BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES HESSENIUS, Claimant, vs. GREAT PLAINS ORTHOTICS & PROSTHETICS, INC., Employer, and UNITED FIRE & CASUALTY CO., Insurance Carrier, Defendants.	FILED JUN 5 2015 WORKERS' COMPENSATION File No. 5044228 ARBITRATION DECISION Head Note Nos: 1402.30, 1402.40, 1703, 1804, 2501, 2701, 2908

STATEMENT OF THE CASE

James Hessenius, claimant, filed a petition in arbitration seeking worker's compensation benefits from Great Plains Orthotics & Prosthetics, Inc., as his employer, and United Fire & Casualty Co., as the insurance carrier. This case proceeded to an arbitration hearing on March 2, 2015 in Des Moines, Iowa.

Claimant testified on his own behalf and was the only witness called to testify live at the time of hearing. Claimant offered exhibits 1 through 32. Defendants offered exhibits B through S. All exhibits were received into the evidentiary record, though defendants asserted an objection to claimant's exhibit 29.

The parties also submitted a hearing report, which contains stipulations. The parties' stipulations are accepted and relied upon in entering this decision. No findings or conclusions will be entered with respect to the parties' stipulations and the parties are bound by those agreements.

Counsel for the parties requested the opportunity to file post-hearing briefs. This case was considered fully submitted upon the simultaneous filing of post-hearing briefs on April 3, 2015.

ISSUES

The parties submitted the following disputed issues for resolution:

1. Whether claimant's right shoulder, cervical spine and mental health conditions are causally related to the stipulated January 25, 2010, left shoulder work injury.

2. The extent of claimant's entitlement to healing period benefits, if any.

3. Whether claimant is an odd-lot employee.

4. The extent of claimant's entitlement to permanent disability benefits.

5. The proper commencement date for permanent disability benefits.

6. Whether claimant is entitled to reimbursement or payment of past medical expenses itemized in claimant's exhibit 30.

7. Whether claimant is entitled to an order directing alternate medical care, specifically including transfer of medical care to a pain specialist.

8. The extent of defendants' entitlement to a credit for benefits paid.

9. Whether claimant is entitled to an order for reimbursement of costs.

FINDINGS OF FACT

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

James Hessenius was a 62-year-old married man on the date of hearing. Mr. Hessenius is a high school graduate that joined the Plumbers and Pipefitters Union in 1973 and worked as a pipefitter for ten years. Unfortunately, in March 1983, Mr. Hessenius sustained a low back injury, which resulted in a herniated disk. Mr. Hessenius submitted to two low back surgeries to remedy his herniated disk and was unable to return to work as a pipefitter thereafter.

Having lost his livelihood, Mr. Hessenius elected to seek retraining and obtained his associate's degree in prosthetics from Kirkland Community College. He then moved to Minneapolis and trained to become a prosthetist. While working, Mr. Hessenius also pursued his bachelor's degree by taking night classes. He graduated from Northeast Metro Technical College in 1989 with a certificate as a prosthetic practitioner. He obtained his bachelor's degree in 1990.

Claimant performed a one-year residency in prosthetics and became a certified prosthetist in 1992. In 1992, claimant opened a new prosthetics office for Dale Clark

Prosthetics in Cedar Rapids, Iowa. In 1998, Dale Clark sold his business and claimant opened an office for Great Plaines Prosthetics in Cedar Rapids. He worked in that capacity as a certified prosthetist as well as the office manager.

Mr. Hessenius described the physical demands of his work as a certified prosthetist, which required lifting 75-80 pound positive models made of plaster, lifting 100 pounds of bags of plaster, as well as helping to lift and assist patients he saw. He utilized titanium, steel and tools to fashion and form new limbs for amputee patients. He described constant reaching, overhead reaching activities, as well as forceful pushing and pulling. Mr. Hessenius testified that he worked 10 to 12 hours per day and worked seven days per week as a prosthetist.

On January 25, 2010, Mr. Hessenius was shoveling the walks at GreatPlains Orthotics & Prosthetics after a local snowstorm. The business ran out of ice melt and claimant drove to Ace Hardware to get more. Unfortunately, he slipped and fell onto his left hip and left elbow in the icy conditions. He immediately experienced symptoms in his left hip and left shoulder. His left hip injury resolved, but his left shoulder did not improve. Defendants admit claimant sustained a left shoulder injury.

Mr. Hessenius has not worked since July 2010. In September 2011, the employer terminated claimant's employment as a result of his physical limitations.

The first major factual issue in dispute between the parties is whether claimant's right shoulder is causally related to the January 25, 2010, fall. Clearly, the right shoulder injury is not a direct result or consequence of the January 25, 2010, fall. However, claimant contends that he lost the use of his left arm and shoulder as a result of that fall, began using his right arm and shoulder more, and developed an injury to his right shoulder as a result.

Six physicians have offered causation opinions pertaining to claimant's right shoulder condition. Claimant relies upon the opinions of two treating orthopaedic surgeons, Craig A, Dove, D.O. and David P. Hart, M.D. Claimant also offers the opinions of his independent medical evaluator, Mark C. Taylor, M.D. Defendants rely upon the opinions of treating orthopaedic surgeon, James V. Nepola, M.D., as well as the opinions of Charles D. Mooney, M.D. and Robert L. Broghammer, M.D.

