BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES TOW,	:	
	:	File No. 5068651
Claimant,	:	
	:	
vs.	:	ARBITRATION
	:	
ARCHER DANIELS MIDLAND CO., INC.,:		DECISION
	:	
Employer,	:	
Self-Insured,	:	
Defendant.	:	Head Note Nos.: 1402.20, 1803

STATEMENT OF THE CASE

James Tow, claimant, filed a petition in arbitration seeking worker's compensation benefits against Archer Daniels Midland Company, Incorporated, a self-insured employer.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, a hearing occurred on August 4, 2020, via CourtCall. The case was considered fully submitted on October 5, 2020, upon the filing of briefs.

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

The evidentiary record consists of Claimant's Exhibit 1, and Defendant's Exhibits A through L. Exhibit L was admitted into the evidentiary record subsequent to the evidentiary hearing. Claimant testified on his own behalf. Jason Freeman testified on defendant's behalf.

ISSUES

The parties submitted the following issues for determination:

1. Whether claimant's right shoulder condition, left shoulder condition, neck condition, and/or back condition is causally related to, or a sequela of, the November 13, 2017, work injury;

2. Whether claimant sustained permanent disability as a result of the November 13, 2017, work injury and, if so, the extent of claimant's entitlement to permanent disability benefits.

The parties stipulate claimant sustained a burn injury which arose out of and in the course of employment on November 13, 2017. The parties further stipulate the burn injury is a cause of permanent disability. However, the parties dispute whether the November 13, 2017, work injury resulted in injuries to claimant's bilateral shoulders, neck, and back.

FINDINGS OF FACT

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

James Michael Tow is a 60-year-old gentleman, who was born and raised in Cedar Rapids, Iowa. (Hearing Transcript, page 14) After graduating from high school, Mr. Tow joined the United States Air Force. (Hr. Tr., p. 15) In total, claimant served our country for just over five years. (Hr. Tr., p. 16) Claimant worked on control systems as part of the civil engineering division during this time. (Id.) After being honorably discharged, claimant collected 13 weeks of unemployment benefits and then started working for defendant in October of 1987. (Id.)

Mr. Tow started out as a refinery utility worker and eventually bid into an "Operator 1" position. (Hr. Tr., pp. 18-19) The Operator 1 position is responsible for the controls that produce products within the refinery. (Hr. Tr., p. 19) Claimant has held this position for over 25 years. (Hr. Tr., p. 42) As of the date of hearing, claimant continued to work as an Operator 1 without restrictions. (Hr. Tr., p. 43) Claimant has no plans to retire in the near future. (Hr. Tr., pp. 50-51)

At the evidentiary hearing, defendants called Jason Freeman to provide testimony regarding claimant's current work status. (See Hr. Tr., pp. 54-59) Jason Freeman is the plant superintendent for Archer Daniels Midland. (Hr. Tr., pp. 54-55) Mr. Freeman confirmed claimant remains in the refinery operator position, which is now mostly automated. (Hr. Tr., p. 56) Mr. Freeman testified claimant works full duty, has overtime available to him, retains his seniority, and is working all hours available to him. (Hr. Tr., pp. 57-58)

Claimant's medical history includes chronic issues within the right shoulder, neck, and back. The earliest medical records in evidence note that claimant was diagnosed with rotator cuff tendinitis and cervical neck pain in September 2009. (Ex. C, pp. 21-22) In October 2011, claimant presented to the Physician's Clinic of Iowa reporting a five month history of right shoulder and elbow pain. (Ex. C, p. 23) Claimant attributed his pain to pitching baseballs to his sons from May to July 2011. (Id.) However, at a follow-up appointment with Fred Pilcher, M.D., claimant reported a 10-year history of problems with the right elbow. (Ex. C, p. 26) An MRI of the right shoulder, dated October 13,

2011, revealed moderate AC joint degenerative hypertrophy impinging upon the supraspinatus at the myotendinous junction, a small, nondisplaced SLAP tear, and mild partial interstitial tearing of the distal supraspinatus tendon. (See Ex. 1, p. 2) Claimant would eventually receive injections in his right elbow and right shoulder. Following these injections, claimant testified he did not have any issues within the right elbow or right shoulder until the November 13, 2017, work injury. (Hr. Tr., p. 23)

