BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JOSEPH BROMELL, Claimant, vs. BUILDING SYSTEMS MANAGEMENT, INC., Employer, and GRANITE STATE INSURANCE COMPANY, Insurance Carrier, Defendants.	:	File Nos. 5055872, 5055873 ARBITRATION DECISION Head Note Nos.: 1402.30, 1402.40, 1803, 1803.01, 2500

STATEMENT OF THE CASE

Claimant, Joseph Bromell, filed petitions in arbitration seeking workers' compensation benefits from Building Systems Management, Inc., employer, and Granite State Insurance Company, insurance carrier, both as defendants, as a result of a stipulated injury on May 6, 2013 and an alleged injury sustained on August 28, 2014. This matter came on for hearing before Deputy Workers' Compensation Commissioner Erica J. Fitch, in Des Moines, Iowa. The record in this case consists of Claimant's Exhibits 1, 22, 39, 40, and 44 through 46, Defendants' Exhibits H and L, and the testimony of the claimant, Terry Vargason, Charles Myers, Lisa Chapman, and David Kacena. The parties submitted post-hearing briefs.

ISSUES

In File No. 5055872 (Date of Injury: May 6, 2013 (trauma); involving stipulated injuries to the left shoulder and ribs, and disputed injury to the cervical spine):

The parties submitted the following issues for determination:

1. Whether the injury of May 6, 2013 is a cause of temporary disability from October 24, 2016 through November 7, 2016;

2. Whether the injury is a cause of permanent disability;

3. The extent of industrial disability, if any;

4. The commencement date for permanent disability benefits;

5. Whether defendants are responsible for claimed medical expenses;

6. Whether claimant is entitled to reimbursement of an independent medical examination; and

7. Specific taxation of costs.

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.

In File No. 5055873 (Date of Injury: August 28, 2014 (cumulative); involving disputed injuries to the bilateral upper extremities and cervical spine):

The parties submitted the following issues for determination:

1. Whether claimant sustained an injury arising out of and in the course of his employment on August 28, 2014;

2. Whether the alleged injury is a cause of temporary disability;

3. Whether claimant is entitled to temporary disability benefits from October 24, 2016 through November 7, 2016;

4. Whether the alleged injury is a cause of permanent disability;

5. Whether the alleged disability is a scheduled member disability or an unscheduled disability;

6. The extent of claimant's permanent disability, if any;

7. The proper commencement date for permanent disability benefits;

8. Whether defendants are responsible for medical expenses;

9. Whether claimant is entitled to reimbursement of an independent medical examination; and

10. Specific taxation of costs.

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.

FINDINGS OF FACT

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

Claimant's demeanor at the time of evidentiary hearing was excellent. His testimony was clear, direct, and knowledgeable. Claimant's testimony has remained consistent throughout the protracted course of this case. To the extent his testimony is not reflected in contemporaneous medical records, the conflict is easily reconciled with the fact medical providers may not record all reports verbatim. On several occasions throughout the course of hearing, the undersigned observed claimant massage his right hand and attempt to flex or rotate the right wrist. Claimant also, less frequently, physically shook the right hand. I observed the right hand was never straightened and generally held a clawed and bent position. I find no evidence claimant is dishonest or he lacks veracity. Claimant is found credible.

Claimant was 60 years of age at the time of hearing. He resides in Moscow, Iowa; he lives with his significant other, Lisa Chapman. (Hearing transcript, pages 63-64; Claimant's Exhibit 1, pp. 3-4; Defendants' Exhibit L, Deposition Transcript p. 5) Claimant graduated high school in 1977; he has no other formal post-secondary or vocational education. (Hearing transcript p. 64; CE1, p. 4) His work history consists of primarily construction work, including in concrete, general residential, commercial, and maintenance. He has also performed farmhand labor. (Hearing transcript p. 66; CE1, pp. 4-5) Claimant described his pre-injury health as very good. He denied any chronic neck problems, but admitted to sporadic chiropractic treatment for neck or back complaints. (Hearing transcript pp. 64-65)

Claimant began work at defendant-employer in 2010. He began as a maintenance employee. (Hearing transcript p. 78; CE1, pp. 4, 7) The business of defendant-employer is managing rental property, including houses, duplexes, condos, and apartments. Employees performed required maintenance, such as water heater replacements, drywall, door and window replacement, plumbing, and electrical work. Defendant-employer is owned by David Kacena. (Hearing Transcript pp. 92, 108-109; CE1, pp. 7-8; DEL, Depo. Tr. p. 10) Immediately preceding his stipulated work injury of May 6, 2013, claimant worked full time and earned $17.00 per hour. (CE1, pp. 8-9)

While at work on May 6, 2013, claimant received a call from Mr. Kacena, who requested he inspect the framework of a roof on a property. Roofers had been hired, but were experiencing difficulty with a portion of the roof. Claimant and a coworker, Charles "Chuck" Myers, climbed onto the roof and began work. At some point, claimant

took a step backwards and fell through the roof into the rafters below. With assistance, claimant was able to exit back onto the roof. Due to claimant's immediate pain, Mr. Myers transported claimant to the hospital. At the hospital, it was determined claimant had suffered with three broken ribs, as well as various cuts and bruises. He was discharged and advised to follow up the following day with an occupational health provider. (Hearing transcript pp. 70-72)

On May 7, 2013, claimant presented to Mercy Occupational Health with complaints of pain of the chest and side, towards the back of the ribs. (CE44, Depo. Ex. 10, p. 1) Claimant was evaluated by Ernest Perea, M.D., who noted complaints of left-sided chest and upper back pain. Dr. Perea indicated claimant fell through a roof onto a cross brace and had been seen in the emergency room with complaints of left scapular pain, left lateral rib pain, and resolved shortness of breath. X-rays had revealed nondisplaced left 6th through 8th lateral rib fractures. Dr. Perea applied an Ace wrap for additional rib support, prescribed oxycodone, and restricted claimant from use of his left arm. (CE44, Depo. Ex. 10, pp. 4-6)

Two days later, claimant returned to Dr. Perea, on May 9, 2013. At that time, claimant reported significant rib area pain and a new complaint of left shoulder pain with decreased range of motion. Dr. Perea localized the pain to over the glenohumeral and anterior acromioclavicular portions of the left shoulder. Dr. Perea performed a Toradol injection, ordered a course of physical therapy, ordered a left shoulder x-ray, and left work restrictions in effect. (CE44, Depo. Ex. 10, pp. 11-12)

On May 20, 2013, claimant presented to Mercy Occupational Health and was examined by Daniel Hogan, M.D. Claimant reported continued back and ribcage pain, as well as continued difficulty squeezing with the left hand. Dr. Hogan recommended continuation of the existing treatment program and refilled a prescription for oxycodone. (CE44, Depo. Ex. 10, p. 14)

On June 3, 2013, claimant returned to Dr. Perea in follow up of rib and back pain. Claimant reported discomfort about his rib belt region, as well as a sharp stabbing feeling in his shoulder, down his back to his rear. (CE44, Depo. Ex. 9, p. 1) Dr. Perea noted claimant fractured three ribs in the fall and indicated continued left rib pain was expected. He also noted claimant's left shoulder was painful, with impacted movement. Dr. Perea suspected internal derangement of the left labrum or shoulder. (CE44, Depo. Ex. 9, p. 2) He ordered chest x-rays and a left shoulder MRI; prescribed physical therapy; and imposed work restrictions with respect to the left arm. Dr. Perea recommended use of over-the-counter medication, as needed. (CE44, Depo. Tr. pp. 2-3)

Claimant presented to Dr. Perea on June 10, 2013. Dr. Perea noted complaints of left rib and back pain, as well as sharp pain from the upper thoracic area down into the gluts. Dr. Perea opined claimant's x-rays demonstrated healing of the left rib fractures and opined claimant was making slow progress. He opined a left shoulder MRI showed advanced tendinopathy of the insertion of the distal supraspinatus tendon.

