2022, claimant reported to Dr. Larson that there was no improvement in his pain. (JE 6:30) He had difficulty sleeping at night due to the pain and could not work. (Id.) He was continued on meloxicam, Tylenol, Flexeril and given a prescription for 10 tablets of tramadol. (JE 6:31) Claimant was sent to physical therapy. (JE 6:31; JE 10)

At the June 10, 2022, appointment, claimant was prescribed prednisone to get the inflammation under control. (JE 3:36) An MRI was ordered pending authorization from the insurer. (Id.)

Claimant's acute back pain continued through July 14, 2022, and claimant continued to be off work due to the pain. (JE 6:38) An MRI showed a disc herniation. (Id.) Claimant was using hydrocodone and 2 aspirin a day without much relief. (Id.) Another FMLA form was filled out to give claimant at least a month off of work. (JE 6:40)

Claimant underwent surgical repair of his lumbar spine for a disc herniation impinging the L5 nerve root with decompression with a partial discectomy on August 16, 2022. (JE 11:7) Surgery appeared to be successful with claimant reporting pain at 1-2 on a 10 scale on August 29, 2022. (JE 11:14)

On September 19, 2022, Sunil Bansal, M.D., at Iowa Injury Institute performed an Independent Medical Evaluation with claimant. (JE 12) In the injury and treatment section, Dr. Bansal recorded the following:

At the time of his injury, Mr. Kallansrud was employed by Prestage Foods. On March 5, 2021, he sustained injuries to his left shoulder and neck.

. . . .

After his surgery he continued to complain of pain in his neck and trapezius area, and that his hand felt numb, especially his thumb. He did not have an MRI of his cervical spine, or any specific treatment for his neck pain. He was told that it would resolve with time.

(JE 12:7)

In somewhat of a contradiction to the subjective portion, Dr. Bansal's medical summary did not include any references to the neck. (See JE 12:5-6)

Dr. Bansal recorded claimant's current condition to include pain and popping of the left shoulder, inability to raise left arm overhead, neck soreness and pain when turning head to merge into traffic, neck pain radiating down the left arm into the thumb with numbness and tingling of the thumb." (JE 12:8)

On examination, Dr. Bansal found, “[t]here is tenderness to palpation over the cervical paraspinal musculature, greater on the left” and “[g]uarding is noted over the left cervical paraspinals.” (JE 12:8) There was “tenderness to palpation, greatest at the acromioclavicular joint and the upper arm over the mid biceps,” and “10% strength loss with elbow flexion.” (JE 12:8) The left upper extremity demonstrated a loss of sensory discrimination over the thumb. (JE 12:9)

Dr. Bansal concluded as follows:

LEFT SHOULDER/UPPER ARM: The mechanism of slipping on ice and falling, and getting his left arm caught as he fell, is consistent with his probable left shoulder dislocation which spontaneously reduced, and resulting in a large labral tear and biceps tendonitis which required surgical repair.

He also had a second injury, again falling at work and reinjuring his left shoulder, and required a revision labral repair.

NECK: In my medical opinion, Mr. Kallansrud incurred a cervical neck injury with radiculopathy (numbness and tingling of his right hand) from the impact of the fall on March 5, 2021. The numbness and tingling was reported in the review of his physical therapy visits at Select Physical Therapy, where it was documented that he had numbness of his thumb, consistent with his testimony with me and consistent with a diagnosis of cervical radiculopathy.

(JE 12:10-11)

It appears that Dr. Bansal concluded claimant suffered from cervical radiculopathy due to the numbness in the thumb up to the shoulder which was the only consistently documented symptom relative to a cervical spine issue that was not mentioned in the medical records. Dr. Bansal also opined that the pain was in the right hand and suggested intermittent steroid injections for maintenance of the right shoulder, but the reference to the right side versus the left may have been a simple scrivener’s error. (JE 12:12) Dr. Bansal also noted that claimant had right biceps tendonitis and a left biceps tendonitis for which he required surgical repair; however, there was no such diagnosis made during or prior to the surgery. (JE 12:10) Instead, the surgery—as was documented by Dr. Bansal on page 6 of the report—was for left shoulder arthroscopic revision labral repair. (JE 12:6)