As mentioned, claimant's medical history reflects chronic issues within the cervical spine. On September 3, 2009, claimant reported a 10-year history of neck pain. Claimant was diagnosed with rotator cuff tendonitis and cervical neck pain. (Ex. C, p. 22; Ex. D, p. 31)

As for the low back, a February 12, 2016, MRI of the lumbar spine revealed moderate left-sided foraminal narrowing at L5-S1, mild canal narrowing at L4-L5, moderate canal narrowing at L3-L4, and mild bilateral foraminal narrowing at L3-L4 and L4-L5. (See Ex. A, p. 5)

Claimant testified his low back symptoms never fully resolved prior to the November 13, 2017, work injury. (Hr. Tr., p. 24)

On November 13, 2017, claimant was flushing a pump by a tank that was filled with hot liquid, or "slurry." The slurry in the tanks surged out of the top of the tank through an open access panel and landed on claimant. The hot mixture reportedly came into contact with claimant's neck, upper trunk, bilateral upper extremities, low back, and portions of his buttocks. (See Hr. Tr., pp. 24-28) The treatment records indicate that claimant sustained burns over approximately 9 percent of his body. (Ex. 1, p. 20) Photos of claimant's burns can be found in the evidentiary record at Exhibit 1, pages 30 through 49.

Immediately following the incident, claimant headed to the locker room where he took a cold shower for approximately 45 minutes. (Hr. Tr., p. 27) Safety Director, Karl Schewe, drove claimant to St. Luke's Work Well clinic, who immediately sent him to St. Luke's Hospital. (See Hr. Tr., pp. 27-28) At the hospital, claimant received a tetanus shot and pain medication. Due to the nature and extent of his burns, the medical staff at St. Luke's referred claimant to the University of Iowa Hospitals and Clinics Burn Unit. He was immediately transported by ambulance. (See Hr. Tr., p. 28; Ex. 1, p. 19)

The medical staff at UIHC irrigated and dressed claimant's burns before admitting him for additional monitoring and pain control. (Ex. 1, p. 20) According to the initial medical records, it was believed that claimant had sustained 2nd degree burns to his back and buttocks, and 1st degree burns to the upper extremities. (Id.) The medical staff estimated claimant sustained 2nd degree burns to nine percent of his total body surface. Claimant's posterior trunk accounted for 7.5 of the 9 percent. (Id.) It is noted that claimant did well during his hospital stay and was deemed stable for discharge on November 14, 2017. (Id.)

As part of his hospital stay, claimant participated in occupational therapy on November 14, 2017. (See Ex. 1, p. 27) Claimant appeared frustrated at the time of his appointment. (See Ex. 1, pp. 27-28) ("pt states 'I will do it my way' in response to therapist's recommendations for ADLs and stretches"), ("states he will do what he wants to do when he wants to do it.") Claimant was independent with all ADL assessments. (See Ex. 1, p. 28)

Meesha Last, PA-C, authored a release on November 28, 2017, noting claimant could return to work on December 4, 2017, with no restrictions. (Ex. B, p. 16)

Claimant returned to UIHC for a follow-up appointment on January 11, 2018. (Ex. B, p. 17) He complained of itching associated with his scars; however, it is noted claimant's itching was primarily controlled with lotion and rubbing the area. It is also noted that claimant had medication he could take for the itching if necessary. (Id.) He denied noticing any rashes or skin breakdown. (Id.) Claimant's skin was noted to be immature and prone to breakdown from friction and trauma. (Ex. B, p. 19)

According to the medical notes, claimant was initially performing the stretching exercises that were recommended to him by his physical therapist; however, he stopped doing them because they were irritating a previous injury to his right shoulder. Claimant relayed that he was "allergic to pain." (Id.) On examination, claimant exhibited limited shoulder abduction on the right. Ms. Last attributed this limitation to claimant's prior shoulder injury, noting there was no scar tension from the burns that would be restricting claimant's movement. (Ex. B, p. 18) After physically examining claimant, Ms. Last discharged claimant and recommended he follow-up with occupational medicine one year from the date of injury for an impairment assessment. Claimant was encouraged to contact the Burn Clinic if any burn-related issues arose prior to his one-year follow-up appointment. (Ex. B, p. 20)

Mr. Tow last treated for his burn injuries in January 2018. He requires no use of prescription medications for his burn injury and there are no pending future appointments or treatment recommendations regarding the same. Mr. Tow testified he still feels "pings" from the burn area every now and then, and the burn area continues to itch on occasion. (Hr. Tr., p. 32) It does not appear as though claimant experiences any ongoing pain as it relates to his burns.