He opined claimant demonstrated severe adhesive capsulitis and dysfunction in shoulder motion. Dr. Perea opined claimant had not made progress with respect to his shoulder and accordingly, referred claimant for evaluation with shoulder specialist, Mark Mysnyk, M.D. He ordered continued physical therapy for the rib condition and left work restrictions in effect. (CE44, Depo. Ex. 11, pp. 1-2)

Pursuant to Dr. Perea's referral, on July 5, 2013, claimant presented to Dr. Mysnyk for shoulder evaluation. Claimant reported he did not notice left shoulder pain until he weaned from pain medication prescribed for his rib injuries. He described stiffness of his shoulder, as well as stiffness and a swollen sensation of his fingers. Dr. Mysnyk opined a June 7, 2013 MRI showed moderately advanced distal tendinopathy involving the anterior supraspinatus tendon, and mild intraarticular long head biceps tendinopathy. Dr. Mysnyk noted no definite labral tear, but indicated claimant was extremely painful on O'Brien's test and demonstrated positive impingement signs. Dr. Mysnyk diagnosed, at minimum, left shoulder impingement syndrome. He prescribed a course of physical therapy, use of anti-inflammatories, and imposed work restrictions. Claimant was directed to follow up in one month for consideration of a shoulder injection. (CE44, Depo. Ex. 13, p. 1)

At physical therapy on July 16, 2013, the therapist noted complaints of rib pain, low back pain, a tight feeling of the left hand, left shoulder pain, and occasional numbness into the fingers. (CE44, Depo. Ex. 12, p. 1)

On August 9, 2013, claimant returned to Dr. Mysnyk and received a left shoulder injection. The injection provided considerable relief. Dr. Mysnyk released claimant to return to work on September 21, 2013, without restrictions. (CE22, p. 3)

Following the May 2013 injury, claimant testified he suffered broken ribs, as well as injuries to his upper back, left shoulder, and neck. He also noted reporting bilateral hand tightness and numbness during physical therapy. (CE1, p. 6) Claimant testified he began to experience bilateral arm, hand, and elbow symptoms, as well. (CE1, p. 7) Claimant testified his evaluations with Dr. Perea were short in nature and consisted primarily of Dr. Perea asking him questions. Claimant testified he specifically recalled informing Dr. Perea of problems with his neck and a tight, swollen sensation of his hands. Claimant testified Dr. Perea's response to such complaints was to highlight claimant's broken ribs. He estimated first noticing hand tightness, followed by a neck ache radiating down the back of the arm, two to three weeks' post-injury, as he utilized strong pain medication immediately following the fall. Due to neck complaints, claimant testified he began to see a chiropractor. (Hearing transcript pp. 72-76)

Claimant's chiropractor, Shannon Woodward, D.C., subsequently signed a statement regarding his care of claimant. The statement was authored by claimant's counsel, but edited and signed by Dr. Woodward.[1] Thereby, Dr. Woodward indicated

[1] Dr. Woodward's signed statement is dated November 21, 2018.

that at the time of his July 17, 2013 evaluation, claimant described the May 2013 fall and also indicated he had lifted an object two days prior, resulting in immediate pain of the upper back which moved into the neck. Dr. Woodward opined that claimant more than likely presented with, at minimum, cervicalgia. He opined the condition was more likely than not caused by the fall; he explained the traumatic injuries would have led to weaker support for the shoulder girdle and neck, leading to a greater chance of muscle strain. (CE44, Depo. Ex. 15, p. 2)

Charles "Chuck" Myers testified at evidentiary hearing. Mr. Myers worked for defendant-employer from 2013 to 2016. During this period, Mr. Myers worked as a maintenance worker and subsequently became maintenance supervisor. Mr. Meyers was present with claimant on May 6, 2013 and witnessed him fall through the roof. He assisted claimant to a vehicle and transported him to the emergency room. (Hearing transcript pp. 38-42, 47) Mr. Myers testified claimant's immediately recognizable injuries were to his ribs, as well as scratches and bruises. When claimant returned to work, he complained of rib pain and difficulty with bilateral hand gripping. Mr. Myers testified claimant had obvious difficulty moving his body and appeared to be in pain. Mr. Myers observed claimant's inability to perform certain work tasks due to lack of grip strength and weakness of his upper extremities. He testified claimant fatigued more quickly and, in time, had a more hunched posture. (Hearing transcript pp. 43-44)

Mr. Myers' testimony at the time of hearing was clear and direct. His demeanor at the time of hearing was good and gave the undersigned no reason to doubt his veracity. Mr. Myers is found credible.

Terry Vargason testified at evidentiary hearing. Mr. Vargason testified he worked for defendant-employer from early 2013 through mid-2014. He was hired as an office manager. During that time, Mr. Vargason relied on claimant as the maintenance manager or, at minimum, a lead employee on the maintenance team. (Hearing Transcript pp. 26-27) On May 6, 2013, Mr. Vargason received a call from Mr. Myers, advising that claimant had fallen through a roof and inquiring as to what steps to take. Mr. Vargason advised Mr. Myers to take claimant to the hospital if he was injured. Thereafter, Mr. Vargason recalls claimant relaying issues with his ribs, shoulder, neck, and hands. He personally noticed claimant had weakened grip strength when shaking hands. (Hearing Transcript pp. 30-34) On cross-examination regarding any complaints of a neck injury, Mr. Vargason clarified he was aware claimant had broken ribs, an injured shoulder, "arm trouble," and hand numbness. (Hearing Transcript p. 36) On redirect, Mr. Vargason indicated claimant did not specifically state he had injured his neck, but suffered from "just a combination" of musculoskeletal issues. (Hearing Transcript p. 37)

Mr. Vargason's testimony at the time of hearing was clear, direct, and consistent with the evidentiary record. His demeanor was excellent and gave the undersigned no reason to doubt his veracity. Mr. Vargason is found credible.

Due to continued worsening of his hand complaints, claimant discussed his need for medical care with Mr. Kacena on August 28, 2014. (CE1, pp. 6, 12) On September 3, 2014, claimant returned to Dr. Perea with complaints of bilateral wrist pain, numbness and tingling of the fingers, and difficultly straightening the fingers. The onset of symptoms was noted as one week prior, with continued worsening. Dr. Perea ordered an EMG/NCV, recommended splinting, and prescribed a Medrol Dosepak. (CE22, p. 3) Claimant underwent the recommended EMG/NCV with Dr. Tyson Garrett, who opined claimant's NCV studies were dramatically abnormal of the right upper extremity. His findings included: definite right carpal tunnel syndrome, severe; definite right ulnar neuropathy at the elbow, severe; posterior interosseous nerve entrapment at the Arcade of Frohse; and left carpal tunnel syndrome, mild. Following review, Dr. Perea recommended specialist evaluation. (CE22, p. 4; CE44, Depo. Ex. p. 3)

At the referral of defendants, claimant presented to Patrick Hartley, M.D. on October 30, 2014 for evaluation and consideration of the cause of claimant's bilateral upper extremity neurological symptoms. Dr. Hartley noted claimant sought medical evaluation in August 2014 after discussing his complaints with his employer. Claimant could not identify the duration of symptoms, but reported he was asymptomatic the prior spring and his symptoms increased over the summer months with work activities. Claimant described right hand tightness, tingling, pain, and decreased mobility. Left hand symptoms included tightness, swollen and achy fingers, and decreased mobility which remained superior to that of the right hand. Claimant described decreased grip strength and some difficulty with fine manipulation. He reported no history of neck injury, but indicated he recently experienced neck discomfort and sought treatment two weeks prior. (CE44, Depo. Ex. 2, p. 1) Dr. Hartley noted claimant's history of treatment for his ribs and left shoulder following the fall at work. (CE44, Depo. Ex. 2, pp. 1-2)

Dr. Hartley reviewed an EMG/NCV performed by Dr. Garrett on September 30, 2014. He noted the NCV tests revealed left carpal tunnel syndrome, mild, as well as a dramatically abnormal right upper extremity with the following conditions: definite right carpal tunnel syndrome, severe; definite right ulnar neuropathy at the elbow, severe; and posterior interosseous nerve entrapment at Arcade of Frohse; with clinical weakness in all three nerve distributions and a marked work history of supination and pronation. The EMG was read as revealing acute denervation in the median, ulnar, and PIN territories. (CE44, Depo. Ex. 2, p. 3)

Dr. Hartley performed a physical examination. On examination, Dr. Hartley performed significant evaluation of claimant's bilateral forearms and hands, as well the neck and bilateral upper extremities. His findings included: slightly decreased range of extension of the cervical spine; bilateral Spurling's induced radicular discomfort radiating down the upper extremities; and slightly decreased range of motion of the left shoulder. (CE44, Depo. Ex. 2, p. 2) X-rays of the cervical spine were taken. The radiologist read the x-rays as revealing mild degenerative changes at C5, C6, and C7, with mild disc narrowing and small anterior osteophyte formation. Dr. Hartley saw no evidence of severe spondylosis or spondylolisthesis. (CE44, Depo. Ex. 2, pp. 2-3;

CE44, Depo. Ex. 8, p. 1) Dr. Hartley ultimately assessed bilateral upper extremity neuropathy, right greater than left. (CE44, Depo. Ex. 2, p. 5)