Dr. Dove opines:

> I had the opportunity to review the imaging studies on the right shoulder of the patient.
>
> He does have significant degenerative changes and arthritis.
>
> In regards to causality, although these underlying degenerative changes and arthritis are not a direct result of his previous left shoulder injury, I do believe this did cause an aggravation of his right shoulder

> condition due to the increased use of his right upper extremity due to his left shoulder condition.

(Ex. 7)

Dr. Hart responded to an inquiry from defendants, stating, "While it is true the patient did have pre-existing osteoarthritis involving his left shoulder, the work related accident has significantly aggravated his left shoulder. The reason to proceed with total shoulder replacement is directly related to the above mentioned work accident." (Ex. 5, p. 31) In an office note dated May 24, 2013, Dr. Hart indicated:

> [E]ven though he had pre-existing osteoarthritis of the right shoulder predating the onset of symptoms of May of 2011, it is more likely than not (that i,s (sic) probable), that his reliance on the right shoulder for activities of daily living during the convalescence or recovery of his left shoulder, materially aggravated his right shoulder symptoms.

(Ex. 5, p. 34)

Finally, Dr. Taylor opines:

> One must ask what changed that led to the bilateral shoulder replacement procedures. The left side is well documented and was related to the acute injury. However, Mr. Hessenius had substantial arthritis in the right shoulder that was not previously symptomatic. His use of the right upper extremity essentially doubled, or at least nearly doubled. This increased use of the right upper extremity more likely than not accelerated his need for a right total shoulder replacement. This could also be viewed from the standpoint of a "lighting up." The right shoulder was not previously symptomatic. He was successfully performing his work as a prosthetist, including physically demanding tasks. Although the arthritis was previously present, it was not symptomatic. The only thing that changed was the fact that he had to use the right arm substantially more than what he was accustomed to (and for an extended period of time). This led to increasing symptoms in the right shoulder, which would also be consistent with a "lighting up" of a previously asymptomatic condition. The increased use of the right shoulder may not have substantially changed the radiographic findings, but it is well documented that the symptoms progressed and necessitated ongoing treatment, including injections with Dr. Nepola. Unfortunately, these symptoms still did not resolve and he then required a reverse total shoulder arthroplasty by Dr. Hart.
>
> Therefore, I would agree with Dr. Dove and Dr. Hart that the original January 25, 2010 left shoulder injury represented a significant contributing factor to the worsening of his right shoulder condition. Again,

> this could be viewed as an aggravation or a lighting up. It could also be viewed from the standpoint of the fact that it accelerated his need for a right total shoulder arthroplasty. It is unlikely that Mr. Hessenius would have required a right total shoulder arthroplasty at the time he did but for the left shoulder injury that occurred.

(Ex. 1, p. 13)

Defendants counter the above medical opinions by offering a causation opinion from Dr. Nepola. Dr. Nepola summarizes his medical opinions in response to an inquiry from defense counsel dated January 26, 2015. In his February 4, 2015, response, Dr. Nepola opines that, "Mr. Hessenius' right shoulder condition was not causally related to or medically caused by the left shoulder injury that occurred on January 25, 2010." (Ex. G, p. 30) Dr. Nepola further opines in his own handwriting, "Mr. Hessenius has osteoarthritis, a degenerative condition. He has had Ⓛ and Ⓡ shoulder replacements as well as a Ⓡ total knee replacement. All are consistent with the degenerative disease process." (Ex. G, p. 30)

Defendants also offer the opinions of Dr. Broghammer, who opines:

> It is my medical opinion with a reasonable degree of certainty that Mr. Hessenius' right shoulder complaints are not related to his alleged injury. The reasons for stating so are multiple. First of all, the medical record reflects that the worker did not have right shoulder symptoms or at least none documented until the worker's visit with Dr. Dove in May 2011. There is no mechanism for the worker's shoulder symptoms and no injury. The worker's initial injury was confined to his left upper extremity and his left lower extremity. There is no evidence of any injury to the worker's right shoulder. Secondly, the worker has multiple comorbid conditions including the significant glenohumeral arthritis of his left shoulder. It is more likely than not that a similar process would be present in the worker's right shoulder as these conditions are generally bilateral in nature. There is nothing to suggest that the worker's symptomatology in his right shoulder is due to his alleged injury. Any further work up or treatment for the worker's right shoulder condition should occur outside the auspices of the worker's compensation system as there is no relationship to the worker's alleged injury.
>
> As noted in my review of the record with Mr. Hessenius, it is my opinion as noted above, regarding the worker's right shoulder and presence of likely osteoarthritis is corroborated by the recent CT scan done December 25, 2012 which showed severe glenohumeral osteoarthritis in the right shoulder. This corroborates my opinion that the worker's symptoms are not due to the injury or mechanism but are due to a personal underlying genetic disorder, i.e. osteoarthritis of the glenohumeral joint of the right shoulder. This would all be considered pre-

> existing given the severe nature of the osteoarthritis. It would be expected that the worker would develop symptoms at some point regardless of occupational activities or alleged injury. Thus, I stand by my opinion that the worker's right shoulder symptoms are non-occupational etiology and represent only symptoms of chronic disease.