Dr. Bansal agreed with Dr. Vinyard that claimant reached maximum medical improvement on April 6, 2022. (JE 12:10) Dr. Bansal assigned a 10 percent upper extremity impairment for the left shoulder, a 2 percent upper extremity impairment for claimant’s left biceps, and a 5 percent whole person impairment for having radicular symptoms, spasms, and a loss of range of motion for claimant’s cervical spine. (JE 12:11) The range of motion for the left shoulder was measured as follows:

LEFT SHOULDER

With reference to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, specifically Figures 16-40 through 16-46 and comparing to the right shoulder, we find that Mr. Kallansrud is assigned:

	RANGE OF MOTION	% UE Impairment
Flexion:	138 degrees	3
Abduction:	122 degrees	3
Adduction:	41 degrees	0
External Rotation:	50 degrees	1
Extension:	21 degrees	1
Internal Rotation:	55 degrees	2

(JE 12:11)

It was not clear where claimant suffered spasms as it was not documented in the subjective portion or examination portion of the report. Rather only tenderness to palpation and guarding was documented. (JE 12:8) Dr. Bansal further adopted the FCE restrictions.

Claimant testified that he still goes fishing and boating on the weekends in the summer. (DE H, depo p. 53) His current physical condition includes pain in the neck, shoulder area, left arm and left wrist. Per the claimant's testimony at hearing, the left wrist pain resolved but he continues to have pain in the lower neck, his shoulder, down to the elbow and biceps area. He did not mention numbness or tingling in the hand or thumb which was a persistent problem during the 2021 physical therapy treatment.

CONCLUSIONS OF LAW

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

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" refer 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 Elec. 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.

There are two competing expert opinions on the issue of causation as it relates to claimant's injuries arising from the March 5, 2021, injury. The primary dispute is over claimant's neck pain. Claimant maintains he sustained a permanent injury to his neck arising out of the March 5, 2021, work incident. Dr. Vinyard opined claimant's injury was limited to his left shoulder and arm. Dr. Bansal opines claimant suffered a neck injury along with radiculopathy radiating from the neck on the left side down into the elbow,

wrist and hand. The medical records do not support Dr. Bansal's conclusions. Claimant had a significant number of physical therapy visits in 2021 and none of them referenced a neck injury. Neck pain was not recorded as a complaint during his visits to Dr. Vinyard's office. While it is true that claimant repeatedly reported numbness in the shoulder down to the thumb, there were also many reports of pain being localized in the top of the left shoulder. Importantly, there was no treatment of the neck nor any mention of neck pain or numbness. During the work up for claimant's back surgery there was no mention of neck pain either. The symptom of numbness in the shoulder down to the thumb is not enough to carry claimant's burden of proof as it relates to the neck.

The medical records and treatment lend credibility to Dr. Vinyard's opinion for the neck. Dr. Bansal did conclude claimant sustained an arm injury and that is also consistent with the repeated complaints of pain and numbness in the shoulder down to the thumb. The FCE examiner noted no functional limitations in claimant's grip and that the primary pain and range of motion limitations emanated from the shoulder. Dr. Bansal's report includes some erroneous conclusions such as a finding of left and right biceps tendonitis.

There were consistent reports of pain and disability in the shoulder, arm, wrist, and hand. At hearing claimant stated that his wrist pain resolved.

Therefore it is Dr. Vinyard's opinion that is adopted herein. Claimant sustained a left shoulder injury resulting from the March 5, 2021, injury. Because it is a shoulder injury, claimant's extent of disability is deemed a scheduled member injury and only functional impairment is allowed. Based on this finding, Iowa Code Section 85.34(2)(v) does not apply as permanent partial disability based on paragraphs a through u are excluded.