Dr. Hartley opined claimant's work activities represented a significant contributing factor in the causation of his upper extremity neurological symptoms and EMG/NCV findings. He opined the EMG/NCV findings did not suggest a radicular cause for the right upper extremity neurological symptoms. However, given the examination findings with positive Spurling's test and recent neck pain for which claimant sought chiropractic treatment, Dr. Hartley recommended a cervical MRI to rule out significant neural foraminal encroachment from degenerative disc or facet disease. In the event the MRI suggested a cervical etiology for the upper extremity neurological findings, Dr. Hartley indicated he would reconsider his causation opinion. Given the severity of claimant's nerve entrapment and associated muscle weakness and atrophy, Dr. Hartley recommended a prompt referral to an orthopedic hand surgeon. In the interim, Dr. Hartley imposed work restrictions and recommended use of hand splints. (CE44, Depo. Ex. 2, p. 3)

At Dr. Hartley's recommendation, on January 9, 2015, claimant underwent an MRI of his cervical spine. The report noted clinical indications of neck pain and to rule out significant neural foraminal encroachment from degenerative disc or facet disease. The radiologist read the results as showing mild multilevel degenerative changes, most significant at C6-C7, with mild to moderate spinal stenosis and suspicion for subtle high T2 cord signal change; and moderate to severe neural foraminal stenosis on the left at C7-T1. (CE44, Depo. Ex. 8, pp. 2-3)

On May 14, 2015, claimant returned to Dr. Hartley for further evaluation of bilateral neuropathy and neck pain. Claimant reported worsening symptoms. Examination findings included: bilateral Spurling's induced radicular discomfort down the back of the arms; abnormal resting posture of the right hand, with radial deviation; thenar atrophy; and decreased range of motion. (CE44, Depo. Ex. 2, p. 6) Dr. Hartley assessed: right ulnar nerve entrapment at the elbow, worsening; right median nerve entrapment at the wrist, worsening; right posterior interosseous nerve entrapment in the forearm, worsening; left median nerve entrapment at the wrist, slightly worsening; stable multilevel degenerative changes in the cervical spine; stable mild to moderate spinal stenosis at C6-C7; and stable moderate to severe neural foraminal stenosis at C7-T1 on the left. He opined claimant's cervical CT and MRI showed degenerative changes and foraminal narrowing on the left, but indicated these findings would not explain the severity of claimant's symptoms and examination findings involving the right forearm, wrist, and hand. Dr. Hartley imposed work restrictions. In terms of further care, Dr. Hartley again recommended a prompt referral to an orthopedic hand surgeon; he noted he understood claimant had an appointment scheduled with Dr. Erika Lawler in July 2015. (CE44, Depo. Ex. 2, pp. 6-7)

Claimant testified defendant-insurance carrier's representative told Dr. Hartley not to refer claimant for further evaluation. Claimant testified Dr. Hartley advised him to

seek legal advice. As a result, claimant retained the services of an attorney. (Hearing transcript pp. 73-74; DEL, Depo. Tr. p. 31)

In late 2015, claimant sought evaluation with his personal provider, Jason Thornburg, PA-C, using his personal health insurance. Following evaluation, Mr. Thornburg referred claimant for care at ORA Orthopedics. Claimant was initially seen by board certified orthopedic surgeon, Timothy Millea, M.D. (Hearing transcript, pp. 86, 98-99; CE45, Depo. Ex. 2, p. 1) Claimant underwent a repeat EMG with Robert Chesser, M.D. on February 3, 2016, with findings consistent with a right C8-T1 radicular process. Dr. Millea recommended surgical nerve releases prior to considering cervical intervention. (CE22, p. 5) Dr. Millea performed right carpal and cubital tunnel release and decompression on February 24, 2016. (Hearing transcript pp. 86-87; CE22, pp. 5-6)

Claimant did not improve following surgery. Dr. Millea referred claimant to an upper extremity specialist, Tobias Mann, M.D. Dr. Chesser performed a repeat EMG on June 8, 2016, which did not demonstrate a radiculopathy, but did show denervation and neuropathic findings. Dr. Mann referred claimant to hand specialist, Thomas VonGillern, M.D. Dr. VonGillern ordered a repeat cervical spine MRI which revealed a prominent disc osteophyte complex. An MRI of the right forearm revealed intramuscular edema in the flexor carpi ulnaris and flexor digitorum profundus muscles, and to a lesser degree in the digitorum superficial muscles. (CE22, p. 6; CE45, Depo. Tr. pp. 42-43)

In terms of claimant's neck condition, by a letter dated August 26, 2016, Dr. Millea opined he was unable to attribute any of claimant's cervical spine problems to the May 2013 work injury. He explained that the interval of time between the traumatic injury and claimant's initial report of relevant symptoms was inconsistent with direct causation of the condition. (CE45, Depo. Ex. 1)

Dr. VonGillern performed a second right-arm surgery on October 24, 2016. During arthroscopy, Dr. VonGillern found chondromalacia and a triangular fibrocartilage tear. He performed a chondroplasty, partial triangular fibrocartilage excision, debridement of the scapholunate ligament tear, superficial right ulnar nerve neurolysis at the elbow, right ulnar nerve neurolysis at the wrist and Guyon's canal, and right median nerve lysis at the forearm and wrist. After surgery, claimant testified he was off work for a couple of weeks. He later returned to work under restrictions. (CE22, pp. 6-7; Hearing transcript pp. 87-88)

At the referral of his counsel, on July 20, 2017, claimant presented to Arnold Delbridge, M.D. for an independent medical examination (IME). Following records review, history, x-rays, and examination, Dr. Delbridge authored a report containing his findings and opinions dated September 11, 2017, which addressed both claimant dates of injury. In his report, Dr. Delbridge noted claimant sustained an injury on May 6, 2013, when he fell through a roof, impacting his left lateral chest wall and injuring his left shoulder and fracturing the 6th, 7th, and 8th ribs on the left side. Dr. Delbridge noted

claimant later complained of cervical spine symptoms, but the initial focus had been the painful rib injury. (CE22, p. 1) Dr. Delbridge noted claimant presented to Dr. Perea on September 3, 2014 with complaints of bilateral wrist pain, numbness and tingling of the fingers, and difficultly straightening the fingers. The duration of symptoms was noted as onset a week prior and worsening. (CE22, p. 3) Dr. Delbridge reviewed claimant's evaluation and treatment records regarding his complaints. (CE22, pp. 1-6)

Dr. Delbridge interviewed claimant regarding his work duties. (CE22, p. 8) X-rays of claimant's wrists, left shoulder, and cervical spine were taken and reviewed. Dr. Delbridge also examined claimant's upper extremities, shoulders, and neck. (CE22, p. 7) Thereafter, Dr. Delbridge assessed cubital tunnel and carpal tunnel syndromes of the left upper extremity. He opined each condition warranted a 4 percent upper extremity rating, for a combined total of 8 percent left upper extremity impairment on the basis of compression of the median and ulnar nerves. As for the right upper extremity, Dr. Delbridge opined claimant suffered from abnormalities of the ulnar nerve of the right forearm, warranting permanent impairment ratings of 4 percent for sensation loss and 23 percent for motor disturbance, for a combined total impairment of 28 percent right upper extremity. Dr. Delbridge opined claimant's cervical spine was "involved in his injury." He opined it was not unusual claimant did not immediately report cervical spine symptoms, given claimant's painful rib injury and use of pain medication. He concluded claimant's cervical spine condition contributed to claimant's right hand difficulties, particularly at C8 and T1 levels. He ultimately opined claimant fell within DRE Cervical Category II, warranting an 8 percent whole person impairment. (CE22, p. 8)

Dr. Delbridge opined claimant's cervical, left upper extremity, and right upper extremity conditions were related to claimant's work injury(ies). He further expressed belief claimant was likely experiencing more than entrapment of the ulnar and median nerves of the right upper extremity, particularly with respect to the C8-T1 level, with cervical spine issues and an atypical ulnar palsy. Dr. Delbridge ultimately combined and converted claimant's permanent impairment ratings, resulting in a combined 27 percent whole person impairment. (CE22, pp. 8-9) Dr. Delbridge estimated claimant's functional capacity, noting a severely compromised right hand. He recommended: maximum lift of 25 pounds with both hands and 5 to 10 pounds with the right hand; no vibration; no ladders; and no work in high places if the right hand is used for gripping. (CE22, pp. 10-11)