(Ex. D, p. 8)

Dr. Mooney offers a similar analysis and opinion in his September 12, 2014, independent medical evaluation report in which he opines:

> It is my opinion that Mr. Hessenius demonstrated significant osteoarthropathy in both shoulder. It is my opinion that although there would be some expected increase in activity of the right upper extremity after left shoulder arthroplasty, that there is no evidence that such activity would have accelerated these symptoms necessitating his shoulder arthroplasty. Subsequently, it is my opinion that there is no causal relationship between the findings of the right shoulder and the injury of 01/25/10 based on the Bradford Hill criteria.

(Ex. E, p. 7)

The opinions offered by all parties are from highly qualified physicians. Claimant offers opinions from two highly qualified orthopaedic surgeons and an occupational medicine specialist. Defendants offer the opinion of a highly qualified orthopaedic shoulder specialist as well as two opinions from occupational medicine specialists. Each of these physicians offers rational and well-explained medical opinions on this causation issue.

Ultimately, I find that claimant has not proven by a preponderance of the evidence that his right shoulder injury and resulting surgical intervention are causally related to the January 25, 2010, work injury. While the aggravation or acceleration theory espoused by those physicians proffered by claimant could have merit, their analysis is difficult for me to accept in this case. Claimant did not report right shoulder symptoms for quite some time after his initial injury and long after he quit working for the employer.

Undoubtedly, claimant had an increase in the use of his right arm and right shoulder after his left shoulder surgery and immobilization. This increase in use of the right arm appears to be a significant factor in the causation opinions of Drs. Dove, Hart and Taylor. However, their assumptions of increase usage do not account for or consider the fact that claimant stopped performing work as a prosthetist long before his right shoulder symptoms were reported or treated. Although there may have been an increased use of the right shoulder for daily activities, I doubt that claimant's right arm usage after his left shoulder surgery was significantly more than it would have been on the date of injury when claimant was actively using both arms working as a prosthetist.

At a minimum, I find that claimant failed to prove by a preponderance of the evidence that he experienced a significant increase in the usage of his right shoulder from the amount he used it prior to this date of injury, even after the left shoulder surgery. None of claimant's physicians appear to have considered this fact in their analysis.

Claimant clearly had significant degenerative changes in his right shoulder before the date of injury. He had similar degenerative changes in other major joints as well. In this instance, I find the opinions of Dr. Nepola, Dr. Mooney and Dr. Broghammer to be the most convincing medical opinions. Therefore, I find that claimant failed to prove he sustained a right shoulder injury or material aggravation as a result of the January 25, 2010, work injury.

The next disputed factual issue submitted by the parties for determination is whether claimant's neck condition is causally related to the January 25, 2010, work injury. None of claimant's medical records immediately after the date of injury document neck symptoms or complaints. The first medical record identified in which a physician recorded claimant's complaints of neck symptoms was by Dr. Dove on May 10, 2011. (Ex. 18d, p. 137) On that date, Dr. Dove ordered an MRI of claimant's cervical spine to rule out potential radiculopathy or myelopathy. Dr. Dove also ordered an EMG to identify any potential radiculopathy.

The neck MRI disclosed a bulging disc and stenosis at multiple levels. (Ex. 18d, p. 140; Ex. M) However, the EMG did not reveal any radiculopathy coming from claimant's neck. (Ex. 18d, p. 140) Dr. Dove's diagnosis on June 2, 2011, was "Chronic neck pain likely exacerbation of degenerative disc disease secondary to a fall." (Ex. 18d, p. 141) Dr. Dove referred claimant to Sunny Kim, M.D. for treatment. (Ex. 18D, p. 144)

Dr. Kim evaluated claimant initially on August 1, 2011. His impression at that time was "Chronic neck pain with upper extremity radicular complaints, most likely secondary to cervical radiculitis. Clinical examination supports a left C6 radiculopathy." (Ex. 18b, p. 106) At that time Dr. Kim indicated, "I suspect that the patient suffered injury to the cervical roots, predominantly involving the small pain fibers as a direct consequence of the original injury and symptoms have been worsened post-operatively." (Ex. 18b, p. 106)

Dr. Kim's analysis and opinion appear to assume that claimant had neck and radicular symptoms immediately after the January 25, 2010, fall. However, as noted above, the initial medical records after this injury do not demonstrate any neck or radicular symptoms immediately after the work injury. Dr. Kim does not explain why there was a delay in onset of neck or radicular symptoms after the fall.

Defendants scheduled Mr. Hessenius to be evaluated by a neurosurgeon, Chad D. Abernathy, M.D., to evaluate his neck symptoms and condition. Dr. Abernathy evaluated claimant on April 23, 2012. He responded to inquiries from the defendants, stating:

1. The patient's diagnosis is chronic cervical strain. I do not believe that the degenerative changes on his MRI are related to his work injury of January, 2010.

2. The patient's current complaints are primarily associated with his shoulder issues. He does not have any objective neurologic findings.

3. The patient's current complaints are related to his work injury primarily involving his shoulder issues.

4. I believe that the patient's cervical degenerative changes are not work related and he can certainly have neck pain associated with his shoulder issues unrelated to his cervical degenerative changes.