Prior to the statutory change in 2017, a shoulder injury was not included within the scheduled member injuries contained in Iowa Code section 85.34(2). As such, when a disability occurred in the shoulder prior to the 2017 statutory change, a shoulder injury was compensated with industrial disability benefits. Iowa Code section 85.34(2)(u); Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949); Nazareus v. Oscar Mayer & Co., II Iowa Industrial Commissioner Report 281 (Appeal 1982). However since 2017, the shoulder has been designated as a scheduled member injury pursuant to Iowa Code Section 85.34(2)(n) sets the boundary for compensation for the left shoulder to four hundred weeks.

In all cases of permanent partial disability described in paragraphs "a" through "t", or paragraph "u" when determining functional disability and not loss of earning capacity, the extent of loss or percentage of permanent impairment shall be determined solely by utilizing the guides to the evaluation of permanent impairment, published by the American Medical Association, as adopted by the workers' compensation commissioner by rule pursuant to chapter 17A. Lay testimony or agency expertise shall not be utilized in determining loss or percentage of permanent impairment

pursuant to paragraphs “a” through “t”, or paragraph “u” when determining functional impairment and not loss of earning capacity.

Iowa Code section 85.34(2)(x) (2019). 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).

Dr. Vinyard assessed a 5 percent impairment rating for the left shoulder and Dr. Bansal 10 percent upper extremity impairment rating for the shoulder. Dr. Bansal’s rating was on precise measurements of the left shoulder range of motion. Dr. Bansal’s measurements were fairly close to the ones recorded by the FCE evaluator with some of Dr. Bansal’s measurements showing greater range of motion.

	Dr. Bansal	FCE
Flexion	138	128
Extension	32	21
Abduction	122	124
External Rotation	50	68
Internal Rotation	55	38

Because of this, the opinion of Dr. Bansal as it relates to the left shoulder impairment is adopted herein. Claimant is entitled to 10 percent impairment of the left shoulder.

The parties dispute the claimant’s gross earnings at the time of the injury.

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).

Under section 85.36(7), the gross weekly earnings of an employee who has worked for the employer for less than the full 13 calendar weeks immediately preceding

the injury are determined by looking at the earnings of other similarly situated employees employed over that full period, but if earnings of similar employees cannot be determined, by averaging the employee's weekly earnings computed for the number of weeks that the employee has been in the employ of the employer.

Defendants paid the permanent benefits based on gross weekly wages of \$1,928.00 per week for a weekly compensation rate of \$1,198.41. In November 2021, the parties agreed that the average gross weekly wage was \$1,883.13 which would be a compensation rate of \$1,180.09 per week. (DE G:44) However, according to the findings of fact it is determined that the representative gross weekly wage is \$1,968.03 with a compensation rate of \$1,864.00 for a married with two exemptions injured worker.

Based on the foregoing, defendants are not entitled to a credit for overpayment but they are entitled to a credit of benefits paid against the award of 10 percent impairment of the left shoulder.

Claimant seeks additional medical care.

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).

Claimant is entitled to future care as it relates to his left shoulder but not for the neck and arm based on the causation finding.

ORDER

THEREFORE IT IS ORDERED:

That defendants are to pay unto claimant forty (40) weeks of permanent partial disability benefits at the rate of one thousand eight hundred sixty-four and 00/100 dollars (\$1,864.00) per week from April 6, 2022.

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

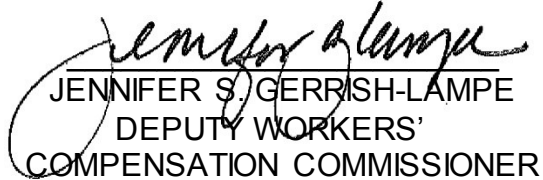
That defendants shall pay interest on unpaid weekly benefits awarded herein as set forth in Iowa Code section 85.30.

That defendants are to be given credit for benefits previously paid.

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

That defendant shall bear the costs of this matter pursuant to rule 876 IAC 4.33, including the cost of the transcript. To the extent these costs are not yet paid, defendants shall pay the costs as soon as practicable.

Signed and filed this 3rd day of April, 2023.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Randall Schueller (via WCES)

Jennifer Clendenin (via WCES)

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