On October 17, 2017, claimant returned to Dr. VonGillern. This date marked his last active treatment of the alleged work injuries. (Hearing transcript pp. 88-89) Claimant testified the surgery performed by Dr. VonGillern involved his right wrist and elbow; although left-sided surgery was contemplated, claimant declined surgery due to worsening of right-sided symptoms following the prior surgeries. Claimant testified he believed at that time, Dr. VonGillern also opined the etiology of claimant's ongoing symptoms was his neck. (Hearing transcript pp. 68-69)

Due to ongoing neck symptoms, Dr. VonGillern referred claimant to his colleague, Mahesh Mohad, M.D. Dr. Mohan performed a neck injection. Claimant

testified the injection numbed his neck pain for a period of months. He later returned for a follow-up injection, but Dr. Mohad was no longer with the practice and claimant testified his replacement did not want to participate in claimant's care. (Hearing transcript pp. 105-106)

On November 2, 2017, Dr. Delbridge sat for a deposition. At that time, Dr. Delbridge testified he remained an active, board certified orthopedic surgeon, who performed generally one independent medical examination per week. (CE39, Depo. Tr. pp. 4-5, 57) Dr. Delbridge identified the complaints he evaluated in connection with claimant's July 20, 2017 IME. As a result of the fall through the roof, Dr. Delbridge opined claimant suffered broken ribs and injured his left shoulder; however, by the time of Dr. Delbridge's evaluation, both conditions had resolved without permanent impairment. Dr. Delbridge noted claimant complained of back pain radiating into the buttocks, but Dr. Delbridge had found no permanent impairment of the lumbar spine as a result of the fall. (CE39, pp. 7-8)

Dr. Delbridge testified the focus of the IME had been claimant's neck and upper extremities. Dr. Delbridge opined claimant probably injured his neck in the 2013 fall, but any contemporaneous symptoms were overpowered by the painful injuries to his ribs and shoulder. (CE39, Depo. Tr. p. 9) Dr. Delbridge testified claimant believed he injured his neck in the fall, but he did not notice neck complaints due to the severity of pain in other areas. (CE39, Depo. Tr. p. 10) Dr. Delbridge opined claimant sustained a cumulative injury with respect to his upper extremities. (CE39, Depo Tr. p. 9)

Dr. Delbridge opined the neck injury occurred when the neck was "whipped around" in the fall. (CE39, Depo. Tr. p. 11) As evidence of a neck injury, Dr. Delbridge cited: limited range of motion; radicular pain into the upper extremity, not typical of ulnar nerve pain; and atypical posture/clawing of the hand for what was to be expected of ulnar nerve deficiency. Dr. Delbridge opined claimant's presentation was consistent with compromise of the C8 and T1 nerves in the neck, which he opined had been confirmed on EMG. He opined this compromise caused claimant's superficialis tendons to weaken. Dr. Delbridge opined these factors resulted in significant hand symptoms and numbness that did not correspond to a pure ulnar nerve injury. (CE39, Depo. Tr. pp. 11-12)

In addition to attributing claimant's neck condition to the 2013 fall, Dr. Delbridge also endorsed the possibility of double crush syndrome. Dr. Delbridge testified claimant's neck was compromised in the accident, but initially improved; however, the condition worsened upon returning to work and performing repetitive movements. He explained the result was compression of the neck and upper extremities, which he referred to as double crush syndrome. (CE39, Depo Tr. p. 19) Dr. Delbridge noted double crush syndrome had not been formally diagnosed, but he considered it a possibility. (CE39, Depo. Tr. p. 20)

Dr. Delbridge opined claimant injured his left shoulder in the May 2013 fall, resulting in adhesive capsulitis. He opined the adhesive capsulitis caused edema in the

distal part of the left arm and forearm, which probably exacerbated or materially aggravated existing nerve compression. He noted claimant reported difficulties, which worsened upon returning to work and subsequent nerve studies showed deficiencies in both the ulnar nerve at the elbow and median nerve at the wrist. On this basis, Dr. Delbridge opined the May 2013 injury either caused or materially aggravated claimant's left carpal and cubital tunnel syndromes. (CE39, Depo. Tr. pp. 20-21) Dr. Delbridge opined claimant's right upper extremity conditions represented cumulative injury, wherein claimant's work activities aggravated the right arm. (CE39, Depo. Tr. p. 23)

In terms of permanent restrictions, Dr. Delbridge noted it was very difficult for claimant to perform work with the right hand. As a result, he recommended: only occasional manipulation and handling with the right hand; no climbing ladders due to lack of right hand strength; no high places; and no use of vibratory tools. Dr. Delbridge also recommended limits in lifting and carrying of 5 to 10 pounds maximum with the right hand and 25 pounds maximum bilaterally. He described Dr. VonGillern's contemporaneous restrictions as largely the same as those he recommended. (CE39, Depo. Tr. p. 30)

On November 9, 2017, Richard Kreiter, M.D., sat for deposition. Dr. Kreiter's background is as an orthopedic surgeon, although his recent work focused upon legal evaluations. (CE40, Depo. Tr. p. 3) Dr. Kreiter performed an IME on February 23, 2017, at the request of claimant's counsel. (CE40, Depo. Tr. pp. 5-6) Dr. Kreiter noted claimant had fallen through a roof in May 2013 and sustained multiple rib fractures; he indicated that in cases of rib fractures, patients "concentrate" on that pain. (CE40, Depo. Tr. pp. 6-7) After weaning from pain medication, claimant noticed shoulder and neck complaints. (CE40, Depo. Tr. pp. 7-8) Dr. Kreiter ultimately opined claimant suffered from work-related injuries to the ribs, left shoulder, left upper extremity, right upper extremity and neck. He opined the rib fractures, left shoulder, and left arm conditions did not result in permanent impairment. (CE40, Depo. Tr. p. 17)

Dr. Kreiter focused the IME upon the right upper extremity and neck conditions. He opined claimant presented with degenerative changes of the neck, as well as radiculopathy. (CE40, Depo. Tr. p. 17) Dr. Kreiter expressed belief claimant likely presented with degenerative changes in his neck, which were aggravated by the 2013 fall. He explained that to his knowledge, claimant had no history of neck treatment and claimant indicated he reported neck symptoms following the fall and his return to work. (CE40, Depo. Tr. pp. 9-12) Dr. Kreiter reviewed Dr. Millea's August 26, 2016 report, wherein Dr. Millea declined to attribute any portion of claimant's neck condition to the work injury. Dr. Kreiter indicated he would agree with Dr. Millea's opinion if claimant did not report neck symptoms for months following the injury. (CE40, Depo. Tr. pp. 26-27) Dr. Kreiter indicated he would not have expected claimant to report radicular neck symptoms quickly, given his receipt of treatment for other painful conditions. He anticipated claimant would have noticed right-sided arm and shoulder symptoms after weaning from pain medication. (CE40, Depo. Tr. pp. 43-44) In the event claimant did not report neck complaints until months after the fall, Dr. Kreiter opined the condition was probably not related to the work injury. (CE40, Depo. Tr. p. 12)

Dr. Kreiter opined claimant's right upper extremity complaints developed from his neck condition. (CE40, Depo. Tr. p. 19) He testified claimant's condition was "not a simple thing," and resulted in double crush, in addition to carpal and cubital tunnel syndromes. (CE40, Depo. Tr. p. 20) In support of his opinion, Dr. Kreiter noted EMG confirmation of carpal and cubital tunnel, as well as findings indicative of a neck process. (CE40, Depo. Tr. p. 21) He specifically relied upon Dr. Chesser's EMG/NCV testing with findings indicative of radiculopathy. (CE40, Depo. Tr. p. 25) Dr. Kreiter explained that in instances of double crush, a patient presents with minor carpal or cubital tunnel syndrome and a cervical condition; these two processes "compound each other." (CE40, Depo. Tr. p. 21) Dr. Kreiter expressed belief Dr. Millea pursued elbow and wrist intervention in hopes the simpler surgical intervention would resolve claimant's symptoms. (CE40, Depo. Tr. pp. 25-26)

Dr. Kreiter testified he provided a provisional impairment rating at the time of his IME, as claimant had not yet achieved maximum medical improvement (MMI). Dr. Kreiter provisionally opined claimant fell within DRE Cervical Category V, due to neurologic loss of hand function and grip, warranting a permanent impairment rating of 35 to 38 percent whole person. (CE40, Depo. Tr. pp. 27-33) As claimant received subsequent orthopedic evaluation, Dr. Kreiter expressed hope claimant improved in the interim and that he would assume a contemporaneous rating would more accurately reflect claimant's impairment. (CE40, Depo. Tr. p. 36)