5. The patient's ongoing treatment would be related to his work injury primarily associated with his shoulder issues.

6. I do not have any work restrictions for the patient from a cervical standpoint.

7. I believe that the patient has achieved Maximum Medical Improvement regarding any cervical issues.

8. I do not believe that the patient has any impairment related to his cervical spine.

(Ex. 18h, pp. 212-213)

Defendants also asked Dr. Mooney to evaluate claimant's neck condition. Dr. Mooney opined:

> It is my opinion that the medical record would not reflect that there was any significant injury occurring to the cervical spine related to date of injury 01/25/10.
>
> Specifically, complaints of neck pain do not meet the temporal relationship expected using the Bradford Hill criteria, nor is there any evidence in the medical record of EMG positive findings consistent with cervical radiculopathy resulting in radiating pain into the neck despite Dr. Kim's conclusions of cervical radiculitis.
>
> It is evident that his treatment for cervical arthropathy and degenerative disc disease as described above was beneficial in treating these symptoms; however, there is no evidence of any causal relationship

> between the development of these symptoms and the date of injury of 01/25/10.

(Ex. E, pp. 7-8)

I find that the objective testing (i.e., MRI and EMG) results tend to support the opinions of Dr. Abernathy and Dr. Mooney over those offered by Dr. Kim. Similarly, I find that the lack of any report of neck or radicular symptoms immediately after the work injury tend to support the medical causation opinions of Dr. Abernathy and Dr. Mooney over those offered by Dr. Kim or Dr. Dove. I find the opinions of Dr. Abernathy and Dr. Mooney to be the most convincing opinions pertaining to the cause of claimant's alleged neck injury. I find that claimant did not sustain a neck injury on January 25, 2010.

Claimant next asserts a claim for a mental health injury that arises out of and as a proximate cause of the injuries sustained on January 25, 2010. Once again, this evidentiary record contains competing expert opinions. Claimant's treating psychiatrist, Gregory Hotsenpiller, M.D., diagnosed claimant with major depressive disorder. Dr. Hotsenpiller opined, "I believe Mr. Hessenius's January 25, 2010 work injury is a substantial contributing factor in causing his major depressive disorder. I also believe all of his depression-related treatment since March 2012 has been necessary as a result of his work injury. I believe his treatment has been beneficial." (Ex. 13, p. 55)

Dr. Hotsenpiller further opined that he did not identify any signs of malingering during his treatment of claimant. Dr. Hotsenpiller further indicated that he was aware of prior psychological treatment or evaluation to which claimant had submitted before a 2006 bariatric surgery. He noted that pre-existing treatment did not change his causation opinion. (Ex. 13, p. 55)

Unfortunately, Dr. Hotsenpiller also opines that Mr. Hessenius will require ongoing mental health treatment and that he does not believe claimant's mental health condition will improve in the future even with the additional needed treatment. Dr. Hotsenpiller opines that claimant is not "capable of working more than three hours per day or more than four days per week. If Mr. Hessenius were physically capable of returning to work, due to his major depressive disorder it would have to be low stress job that required minimal effort and minimal concentration." (Ex. 13, p. 55)

Claimant's treating psychologist, Michael March, Ph.D., also offered a formal causation opinion. Dr. March provided the aforementioned psychological treatment and evaluation in 2006. He has been claimant's treating psychologist since the January 25, 2010, work injury. Dr. March diagnosed claimant with depression. Dr. March opines, "I believe that Mr. Hessenius's depression is caused by the effects of his January 25, 2010, work injury, and the pain and physical limitations he has suffered as a result." (Ex. 11, p. 49) Dr. March concurs with Dr. Hotsenpiller that claimant will require ongoing mental health treatment. (Ex. 11, p. 49)

At defendants' request, Charles V. Wadle, D.O., a board certified psychiatrist, evaluated Mr. Hessenius on February 18, 2012. Dr. Wadle obtained a Minnesota Multiphasic Personality Inventory (MMPI) evaluation from claimant. He took a history and performed his psychiatric evaluation of claimant in addition to performing a record review. Dr. Wadle concluded:

> Mr. Hessenius struggles with a multitude of issues including alleged chronic pain, disappointment with his job termination as a product of the initial owner's selling the company, and conflicts with his wife over his social behaviors via electronic media. Although all the above can have themes of dysphoria and demoralization, such does not necessarily implicate a separate diagnosis of Major Depressive Disorder. DSM-IV (Diagnostic and Statistical Manual of Mental Disorders) is a phenomenological identifier of symptoms without considering symptom etiology. A list of symptoms may qualify for a diagnosis without consideration of symptom causation. When considering symptom causation in this case, it is more conducive to determine any semblance of "depression" as emanating from the multiple issues at hand versus an overt psychiatric disorder such as Major Depressive Disorder.

(Ex. F, p. 5)

Ultimately, Dr. Wadle concludes:

> Mr. Hessenius does not have a psychiatric diagnosis causally related to his injury of January 2010. There are no work restrictions based upon any psychological, emotional, or psychiatric diagnosis. Returning to work would be beneficial to Mr. Hessenius and he identifies work return as his goal. Treatment via psychotherapy or pharmacotherapy would be incidental to chronic pain as a medical condition versus any psychiatric condition.