Eric Aschenbrenner, M.D., evaluated claimant for purposes of an impairment rating on April 17, 2019. (Ex. 1, pp. 50-52) Dr. Aschenbrenner assigned seven percent whole person impairment as a result of claimant's burn injuries. (Ex. 1, p. 52)

After being released from UIHC for his burn injury, claimant's personal physician's assistant referred him for orthopedic evaluation of his right shoulder. (See Ex. 1, p. 13) At the February 6, 2018, evaluation, Fred J. Pilcher, M.D., reviewed claimant's 2011 MRI with him, noting some rotator cuff impingement and labral tears. (See Ex. 1, p. 13) According to the medical record, claimant's right shoulder pain had "never gotten well and has recently been made worse following treatment for a second-

degree burn […] He had to lay a certain way for burn care, which somewhat irritated his shoulder and perhaps even his low back. […] However, he has had chronic similar orthopedic conditions." (Ex. 1, p. 13) The medical record does not mention left shoulder pain. Dr. Pilcher diagnosed claimant with rotator cuff chronic impingement syndrome with history of labral tears and rotator cuff tendinitis. An updated MRI was planned. (Id.)

The MRI, dated February 13, 2018, revealed degenerative changes in the right shoulder. (Ex. A, p. 7) The MRI results were reviewed with claimant on February 26, 2018. (See Ex. C, p. 29) Claimant told Dr. Pilcher that his pain was not intolerable and he would take anti-inflammatories for the same. (Ex. C, p. 29)

There is no evidence claimant presented for any treatment relating to his right shoulder between February 2018 and April 2019. At the previously mentioned April 17, 2019, appointment with Dr. Aschenbrenner, claimant reported pain in both of his shoulders. This is the first medical record in which claimant complained of left shoulder pain following the November 13, 2017, work injury. According to claimant, the pain in his shoulders developed as a result of having to sleep on his stomach, with his arms above his head, for a period of five to six months after the work injury. Dr. Aschenbrenner indicated he was not authorized to evaluate the condition of claimant's shoulders and no additional commentary on the subject was provided. (Ex. 1, p. 52)

Nearly six months later, claimant presented to Kyle Switzer, M.D., with complaints of left shoulder pain. (Ex. 1, p. 15) Claimant described the pain as stabbing and intermittent. (Id.) There is no mention of right shoulder pain. The October 3, 2019, medical record asserts that claimant had been experiencing left shoulder pain for "a couple of years." (Id.) It is again noted that claimant had to sleep on his stomach with his arms over his head for quite some time as a result of the November 13, 2017, burn injury. (Id.)

At some point in time prior to the October 3, 2019, appointment, claimant underwent an MRI of the left shoulder. (See Ex. 1, pp. 15-16) The diagnostic imaging revealed a moderately degenerative AC joint with some secondary impingement, rotator cuff tendinitis of the supraspinatus and subscapularis, and some labral fraying. (See Ex. 1, pp. 15-16) Dr. Switzer administered an injection of Depo-Medrol into claimant's left shoulder and referred him to physical therapy. (Ex. 1, p. 16) Unfortunately, claimant did not follow through with the physical therapy recommendation. (See Ex. 1, p. 17)

Claimant returned to Dr. Switzer on December 10, 2019, reporting that his left shoulder pain was roughly the same. (Ex. 1, p. 17) Claimant reported the October 2019 injection mitigated his pain for approximately one week. Again, there is no mention of right shoulder pain. Claimant exhibited essentially symmetric range of motion in the bilateral shoulders. (Id.) Dr. Switzer diagnosed claimant with tendinitis of the left rotator cuff and osteoarthritis of the AC joint. (Id.) Dr. Switzer recommended

claimant present for physical therapy; however, claimant told Dr. Switzer he was not interested in the same. Interestingly, Dr. Switzer's record provides,

> I am trying to figure out exactly what he wants from the appointment today. It is too soon to repeat injection and if he only had a week of relief I would not repeat this. I explained to him that his MRI does not show anything emergent by any means. Options would include arthroscopy of the shoulder although I am very hesitant to pursue this if he is not going to try therapy before and is not going to do any therapy afterwards.