On November 19, 2018, Thomas VonGillern, M.D. responded to questions raised by claimant's attorney. Thereby, he opined the trauma sustained in the May 6, 2013 fall did not cause claimant's cervical derangement condition. He further opined he did not believe the cervical spine condition was permanently aggravated or worsened by the fall. Finally, Dr. VonGillern opined he did not believe the trauma of the fall resulted in claimant suffering a double crush syndrome. (DEH, p. 356)

On January 28, 2019, Patrick Hartley, M.D., sat for deposition. Dr. Hartley noted defendants had referred claimant for assessment and opinion. (CE44, Depo. Tr. pp. 4, 6) During his initial evaluation, a positive Spurling's test led him to refer claimant for additional workup, as such a finding indicates likely cervical radiculopathy. (CE44, Depo. Tr. pp. 14-16) In the event cervical radiculopathy was present, Dr. Hartley testified the condition could be due to an acute injury or a degenerative process. (CE44, Depo. Tr. pp. 79-80) Dr. Hartley testified that if the fall in May 2013 caused acute injury to the cervical spine and associated impingement on the nerve roots, he would have expected some motor or sensory symptoms in the weeks following the injury. Although he declined to identify a specific timeframe, he estimated an anticipated timeframe of 4 to 6 weeks for onset of symptoms. (CE44, Depo. Tr. p. 44) Dr. Hartley testified it was possible that claimant presented with a double crush phenomenon and that may explain claimant's less than optimal surgical results. However, he could not state with medical certainty that the fall caused the double crush phenomenon, if present. (CE44, Depo. Tr. p. 44)

On February 13, 2019, Dr. Millea sat for deposition. Dr. Millea specializes in spinal surgery. Claimant was referred to Dr. Millea for evaluation of his neck. (CE45, Depo. Tr. pp. 16, 28) Dr. Millea noted he began treating claimant on December 31, 2015, at which time claimant related his symptoms back to the May 2013 fall. (CE45, Depo. Tr. pp. 3, 8) During the course of treatment, Dr. Millea recommended claimant begin with cubital and carpal tunnel surgeries. In the event the surgeries provided insufficient relief, Dr. Millea indicated he would consider cervical intervention. (CE45, Depo. Tr. pp. 28-29) Dr. Millea ultimately referred claimant for evaluation by hand and upper extremity specialist, Dr. Mann; Dr. Mann subsequently referred claimant to Dr. VonGillern. (CE45, Depo. Tr. pp. 42-43)

Despite unsatisfactory results, Dr. Millea subsequently declined to recommend spinal surgery for fear of failure to provide relief. He opined claimant was not a surgical candidate, as the potential benefits of surgery were outweighed by the associated risks. Dr. Millea opined claimant's EMG results provided more convincing evidence of peripheral nerve entrapment than a cervical spine problem. (CE45, Depo. Tr. pp. 29-30, 45) Dr. Millea opined claimant's lack of improvement following upper extremity surgeries did not prove a cervical etiology. (CE45, Depo. Tr. p. 44) He opined the noted issues of shoulder stiffness, finger stiffness, difficulty squeezing, and hand tightness were not indicative of cervical radiculopathy. (CE45, Depo. Tr. pp. 31-32) He found nothing in claimant's medical records to confirm a cervical injury. (CE45, Depo. Tr. pp. 40-41) On August 26, 2016, Dr. Millea had opined claimant's cervical spine problems were not causally related to the work injury of May 2013. (CE45, Depo. Tr. p. 3) After subsequent review of additional medical records and discussion at deposition, Dr. Millea indicated his opinions remained unchanged. (CE45, Depo. Tr. pp. 13, 40-41)

Dr. Hartley sat for a second deposition on March 25, 2019. At that time, Dr. Hartley reaffirmed his prior testimony. (CE46, Depo. Tr. p. 3) Dr. Hartley opined claimant's bilateral carpal tunnel syndrome was related to repetitive wrist activity; specifically, Dr. Hartley opined claimant's work activities substantially contributed to the conditions. Dr. Hartley also opined claimant's ulnar neuropathy condition was likely related to work activities. (CE46, Depo. Tr. pp. 18-20) He declined to attribute the upper extremity symptoms to the May 2013 fall. (CE46, Depo. Tr. p. 23) He indicated it was unclear whether claimant's degenerative neck condition was an independent contributing factor in claimant's upper extremity symptoms and indicated he could not state the May 2013 fall more likely than not caused and/or aggravated an existing neck condition which then became symptomatic. (CE46, Depo. Tr. pp. 19-20) Dr. Hartley was also unable to state with a reasonable degree of medical certainty that work activities worsened claimant's neck condition. Dr. Hartley indicated he would defer to spine surgeon, Dr. Millea, with respect to cervical spine issues. (CE46, Depo. Tr. pp. 21-22, 25)

Claimant reported continued symptoms he relates to his work injuries. Claimant testified both his left shoulder and rib injuries healed. (Hearing transcript p. 85) Claimant relates his neck and upper extremity complaints to the May 2013 fall at work. (Hearing transcript pp. 85-86; DEL, Depo. Tr. pp. 18-19) He testified his right hand and

wrist are constantly bent or clawed and the wrist does not move. His left fingers have a sensation of tightness or feeling swollen. Claimant declined left-sided surgery due to fear of a poor outcome, like on his right side. (Hearing transcript pp. 96, 98) Claimant testified his sleep is interrupted by both neck and hand complaints, as he struggles to find a comfortable position. (Hearing transcript p. 77) Claimant testified he is not capable of singularly performing all the tasks he was capable of performing preinjury; he requires assistance with more physically demanding tasks. Claimant explained he has experienced considerable loss of strength, particularly right-sided grip strength. Claimant testified his right wrist is locked and his movement is limited. He is right-hand dominant. (Hearing transcript pp. 69-70, 78-79; DEL, Depo. Tr. p. 32)

Due to continued neck complaints, claimant arranged an appointment with Dr. Millea that was scheduled for the month following hearing. Claimant's medical records had also been sent to Chad Abernathey, M.D., for review and potential assumption of care. (Hearing transcript, pp. 83-84)

Lisa Chapman testified at evidentiary hearing. Ms. Chapman began dating claimant in 2003; the two have lived together since 2004. Ms. Chapman learned of the May 6, 2013 injury when claimant telephoned her after leaving the hospital. Ms. Chapman testified claimant is not a person who complains, but is a "suck it up" type of individual. (Hearing transcript p. 52) Nevertheless, for the first several weeks after the fall, claimant "hurt all over," with pain "concentrated in the ribs." (Hearing transcript p. 53) She expressed belief claimant began to experience hand and neck symptoms after weaning from pain medication. She relayed the two did not attend a July 4th fireworks display, as looking up would cause claimant neck pain. Ms. Chapman testified claimant also began to request regular neck massages. (Hearing transcript pp. 53-55) She also noted claimant's body position appeared stiff and he frequently changed position to get comfortable. Ms. Chapman testified she began to sleep in another bedroom in 2016, upon realization claimant's inconsistent sleep was interrupting her sleep as well. She also indicated claimant began to rub his right hand, as if due to cramping, and the hand appears curled. (Hearing transcript pp. 55-57) Ms. Chapman testified claimant's neck and right hand symptoms have progressively worsened over time. (Hearing transcript p. 58)

Ms. Chapman's testimony was clear and direct. Her demeanor at the time of evidentiary hearing was excellent and gave the undersigned no reason to doubt her veracity. Ms. Chapman is found credible.

Claimant remains employed full time at defendant-employer. He earns $19.00 per hour and works 40 hours per week. Following the May 2013 fall, claimant returned to work as a maintenance worker. Mr. Myers' employment with defendant-employer ended in November 2016; at that time, claimant transitioned to the position of maintenance supervisor. In this role, claimant worked as a working supervisor and supervised three or four workers. He received work orders, obtained materials, and assigned employees to complete the tasks; he also verified work was done properly and

in a timely manner. (Hearing transcript pp. 78-80, 91-92, 110; See CE1, pp. 7-9; DEL, Depo. Tr. pp. 8-10)

However, within the week preceding evidentiary hearing, claimant was advised he would no longer hold the maintenance supervisor position and would return to a maintenance worker position. Claimant explained that Mr. Kacena had called claimant to let him know that a new maintenance supervisor would be hired. Claimant indicated Mr. Kacena stated he did not want claimant to quit, but he would be returning to maintenance work full time. Claimant testified Mr. Kacena desired a maintenance supervisor who could perform computer-related tasks. (Hearing transcript pp. 79-82, 92-93) Claimant testified he intends to keep working at defendant-employer and perform the tasks he is capable of completing. (Hearing transcript pp. 104-105)

Mr. Kacena testified at evidentiary hearing. He confirmed he recently hired a new maintenance supervisor at defendant-employer. He explained that the company transitioned to management software which heavily involves computer and smartphone usage. Mr. Kacena also testified the company had experienced some attrition and indicated claimant did not relate well to some workers. He testified claimant is a hard worker and works well on his own, but Mr. Kacena needed a maintenance supervisor that was more people-oriented. Additionally, Mr. Kacena prefers to work from around 4:00 a.m. to 12:00 p.m., which left an issue of lack of supervision in the afternoon hours. He testified the position change was not related to claimant's work injury claims and he has no intention to terminate claimant. (Hearing transcript pp. 110-114)

Mr. Kacena's testimony was clear and direct. His demeanor at the time of evidentiary hearing was good and gave the undersigned no reason to doubt his veracity. Mr. Kacena is found credible.