(Ex. F, p. 5)

Dr. Wadle does not appear to dispute or refute claimant's proclaimed symptoms. Nor does he suggest that ongoing treatment is unnecessary. Rather, Dr. Wadle simply concludes that there is not an applicable psychiatric diagnosis. Rather, claimant's mental health symptoms can be attributed to his ongoing chronic pain.

Dr. Wadle's opinion makes sense with regard to the need for ongoing treatment and corresponds with the opinion of Dr. Hotsenpiller and Dr. March in this regard. I find that claimant requires ongoing mental health treatment whether it is for a mental health diagnosis or for mental health treatment to deal with chronic pain and related symptoms.

Dr. Wadle offers no explanation for why claimant did not require mental health treatment before his January 25, 2010, work injury, but now requires ongoing psychotherapy and pharmacological treatment. Temporally, it appears that claimant's need for mental health treatment corresponds with his work injury.

Considering claimant's ongoing chronic pain symptoms, his job loss, and the effects of those events as testified to by Mr. Hessenius, I find that the explanations of Dr. Hotsenpiller and Dr. March are more consistent with the temporal development of mental health symptoms. Both of those mental health providers have seen claimant for an extended period of time since the work injury. Dr. March treated claimant both before and after the work injury, providing him a unique perspective from which to evaluate the cause of claimant's current mental health.

I find the opinions of Dr. Hotsenpiller and Dr. March to be the most convincing on mental health issues in this case. Therefore, I find that claimant has proven he sustained a mental health injury as a result of the January 25, 2010, work injury. Relying upon the opinions of Dr. Hotsenpiller and Dr. March, I find that claimant requires ongoing mental health treatment that is causally related to the January 25, 2010, work injury.

Finally, relying upon the opinion of Dr. Hotsenpiller, I find that claimant is not likely to improve from his mental health injuries even with ongoing treatment and that claimant is precluded from working more than three hours per day or more than four days per week as a result of his mental health injuries. I further find that, if he returned to work, claimant would be limited to a low stress job that would require no more than minimal effort or concentration. (Ex. 13, p. 55)

With respect to his admitted left shoulder injury, I find that claimant has achieved maximum medical improvement and that he sustained a 21percent whole person impairment rating as a result of the January 25, 2010, work injury. (Ex. 1, p. 14) Dr. Mooney offered a similar impairment rating at 20 percent of the whole person, suggesting Dr. Taylor's impairment rating is fairly accurate. (Ex. E, p. 9)

Dr. Mooney offered no opinion pertaining to claimant's work restrictions from his left shoulder injury because he was still recovering from surgeries to the left shoulder. (Ex. E, p. 9) Dr. Hart offered permanent restrictions, but his restrictions were outlined in 2012 and are not terribly current or pertinent. I find later restrictions imposed to be more relevant and credible.

In November 2014, Dr. Nepola opined that claimant, "May lift up to 5 pounds with his left arm with his elbow close to his side. No reaching above chest height and no repetitive reaching extended out from the body with his left arm." (Ex. 3, p. 29) Dr. Nepola also recommended against driving or any activity that requires alertness while taking sedating medications. (Ex. 3, p. 29)

Claimant continues to require ongoing medications and treatment for chronic pain. Given the extent of claimant's injury and surgical replacement, I find Dr. Nepola's restrictions to be realistic and reasonable.

In December 2014 (following his November 2014 examination), claimant's independent medical evaluator also offered permanent work restriction recommendations. Dr. Taylor offered similar restrictions to those imposed by Dr. Nepola. Specifically, Dr. Taylor opined that claimant could occasionally lift 20-25 pounds between knee and waist. Dr. Taylor opined that claimant could lift only 5-10 pounds with his left arm close to the body. Dr. Taylor also opined that claimant could not lift his left arm above chest level and that he needed to avoid forceful pushing and pulling movements with his upper extremities. (Ex. 1, pp. 14-15)

Subsequent to Dr. Nepola's imposition of restrictions, claimant submitted to a functional capacity evaluation in December 2014, which demonstrated the ability to lift 45 pounds occasionally. Realistically, however, I rely upon the clinical judgment of Dr. Nepola as the treating orthopaedic shoulder specialist to determine the claimant's realistic and safe physical limitations and abilities. I accept Dr. Nepola's restrictions as accurate and applicable.

Both parties submitted vocational rehabilitation specialists' opinions to aid the undersigned in analyzing claimant's industrial disability and odd-lot claims. Claimant offered a report and deposition from Kent Jayne. Defendants offer vocational opinions from Tom Karrow.

Mr. Jayne reviewed claimant's medical records, discovery materials, administered several of his own tests to claimant, conducted an interview of claimant, and conducted a labor market survey. Mr. Jayne opines, "Given his current limitations as understood, it is unlikely that any feasible vocational rehabilitation plan would have a reasonable likelihood of success in returning Mr. Hessenius to competitive employability absent a significant increase in his physical and vocational capacities, and amelioration of his severe chronic pain." (Ex. 15, p. 78)

Mr. Karrow reviewed claimant's medical records, pertinent discovery materials, and conducted a labor market survey. Mr. Karrow did not interview claimant.