(Id.) Dr. Switzer subsequently released claimant from care and instructed him to return on an as needed basis. (Ex. 1, p. 18)

Claimant did not seek any treatment for the alleged neck condition. (Hr. Tr., p. 45)

Claimant sought an independent medical examination, performed by Mark C. Taylor, M.D., on June 8, 2020. (Ex. 1, p. 1) Dr. Taylor issued his report on July 1, 2020. In his report, Dr. Taylor diagnosed claimant with partial-thickness burns involving nine percent total body surface area, bilateral glenohumeral area pain, left worse than right, cervicalgia, and lumbago. (Ex. 1, p. 8) With respect to causation for the glenohumeral area pain, Dr. Taylor opined these complaints were more than likely sequela of the original injury. (Ex. 1, p. 9) That being said, Dr. Taylor further opined, "The positioning of his arms may not have caused the radiographic abnormalities, specifically the labral tears, especially with a prior labral tear on the right side identified back in 2011. […] These areas of pain could be considered an aggravation of a pre-existing condition, or even a 'lighting up' of a previously asymptomatic condition." (Id.)

As for claimant's neck pain, Dr. Taylor opined, "it appears more likely than not the pain occurred as a sequela of his injury." Dr. Taylor noted it was unclear whether his neck pain was due to a combination of the problems with his burns and the impact the burns had on claimant's shoulders, or if the pain was related to claimant's sleeping position, "or some combination thereof." (Id.) Dr. Taylor opined claimant's sleeping position could have temporarily exacerbated his pre-existing low back condition; however, he did not believe the work injury permanently aggravated the same. (Id.)

Dr. Taylor agreed with the seven percent whole person impairment rating provided by Dr. Aschenbrenner with respect to claimant's burns. (Ex. 1, p. 10) Due to claimant's loss of range of motion, Dr. Taylor assigned seven percent impairment to the right upper extremity and nine percent impairment to the left upper extremity. Despite noting that claimant's condition did not reach the threshold for placement in DRE Cervical Category II, Dr. Taylor assigned two percent whole person impairment for claimant's chronic cervicalgia. (Id.) Utilizing the Combined Values Chart, Dr. Taylor assessed claimant with 18 percent whole person impairment as a result of the November 13, 2017, work injury. (Ex. 1, p. 10) Per claimant's request, Dr. Taylor did not assign any permanent restrictions. (Ex. 1, pp. 10-11)

Following a conference call, counsel for defendant produced a pre-written opinion letter to Dr. Switzer on July 29, 2020. (Ex. K) The letter is alleged to be a summation of the conference call. (See Ex. K, p. 66) The letter confirms Dr. Switzer did not appreciate any significant differences in the range of motion in Mr. Tow's left and right shoulders. The letter also reports that Dr. Switzer reviewed claimant's left shoulder MRI and believed the pathology indicated in the MRI would not be expected to affect Mr. Tow's left shoulder range of motion. Additionally, the letter asserts that Dr. Switzer was not able to determine within a reasonable degree of medical certainty whether claimant's rotator cuff tendonitis was acute or degenerative in nature. The fourth assertion is poorly worded, but essentially asserts that Dr. Switzer would not assign any permanent impairment to the left shoulder condition observed on diagnostic imaging. (Ex. K, p. 67) The letter concludes by confirming Dr. Switzer did not assign any restrictions for claimant's left shoulder condition, and Mr. Tow did not complain of neck pain during his two visits in October and December 2019. (Id.) Dr. Switzer endorsed the contents of the pre-written report on July 30, 2020. (Id.)

The evidentiary record was held open for the introduction of an updated report from Dr. Aschenbrenner. (See Hr. Tr., pp. 9-11)

On September 10, 2020, Dr. Aschenbrenner issued his report holding it was unlikely that claimant's scarring would restrict the range of motion in his bilateral shoulders. (Ex. L, p. 68) He further opined that based on the appearance and texture of claimant's scars at the time of his April 2019 evaluation, it was unlikely that claimant would subsequently develop altered or raised scar tissue that would affect the range of motion in his shoulders. (Id.)