CONCLUSIONS OF LAW

In File No. 5055872 (Date of Injury: May 6, 2013 (trauma); involving stipulated injuries to the left shoulder and ribs, and disputed injury to the cervical spine):

The first issue for determination is whether the injury of May 6, 2013 is a cause of temporary disability from October 24, 2016 through November 7, 2016. To the extent claimant, by post-hearing brief, sought temporary benefits for other periods, the claims are considered waived, as no other claimed periods were raised on the approved hearing report or at the time of evidentiary hearing.

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

When an injured worker has been unable to work during a period of recuperation from an injury that did not produce permanent disability, the worker is entitled to temporary total disability benefits during the time the worker is

disabled by the injury. Those benefits are payable until the employee has returned to work, or is medically capable of returning to work substantially similar to the work performed at the time of injury. Section 85.33(1).

Healing period compensation describes temporary workers' compensation weekly benefits that precede an allowance of permanent partial disability benefits. Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999). Section 85.34(1) provides that healing period benefits are payable to an injured worker who has suffered permanent partial disability until the first to occur of three events. These are: (1) the worker has returned to work; (2) the worker medically is capable of returning to substantially similar employment; or (3) the worker has achieved maximum medical recovery. Maximum medical recovery is achieved when healing is complete and the extent of permanent disability can be determined. Armstrong Tire & Rubber Co. v. Kubli, Iowa App., 312 N.W.2d 60 (Iowa 1981). Neither maintenance medical care nor an employee's continuing to have pain or other symptoms necessarily prolongs the healing period.

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).

Claimant claims entitlement to temporary disability benefits from October 24, 2016 through November 7, 2016. This period coincides to the time claimant was off work following right upper extremity surgery by Dr. VonGillern on October 24, 2016. The only considered injuries relative to the May 6, 2013 traumatic fall are stipulated injuries to the left shoulder and ribs, and a disputed injury to the cervical spine. Therefore, to the extent Dr. VonGillern performed surgery due to a right upper extremity injury, that claim is not properly raised in reference to the May 6, 2013 injury. The only

potential basis for an award of temporary benefits following this surgery in reference to the May 6, 2013 injury would be if the surgery were attributable to the alleged cervical condition. Accordingly, it must be determined if claimant sustained a cervical injury as a result of the May 6, 2013 fall. In questions of causation, the opinions of medical providers are of paramount importance; given the complexity and potentially intertwined nature of claimant's conditions, those opinions are crucial.

Claimant testified he developed symptoms of his neck and bilateral hands within two to three weeks of the May 6, 2013 fall. Ms. Chapman testified claimant's neck pain began prior to the July 4th holiday. Claimant testified he informed Dr. Perea of his symptoms, but Dr. Perea deferred to claimant's rib fractures as explanation. In support of his argument that the work injury caused or aggravated a cervical condition, claimant relies upon the opinions of his chiropractor, Dr. Woodward, as well as IME physicians, Drs. Delbridge and Kreiter.

Dr. Woodward examined and performed chiropractic adjustment at an appointment July 17, 2013. Dr. Woodward noted claimant reported the May 2013 fall and also indicated neck pain developed following a lifting event two days prior. Dr. Woodward subsequently opined that claimant's cervical condition was likely due to the May 2013 fall, as the trauma would have resulted in weaker support and increased likelihood of muscle strain.

Dr. Woodward's opinion is unconvincing as to the question of whether the work injury caused or aggravated claimant's cervical spine condition. Rather, following an intervening event, Dr. Woodward attributed claimant's then-condition to the work injury by way of resultant weakened neck musculature. Even if provided weight, this opinion does not specifically address whether the traumatic work injury caused or aggravated an existing degenerative condition of claimant's neck. Furthermore, the evidentiary record is devoid of detailed examination findings and it is unclear whether Dr. Woodward possessed any of claimant's relevant objective examination or testing results from his treating and evaluating physicians. After consideration, I decline to award any weight to the opinion of Dr. Woodward.

Dr. Delbridge served as one of claimant's chosen IME physicians. Dr. Delbridge opined claimant probably injured his cervical spine by whipping his neck around in the May 6, 2013 fall. He opined claimant's cervical spine condition was not only involved in the fall, but contributed to claimant's right hand difficulties; he specifically endorsed the possibility of double crush phenomenon. Upon comparison to the remainder of the evidentiary record, particularly the contrary opinions of treating surgeons Drs. Millea and VonGillern, I find Dr. Delbridge's opinion unconvincing.

Dr. Kreiter served claimant's other chosen IME physician. He opined it was likely degenerative changes in claimant's neck were aggravated by the work injury on May 6, 2013. However, Dr. Kreiter hedged on his opinion when confronted with the contrary opinion of Dr. Millea and indicated he would agree with Dr. Millea if neck symptoms did not present for an unspecified period of months. Dr. Kreiter also opined claimant's right

upper extremity symptoms developed from the neck condition, resulting in double crush, cubital tunnel syndrome, and carpal tunnel syndrome. Dr. Kreiter's opinion with respect to causation of claimant's neck condition is equivocal and lacking specificity. Given this lack of clarity, I find his opinions entitled to little weight as compared to the opinions of claimant's treating providers, Drs. Millea and VonGillern.

Following review of the entirety of the evidentiary record, I award greatest weight to the consistent opinions of treating physicians, Drs. Millea and VonGillern.

Dr. Millea opined he found no convincing evidence of a cervical injury and in the event a cervical condition was present, the condition was not causally related to the work injury on May 6, 2013. Dr. Millea opined the objective evidence of a peripheral nerve entrapment was stronger than for a cervical spine etiology. He also specifically opined he was unable to attribute any cervical issues to the fall due to the interval of time between the injury and subsequent complaints of relevant symptoms. Furthermore, claimant's personal provider referred claimant to Dr. Millea for neck evaluation, given Dr. Millea's specialty as a spinal surgeon. Thereafter, Dr. Millea examined claimant, reviewed claimant's history and imaging, and crafted a course of care. Dr. Millea performed the initial procedures personally, providing him the opportunity to observe claimant intraoperatively. He also referred claimant for evaluation by hand and upper extremity specialists, leading to his course of care with Dr. VonGillern.

Dr. Millea's opinions are further buttressed by the statements of IME physician's Drs. Hartley and Kreiter. Dr. Hartley indicated it was unclear if claimant's neck played a role in his symptomatology and he could not state to a degree of medical certainty that claimant's neck condition was caused or aggravated by the May 6, 2013 fall. Similarly, while double crush could potentially explain claimant's suboptimal results, he could not state with medical certainty that claimant demonstrated such a scenario. Dr. Hartley also specifically deferred to Dr. Millea with respect to issues pertaining to the cervical spine. Dr. Kreiter indicated he would agree with Dr. Millea's opinion that claimant's neck condition was not work-related if claimant did not present with neck symptoms for a period of months. This extended duration was specifically noted by Dr. Millea. While claimant may have experienced symptoms he believed were related to his neck, he is not a medical provider who is qualified to opine as to the source of those symptoms. Rather, he is an individual who suffered a very painful traumatic injury that likely manifested diffuse symptoms in a number of bodily locations. Dr. Perea provided claimant's contemporaneous medical care, which included further testing and specialist referrals; there is no evidence Dr. Perea refused to consider neck symptoms. To the contrary, claimant testified Dr. Perea explained his complaints by reference to the painful rib fractures. On this basis, I cannot find claimant presented with relevant symptoms within a few weeks of the May 2013 fall, particularly when Dr. Millea specifically opined claimant did not present with such symptoms.