Mr. Karrow indicates an understanding that claimant was earning approximately $85,000 per year prior to his work injury. Mr. Karrow opines that claimant is capable of returning to work earning in the $88,000 per year range and opines that claimant has no wage loss as a result of his left shoulder injury. (Ex. O, p. 8)

Mr. Karrow opines that claimant remains capable of working in the light duty category according to Dr. Hart's restrictions. Considering he worked above the light duty category before the date of injury, Mr. Karrow opines that claimant sustained an approximate 10-15 percent physical access loss as a result of his left shoulder injury. (Ex. O. p. 8) Mr. Karrow specifically opines that claimant could return to prosthetic sales jobs. The job openings found and provided by Mr. Karrow include one position in Cedar Rapids (Clark & Associates). One other position is likely in Iowa with Hangar Prosthetics. All other openings or job possibilities as a prosthetics sales person are located in other states.

Considering Mr. Karrow's opinions, I identified several troubling issues that cause me to discount his opinions. First, Mr. Karrow applies the medical restrictions offered by Dr. Hart, which I found were outdated from 2012 and not particularly pertinent to claimant's current condition and restrictions. Granted, the restrictions from Dr. Nepola and Dr. Taylor had not been issued at the time Mr. Karrow authored his report. However, the fact that he does not apply the most current restrictions (which are the restrictions I found applicable) renders his opinions less convincing and credible.

Second, Mr. Karrow notes in his report an understanding that claimant "is not restricted from activities due to his mental health." (Ex. O, p. 2) Having found Dr. Hotsenpiller's opinions credible and his psychiatric restrictions applicable, I find this is an erroneous assumption by Mr. Karrow. Dr. Hotsenpiller's restrictions are quite significant and presumably would change Mr. Karrow's analysis and opinions with respect to full-time employment opportunities in stressful jobs such as prosthetic sales. Given his physical and mental health restrictions, I find that claimant is not realistically capable of performing the jobs identified by Mr. Karrow.

When considering the vocational opinions offered by the parties, I find Mr. Jayne's opinions to be closer to the actual evidentiary record and more convincing. When considering the left shoulder restrictions offered by Dr. Nepola, as well as the mental health restrictions offered by Dr. Hotsenpiller, I find that claimant is not currently capable of realistically obtaining or performing a job within the competitive labor market.

I find that the only services that Mr. Hessenius could reasonably perform at the present time as a result of his left shoulder injury and resulting mental health injuries are so limited in quality, dependability, or quantity that a reasonable stable market for his services does not exist. Considering Mr. Hessenius' age, education, employment history, permanent impairment, permanent restrictions, motivation level, intelligence, as well as all other industrial disability factors outlined by the Iowa Supreme Court, I find that the combination of claimant's left shoulder injury from the January 25, 2010, work injury as well as the resulting mental health injuries wholly disable Mr. Hessenius from performing work that he would otherwise be qualified and capable of performing. I find that

Mr. Hessenius has proven he is permanently and totally disabled as a result of his January 25, 2010, left shoulder work injury and resulting mental health injuries.

I find that Mr. Hessenius last worked for the employer in August 2010. (Ex. 23) The actual date of claimant's last work is not clearly defined in this evidentiary record. However, claimant has proven that he has not been able to work since his initial left shoulder surgery. Therefore, I find that he has been unable to return to work since his left shoulder surgery on August 24, 2010. (Ex. 18f, p. 203)

Claimant submits exhibit 30, which contains past medical expenses for which claimant is seeking reimbursement and/or payment by defendants. Review of the medical expenses contained in exhibit 30 reflects that the medical charges from Cedar Centre Psychiatric Group are for mental health treatment provided by Dr. Hotsenpiller and Dr. March. These expenses are reasonable, necessary and causally related to the January 25, 2010, work injury.

The remainder of the medical charges contained in exhibit 30 represent charges for treatment of claimant's right shoulder. Having found that the right shoulder injury was not the result of the January 25, 2010, work injury, I find that the medical expenses from Unity Point Health, Physicians' Clinic of Iowa, and Virginia Gay Hospital are not causally related to the January 25, 2010, work injury.

Finally, the parties submitted a dispute pertaining to claimant's request for an order of alternate medical care. Mr. Hessenius seeks an order transferring care for purposes of a pain clinic and pain management to a local pain clinic. Specifically, claimant seeks an order for treatment through Stanley Mathew, a pain specialist, pursuant to the recommendation and referral of Dr. Kim.

Defendants resist claimant's request to transfer his care to Dr. Mathew. Instead, defendants have offered an in-patient pain rehabilitation program at a facility located in Omaha. (Ex. Q, p. 5) Claimant resists participation in this program because it is an 8-12 week inpatient program that is located in another state. Claimant contends that participation in this program will result in significant upheaval in his life and that it is not a reasonable substitute for providing a local pain management physician, such as Dr. Mathew, for care. (Ex. 32)

Mr. Hessenius has expressed concerns and a desire to wean off of narcotics. Defendants introduced evidence to establish that its chosen facility, QLI, specializes in narcotic weaning with physician oversight and 24 hour nursing care. QLI has physical therapy facilities and psychological services. QLI appears to be a highly qualified and reasonable selection of a pain management program.

Claimant has introduced nothing to establish that treatment through Dr. Mathew would be superior to care through QLI. Claimant's request for care appears to be for less invasive, less intensive, and a lesser quality of care than is being offered by defendants. I find that the defendants' offer of treatment through QLI is reasonable and appropriate for the treatment of claimant's condition. I do not find it to be unduly inconvenient for claimant to travel one time to Omaha to attend an in-patient program that will last at least a couple of months.

CONCLUSIONS OF LAW AND REASONING

The initial dispute submitted by the parties for determination is whether claimant proved he sustained right shoulder, neck, and/or mental health injuries as a result of the January 25, 2010 work injury.

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

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).

While a claimant is not entitled to compensation for the results of a preexisting injury or disease, its mere existence at the time of a subsequent injury is not a defense. Rose v. John Deere Ottumwa Works, 247 Iowa 900, 76 N.W.2d 756 (1956). If the claimant had a preexisting condition or disability that is materially aggravated, accelerated, worsened or lighted up so that it results in disability, claimant is entitled to recover. Nicks v. Davenport Produce Co., 254 Iowa 130, 115 N.W.2d 812 (1962); Yeager v. Firestone Tire & Rubber Co., 253 Iowa 369, 112 N.W.2d 299 (1961).

In this case, I found that claimant proved his mental health injuries were causally related to the January 25, 2010, work injury. Accordingly, I conclude that claimant has established entitlement to worker's compensation benefits, both medical and weekly benefits, for his mental health injuries.

However, I found that claimant did not prove he sustained a right shoulder injury or a neck injury as a result of the January 25, 2010, work injury. Therefore, I conclude that claimant is not entitled to an award of either medical benefits or weekly benefits for the alleged injuries to his right shoulder and neck.

The parties stipulate that claimant sustained a left shoulder injury.

When disability is found in the shoulder, a body as a whole situation may exist. Alm v. Morris Barick Cattle Co., 240 Iowa 1174, 38 N.W.2d 161 (1949). In Nazarenus v. Oscar Mayer & Co., II Iowa Industrial Comm'r. Report 281 (App. 1982), a torn rotator cuff was found to cause disability to the body as a whole.

Claimant's mental health injury is also an unscheduled injury. As such, the mental health injury would also qualify claimant for industrial disability benefits pursuant to Iowa Code section 85.34(2)(u).

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).

Mr. Hessenius asserts that he is permanently and totally disabled as a result of the January 25, 2010, work injury to his left shoulder, as well as the consequences of his right shoulder, cervical spine, and mental health conditions, which Mr. Hessenius asserts are all causally related to the initial January 25, 2010, work injury. Mr. Hessenius asserts his claim under both the traditional industrial disability analysis and claims that he is an odd-lot employee. The odd-lot doctrine includes a burden shifting analysis, which could be advantageous to the claimant. Therefore, the odd-lot claim will be evaluated first.

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.

In this case, Mr. Hessenius produced prima facie evidence to establish a claim for permanent total disability. Therefore, the burden of production shifted to the defendants to produce evidence demonstrating the availability of suitable employment. Having found that the employer produced such evidence, the ultimate burden of persuasion rests on claimant to demonstrate that he is not employable in the competitive labor market. Having found that Mr. Hessenius proved that the only services he could presently offer in the labor market are so limited in quality,

dependability, or quantity that there does not exist a reasonably stable labor market for those services, I conclude that. Mr. Hessenius has proven he is an odd-lot employee and that he is entitled to permanent total disability benefits.

However, even if I did not rely upon the odd-lot doctrine, I would still conclude that Mr. Hessenius is entitled to permanent total disability benefits. Assessments of industrial disability involve a viewing of loss of earning capacity in terms of the injured workers' present ability to earn in the competitive labor market without regard to any accommodation furnished by one's present employer. Quaker Oats Co. v. Ciha 552 N.W.2d 143, 158 (Iowa 1996); Thilges v. Snap-On Tools Corp., 528 N.W. 2d 614, 617 (Iowa 1995).

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 this case, I considered all of the relevant industrial disability factors and found that Mr. Hessenius is wholly disabled and is physically unable to perform work that his experience, training, education, and intelligence would otherwise have allowed him to perform. Having found that there is no realistic jobs available to Mr. Hessenius given the restrictions imposed by Dr. Nepola and Dr. Hotsenpiller, I conclude that claimant has proven he is permanently and totally disabled even if the odd-lot doctrine is not considered.

The parties dispute the commencement date for permanent disability benefits. The parties stipulate that defendants paid some weekly benefits as healing period benefits. Realistically, however, claimant never qualified for healing period benefits. Iowa Code section 85.34(1) (noting that healing period is only payable if the claimant is entitled to permanent partial disability benefits).

Pursuant to Iowa Code section 85.34(3), claimant is entitled to permanent total disability benefits "during the period of the employee's disability." Having found that claimant has been unable to work since his left shoulder surgery on August 24, 2010, I conclude that claimant is entitled to permanent total disability benefits commencing on August 24, 2010, and continuing through the date of the arbitration hearing and into the future for so long as claimant's period of disability continues. Iowa Code section 85.34(3).