Given the level of Dr. Millea's involvement in claimant's case and his specialization in spinal surgery, I find Dr. Millea's opinion entitled to significant weight.

Dr. VonGillern opined claimant's neck condition was not caused or aggravated by the fall on May 6, 2013. He also specifically opined the fall did not cause double crush phenomenon. His opinion renounces the possibility of such a scenario raised by claimant's evaluating physicians. Dr. VonGillern served as claimant's treating surgeon and as such, he had the opportunity to examine claimant on multiple occasions, including intraoperatively. He was privy to and involved in obtaining claimant's examination history and testing results. Furthermore, Dr. VonGillern was identified as a hand specialist and surgeon. As such a specialist and as a treating physician, I find Dr. VonGillern's opinion entitled to significant weight.

After consideration of the entirety of the evidentiary record, I award greatest weight to the opinions of Drs. Millea and VonGillern. As such, I find claimant has failed to prove by a preponderance of the evidence that the work injury of May 6, 2013 caused or aggravated a cervical condition. Given claimant has failed to carry this burden and given that claimant has not raised a right upper extremity injury in connection to this traumatic injury, I find claimant is not entitled to temporary disability benefits from October 24, 2016 through November 7, 2016.

The next issue for determination is whether the injury is a cause of permanent disability.

Claimant suffered stipulated injuries to his left shoulder and ribs as a result of the fall on May 6, 2013. Each condition was treated conservatively and claimant ultimately returned to work without restrictions relative to each injury. No physician opined claimant sustained permanent impairment as a result of either the left shoulder or rib injuries. Both of claimant's IME physicians, Drs. Delbridge and Kreiter, specifically opined claimant did not suffer ratable permanent impairment as a result of the conditions. Claimant did not testify to any discrete limitations due to either the rib or left shoulder condition. On these facts, I find claimant has not carried his burden of establishing he suffers with permanent disability as a result of the work injury of May 6, 2013. As claimant has failed to prove he suffered permanent disability as a result of the work injury of May 6, 2013, no award of industrial disability is warranted and no permanent partial disability benefits will be ordered.

The next issue for determination is whether defendants are responsible for claimed 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 16, 1975).

Defendants are responsible for authorized medical care obtained in treatment of the May 6, 2013 work injury, including care for the left shoulder injury and left rib fractures. There has been no evidence presented that defendants did not provide payment for any such authorized, causally-related medical expenses; therefore, no specific award of medical costs can be made.

The next issue for determination is whether claimant is entitled to reimbursement of an independent medical examination.

Section 85.39 permits an employee to be reimbursed for subsequent examination by a physician of the employee's choice where an employer-retained physician has previously evaluated "permanent disability" and the employee believes that the initial evaluation is too low. The section also permits reimbursement for reasonably necessary transportation expenses incurred and for any wage loss occasioned by the employee attending the subsequent examination.

Defendants are responsible only for reasonable fees associated with claimant's independent medical examination. Claimant has the burden of proving the reasonableness of the expenses incurred for the examination. See Schintgen v. Economy Fire & Casualty Co., File No. 855298 (App. April 26, 1991). Claimant need not ultimately prove the injury arose out of and in the course of employment to qualify for reimbursement under section 85.39. See Dodd v. Fleetguard, Inc., 759 N.W.2d 133, 140 (Iowa App. 2008).

Claimant underwent an independent medical examination with Dr. Kreiter, for which Dr. Kreiter charged $1,200.00: $400.00 for an examination and $800.00 for the written report. In order to be entitled to reimbursement of an IME, there must first have been an evaluation of permanent disability by an employer-retained physician. In this case, defendants authorized and provided medical care. However, review of the evidentiary record does not reveal that an employer-provided physician ever opined as to the extent of permanent disability. Accordingly, claimant is not entitled to reimbursement of Dr. Kreiter's IME expense.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the costs of: Dr. Kreiter's report fee ($800.00); subpoena expense for Mr. Myers' testimony ($204.80); and subpoena expense for Mr. Vargason's testimony ($104.00). Defendants prevailed in determination of each of the issues presented for consideration; accordingly, none of the requested costs are taxed to defendants.

In File No. 5055873 (Date of Injury: August 28, 2014 (cumulative); involving disputed injuries to the bilateral upper extremities and cervical spine):

The first issue for determination is whether claimant sustained an injury arising out of and in the course of his employment on August 28, 2014.

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

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

Claimant alleges he sustained cumulative injuries to his bilateral upper extremities and cervical spine, manifesting on August 28, 2014. Defendants dispute each claim. Due to the intertwined nature and presentation of the August 28, 2014 and May 6, 2013 injuries, it is important to highlight that only a cumulative injury claim is raised with respect to the August 28, 2014 injury; this claim is independent from

potential allegations that the May 6, 2013 injury played a causal role in the bilateral upper extremity and neck conditions.

Only two medical providers specifically addressed a cumulative basis for claimant's bilateral upper extremity and neck conditions. Defendants' IME physician, Dr. Hartley, opined claimant's bilateral upper extremity neuropathy and bilateral carpal tunnel syndrome were attributable to repetitive wrist activity and that claimant's work activities were a significant contributing factor in causing the conditions. Dr. Hartley indicated he could not state claimant's neck condition worsened due to work activities. Claimant's IME physician, Dr. Delbridge, opined claimant's left carpal and cubital tunnel conditions reflected work-related cumulative injuries, as did ulnar nerve abnormalities of the forearm. Dr. Delbridge opined claimant originally injured his neck in the May 2013 fall, but the condition improved, only to worsen upon returning to work. His testimony on this point was offered in discussion of a potential claim of double crush.

Both physicians, Drs. Hartley and Delbridge, opined claimant's bilateral upper extremity conditions reflected cumulative injuries attributable to work duties. These opinions are unrebutted and therefore, adopted. Drs. Hartley and Delbridge disagree as to whether claimant's work duties played a role in claimant's neck condition. Following review of the records, I award greater weight to the opinion of Dr. Hartley on this question. Dr. Hartley's opinion was clearly and specifically stated in respect to discussion of the etiology of claimant's neck condition. Dr. Delbridge's testimony lacked the specificity of Dr. Hartley's and was offered in description of a potential instance of double crush phenomenon, a possible diagnosis that was refuted by Dr. VonGillern.

It is determined claimant sustained cumulative injuries to his bilateral upper extremities arising out of and in the course of his employment with defendant-employer, manifesting on August 28, 2014. Claimant has failed to prove he sustained a cumulative injury to his cervical spine arising out of and in the course of his employment.

The next issue for determination is whether the alleged injury is a cause of temporary disability. The next issue for determination is whether claimant is entitled to temporary disability benefits from October 24, 2016 through November 7, 2016. These issues will be considered together. To the extent claimant, by post-hearing brief, sought temporary benefits for other periods, the claims are considered waived, as no other claimed periods were raised on the approved hearing report or at the time of evidentiary hearing.

Claimant credibly testified he was off work for a couple weeks following his right upper extremity surgery with Dr. VonGillern on October 24, 2016. His testimony corresponds to the claimed period of October 24, 2016 through November 7, 2016. By this decision, it was determined claimant's right upper extremity condition was compensable as a cumulative injury. As claimant was off work following surgery to treat a compensable condition, claimant has proven the injury was a cause of temporary disability during the claimed period. Claimant is entitled to temporary total disability or

healing period benefits, whichever shall prove applicable, for the claimed period of October 24, 2016 through November 7, 2016. The parties stipulated at the time of the injury, claimant's gross average weekly wage was $728.06 and he was single and entitled to one exemption. The proper rate of compensation is therefore, $446.69.

The next issue for determination is whether the alleged injury is a cause of permanent disability. The next issue for determination is whether the alleged disability is a scheduled member disability or an unscheduled disability. These issues will be considered together.

Under the Iowa Workers' Compensation Act, permanent partial disability is compensated either for a loss or loss of use of a scheduled member under Iowa Code section 85.34(2)(a)-(t) or for loss of earning capacity under section 85.34(2)(u). The extent of scheduled member disability benefits to which an injured worker is entitled is determined by using the functional method. Functional disability is "limited to the loss of the physiological capacity of the body or body part." Mortimer v. Fruehauf Corp., 502 N.W.2d 12, 15 (Iowa 1993); Sherman v. Pella Corp., 576 N.W.2d 312 (Iowa 1998). The fact finder must consider both medical and lay evidence relating to the extent of the functional loss in determining permanent disability resulting from an injury to a scheduled member. Terwilliger v. Snap-On Tools Corp., 529 N.W.2d 267, 272-273 (Iowa 1995); Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417, 420 (Iowa 1994).

Benefits for permanent partial disability of two members caused by a single accident is a scheduled benefit under section 85.34(2)(s); the degree of disability must be computed on a functional basis with a maximum benefit entitlement of 500 weeks. Simbro v. DeLong's Sportswear, 332 N.W.2d 886 (Iowa 1983).

As set forth, *supra*, claimant met his burden of establishing he sustained cumulative injuries to his bilateral upper extremities manifesting on August 28, 2014. Claimant failed to prove he sustained injury to his cervical spine. Accordingly, any permanent disability, if established, would be compensated as a scheduled injury.

It must therefore be determined if claimant suffers with permanent disability to either or both upper extremities. Claimant credibly testified he suffers with abnormal right hand and wrist posture, limited motion, loss of grip strength, and sensations of left finger tightness. Claimant's abnormal hand and wrist posture was evident to observation at hearing, as was his frequent need to massage and stretch the right hand.

Two physicians, Drs. Delbridge and Kreiter, opined as to the extent of permanent impairment sustained by claimant as a result of the bilateral upper extremity conditions. Dr. Delbridge opined claimant suffered with left cubital and carpal tunnel syndromes. For each condition, Dr. Delbridge awarded 4 percent upper extremity impairment; he determined a total combined impairment of 8 percent left upper extremity as a result of compression of the median and ulnar nerves. Dr. Delbridge opined claimant suffered with ulnar nerve abnormalities of the right upper extremity. He found a combined impairment of 28 percent right upper extremity, specifically a 4 percent loss for

sensation and 23 percent loss for motor disturbance. Dr. Delbridge also recommended permanent restrictions, based primarily upon claimant's right hand limitations. Dr. Kreiter provided a provisional impairment rating. He found no impairment to the left upper extremity and a 35 to 38 percent whole person impairment due to neurological function and grip of the right hand. Dr. Kreiter considered claimant's right upper extremity impairment in conjunction with a cervical impairment and rated claimant's impairment on the basis of DRE Cervical Category V.

Following review, I award greatest weight to the opinions of Dr. Delbridge as to the issues of permanent disability. Dr. Delbridge specifically delineated the basis of his ratings to each upper extremity independently and not in conjunction with a noncompensable cervical condition. Dr. Delbridge's ratings to each upper extremity are consistent with claimant's credible testimony of ongoing complaints and limitations, as well as with my observations of claimant's condition at hearing. Dr. Kreiter's provisional ratings were inconsistent with claimant's testimony and utilized an incorrect rating methodology, as claimant failed to prove he sustained a compensable cervical injury.

Therefore, it is determined claimant has proven the work injury of August 28, 2014 resulted in permanent disability to his left and right upper extremities. The disability is compensable as a bilateral injury to the upper extremities pursuant to section 85.34(2)(s).

The next issue for determination is the extent of claimant's permanent disability. The next issue for determination is the proper commencement date for permanent disability benefits. These issues will be considered together.

As set forth *supra*, only Drs. Delbridge and Kreiter opined as to the extent of claimant's permanent impairment as a result of the cumulative injury of August 28, 2014. The opinions of Dr. Delbridge as to the extent of claimant's permanent impairment and need for restrictions represent the best and most persuasive evidence in the record. Accordingly, I adopt Dr. Delbridge's permanent impairment ratings of 8 percent left upper extremity and 28 percent right upper extremity.

Pursuant to section 85.34(2)(s), claimant's disability is to be compensated on the basis of 500 weeks. Accordingly, Dr. Delbridge's upper extremity ratings must be converted to whole person impairments and combined. By the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, a rating of 8 percent upper extremity converts to 5 percent whole person and a rating of 28 percent upper extremity converts to 17 percent whole person. Combining these two ratings via the combined values chart results in a combined impairment of 21 percent whole person as a result of the bilateral upper extremity conditions.

It is determined claimant sustained a 21 percent whole person impairment as a result of the cumulative bilateral upper extremity injuries manifesting on August 28, 2014. This award entitles claimant to 105 weeks (21 percent x 500 weeks = 105 weeks) of permanent partial disability benefits at the weekly rate of $446.69. While initially

noted as a disputed issue, by post-hearing brief, defendants agreed with claimant's proposed commencement date of November 8, 2016. Accordingly, permanent partial disability benefits shall commence on the agreed date of November 8, 2016, the date following termination of claimant's healing period.

The next issue for determination is whether defendants are responsible for claimed medical expenses.

Due to exclusion of a number of claimant's exhibits at evidentiary hearing, the record does not contain an itemized claim for medical benefits. However, this decision determined claimant sustained compensable injuries to his bilateral upper extremities as a result of the August 28, 2014 injury. Defendants denied liability for claimant's claim and provided no care, leading claimant to seek care for these work-related conditions. As claimant has proven he suffered compensable injuries and these injuries required medical care, the responsibility for such care should be borne by defendants. Defendants are hereby found responsible for medical treatment causally related to the compensable bilateral upper extremity injuries, specifically including the upper extremity surgeries. Within 10 days of this decision, the claimant shall serve upon defendants an itemized list of all medical expenses incurred in treatment of the compensable bilateral upper extremity injuries. Expenses obtained in connection with cervical spine treatment shall be excluded. Within 10 days thereafter, defendants shall notify claimant of any objections to claimed expenses. Through this process, if the parties are unable to agree as to responsibility for claimed medical expenses, the dispute may become the subject of a request for rehearing before the undersigned.

The next issue for determination is whether claimant is entitled to reimbursement of an independent medical examination.

Claimant seeks reimbursement for Dr. Kreiter's IME in the amount of $1,200.00. Defendants denied liability for claimant's claims prior to receiving an evaluation of permanent disability by an employer-retained physician. Defendants' denial does not equate to an opinion of zero impairment and does not trigger claimant's right to a reimbursable IME. Accordingly, claimant is not entitled to reimbursement of Dr. Kreiter's IME expense.

The final issue for determination is a specific taxation of costs pursuant to Iowa Code section 86.40 and rule 876 IAC 4.33. Claimant requests taxation of the costs of: Dr. Kreiter's report fee ($800.00); subpoena expense for Mr. Myers' testimony ($204.80); and subpoena expense for Mr. Vargason's testimony ($104.00). Claimant prevailed in this matter and an award of costs is appropriate. The costs associated with the subpoenas of Mr. Myers and Mr. Vargason are allowable costs and are hereby taxed to defendants. The cost of Dr. Kreiter's report is also taxable as a practitioner's report. Claimant only requested taxation of the costs associated with report preparation and excluded the portion of the costs associated with examination. This request is consistent with the ruling of Des Moines Area Regional Transit Authority v. Young, 867

N.W.2d 839 (Iowa 2015). Defendants are therefore taxed with total costs in the amount of $1,108.80 ($800.00 + $204.80 + $104.00).

ORDER

THEREFORE, IT IS ORDERED:

In File No. 5055872 (Date of Injury: May 6, 2013 (trauma); involving stipulated injuries to the left shoulder and ribs, and disputed injury to the cervical spine):

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Claimant shall take nothing further from these proceedings.

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

Costs are taxed to claimant pursuant to 876 IAC 4.33.

In File No. 5055873 (Date of Injury: August 28, 2014 (cumulative); involving disputed injuries to the bilateral upper extremities and cervical spine):

The parties are ordered to comply with all stipulations that have been accepted by this agency.

Defendants shall pay unto claimant healing period benefits at the weekly rate of four hundred forty-six and 69/100 dollars ($446.69) for the period of October 24, 2016 through November 7, 2016.

Defendants shall pay unto claimant one hundred five (105) weeks of permanent partial disability benefits commencing November 8, 2016 at the weekly rate of four hundred forty-six and 69/100 dollars ($446.69).

Defendants shall pay accrued weekly benefits in a lump sum.

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

Defendants shall pay accrued weekly benefits in a lump sum together with interest at the rate of ten percent for all weekly benefits payable and not paid when due which accrued before July 1, 2017, and all interest on past due weekly compensation benefits accruing on or after July 1, 2017, shall be payable at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most recent H15 report settled as of the date of injury, plus two percent. See Gamble v. AG Leader Technology, File No. 5054686 (App. Apr. 24, 2018).

Defendants shall receive credit for benefits paid.

Defendants are responsible for medical expenses as set forth *supra*.

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

Costs are taxed to defendants pursuant to 876 IAC 4.33 as set forth *supra*.

Signed and filed this 6th day of November, 2020.

ERICA J. FITCH
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Paul McAndrew (via WCES)
Thomas M. Wertz (via WCES)

Aaron Oliver (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.