The parties also disputed defendants' entitlement to credit for weekly benefits paid to date. Defendants are entitled to credit for all weekly benefits paid to date. It appears that defendants paid healing period benefits at a weekly rate higher than the maximum permanent disability rate. All benefits paid by defendants to date shall be credited toward their obligation to pay permanent total disability benefits, including the overpayment of weekly benefits previously assumed to be healing period benefits. Iowa Code section 85.34(3)(b).

Claimant asserted a claim for past medical expenses.

The employer shall furnish reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance, and hospital services and supplies for all conditions compensable under the workers' compensation law. The employer shall also allow reasonable and necessary transportation expenses incurred for those services. The employer has the right to choose the provider of care, except where the employer has denied liability for the injury. Section 85.27. Holbert v. Townsend Engineering Co., Thirty-second Biennial Report of the Industrial Commissioner 78 (Review-Reopening October 1975).

Having found that claimant's right shoulder and neck injuries are not causally related to the January 25, 2010, work injury, I also found that the medical expenses pertaining to claimant's right shoulder treatment at Unity Point Health (St. Luke's Hospital), Physicians' Clinic of Iowa (PCI) and Virginia Gay Hospital were not causally related to the January 25, 2010, work injury. Claimant failed to establish entitlement to reimbursement or payment of those medical expenses.

Claimant proved his mental health injuries were causally related to the January 25, 2010, work injury. Having found that the medical expenses from Cedar Centre Psychiatric Group are causally related to the work injury, I conclude claimant is entitled to an order directing defendants to pay or reimburse all medical expenses from Cedar Centre Psychiatric Group contained in exhibit 31. Iowa Code section 85.27.

Mr. Hessenius also sought an order for alternate medical care.

Iowa Code section 85.27(4) provides, in relevant part:

For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. . . . The treatment must be offered promptly and be reasonably suited to treat the injury without undue inconvenience to the employee. If the employee has reason to be dissatisfied with the care offered, the employee should communicate the basis of such dissatisfaction to the employer, in writing if requested, following which the employer and the employee may agree to alternate care reasonably suited to treat the injury. If the employer and employee cannot agree on such alternate care, the commissioner may, upon application and reasonable proofs of the necessity therefor, allow and order other care.

An application for alternate medical care is not automatically sustained because claimant is dissatisfied with the care he has been receiving. Mere dissatisfaction with the medical care is not ample grounds for granting an application for alternate medical care. Rather, the claimant must show that the care was not offered promptly, was not reasonably suited to treat the injury, or that the care was unduly inconvenient for the claimant. Long v. Roberts Dairy Co., 528 N.W.2d 122 (Iowa 1995).

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 1975).

"Determining what care is reasonable under the statute is a question of fact." Long v. Roberts Dairy Co., 528 N.W.2d 122, 123 (Iowa 1995).

Defendants offered in-patient pain management services that I found to be reasonable, appropriate and not unduly inconvenient. Claimant offered no evidence that the treatment offered by defendants was unreasonable or inappropriate to treat his injuries. Claimant offered no evidence of superior treatment that could be provided closer to his residence. I found that defendants offered reasonable medical care. Therefore, I conclude that claimant's request for alternate medical care should be denied.

Finally, claimant seeks assessment of costs in his case pursuant to 876 IAC 4.33(7). Claimant submitted his requested costs at exhibit 31. Assessment of costs is a discretionary function of the agency. Iowa Code section 86.40. Claimant has prevailed on the majority of the disputed issues. Exercising the agency's discretion, I conclude it is appropriate to assess some of claimant's costs.

Claimant seeks reimbursement of his filing fee ($100.00). This is a reasonable request and is specifically permitted by 876 IAC 4.33(7). Claimant's filing fee will be assessed.

Mr. Hessenius also seeks assessment of costs for his collection of medical records, as well as three medical providers' consultations and reports as well as a fee for a vocational expert report. Claimant does not specifically cite the authority upon which he bases his request for these various costs.

Agency rule 876 IAC 4.33(6) permits the assessment of "the reasonable costs of obtaining no more than two doctors' or practitioners' reports." I find Mr. Jayne's vocational charges of $5,263.50 to be unreasonable, and therefore, decline to assess those charges. However, the requested costs associated with a consultation with Dr. March ($325.00) and the cost of a consultation with Dr. Hart ($125.00) are reasonable. Both those costs are assessed against defendants. All other requests for assessment of costs are denied.

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant permanent total disability benefits at the weekly rate of one thousand three hundred dollars ($1,300.00) from August 24, 2010, through the date of the arbitration hearing and into the future during the period of claimant's continued disability.

Defendants shall pay all accrued weekly benefits in lump sum with applicable interest pursuant to Iowa Code section 85.30.

Defendants shall be entitled to credit for any weekly benefits paid to date, including their overpayment of the weekly rate.

Defendants shall hold claimant harmless for all medical expenses from Cedar Centre Psychiatric Group contained in and itemized in exhibit 30 by reimbursing any third-party payor, directly paying those charges to claimant, or directly paying the charges to the medical provider.

Defendants shall reimburse claimant's costs as noted in the conclusions of law section in the amount of five hundred fifty dollars ($550.00).

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

Signed and filed this 5th day of June, 2015.

WILLIAM H. GRELL
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.