The parties submit two primary disputed issues in this case. The first is whether Mr. Tow sustained sequela injuries to his shoulders and neck as a result of the November 13, 2017, work injury. It appears as though claimant concedes he did not sustain an injury to the low back, as his post-hearing brief makes no mention of the condition. The second significant disputed issue is the extent of Mr. Tow's entitlement to permanent disability benefits.

With respect to the right shoulder claim, claimant first reported an aggravation of his pre-existing right shoulder condition to Ms. Last on January 11, 2018. (Ex. B, p. 17) Claimant told Ms. Last that stretching his arm irritated a previous injury to his shoulder. (Id.) Claimant sought additional treatment from Ms. Last in February 2018, and reported right shoulder pain to Dr. Aschenbrenner in April 2019. Defendants deny liability for the right shoulder claim. Mr. Tow obtained an updated MRI of the right shoulder. He declined physical therapy aimed at treating his right shoulder condition. Outside of his one appointment with Dr. Pilcher in February 2018, it does not appear as though claimant sought any treatment for the right shoulder condition on his own. Claimant did not complain of right shoulder pain when he presented to Dr. Switzer in October and December 2019.

Defendants appropriately point out that Mr. Tow experienced similar complaints in his right shoulder before the November 13, 2017, work injury. Claimant concedes that he sustained an injury to the right shoulder sometime in 2010 or 2011. However, claimant asserts his prior right shoulder condition resolved and he was not experiencing issues leading up to the November 13, 2017, work injury. Claimant asserts his right shoulder condition worsened after having to sleep on his stomach with his arms above his head for several months following the November 13, 2017, work injury.

Similarly, claimant appears to assert that his left shoulder condition was either caused by having to sleep on his stomach with his arms above his head for several months following the November 13, 2017, work injury, or, said sleeping position materially aggravated a previously asymptomatic pre-existing condition.

At hearing, claimant testified he began experiencing symptoms in his left shoulder during the five or so months in which he slept on his stomach, with his arms above his head, following the date of injury. However, the evidentiary record reveals claimant did not report any symptoms in the left shoulder until April 2019, nearly 18 months after the date of injury, when he presented to Dr. Aschenbrenner for an impairment assessment of his burn injuries. Additionally, claimant did not seek any medical treatment for the alleged left shoulder condition until October 2019.

When asked to address claimant's left shoulder condition, Dr. Switzer opined claimant's MRI revealed degenerative conditions, including labral fraying and a moderately degenerative AC joint with some secondary impingement. Dr. Switzer opined he could not determine whether claimant's rotator cuff tendonitis was an acute or degenerative condition. Dr. Switzer further opined the pathology demonstrated on claimant's MRI would not be expected to affect Mr. Tow's left shoulder range of motion, and he would not expect the pathology identified in claimant's MRI report to result in permanent impairment.

In addition to being unnecessarily confusing, Dr. Switzer's report is largely unhelpful when it comes to the issue of causation. The fundamental issue to be addressed was whether claimant's sleeping position between November 2017 and March 2018 could have caused a left shoulder condition that did not present itself until approximately October 2019. Instead of addressing this seemingly simple question, defendant obtained five opinions loosely tailored to demonstrate claimant sustained little to no permanent disability in the left shoulder. The opinions endorsed by Dr. Switzer leave open the possibility that claimant's left shoulder condition is causally related to the November 13, 2017, work injury.

As previously discussed, claimant obtained an IME report from Dr. Taylor. Dr. Taylor opined:

> Given the position of the glenohumeral joints during his sleep, a position that he was not at all accustomed to, and coupled with the temporal relationship of the onset of these symptoms occurring after having to sleep

> in that position, it is my opinion that his bilateral glenohumeral complaints more than likely occurred as a sequela of his injury. The positioning of his arms may not have caused the radiographic abnormalities, specifically the labral tears, especially with a prior labral tear on the right side identified back in 2011. However, he was doing well prior to the November 2017 incident at work and he was not previously experiencing problems with the left side. As such, these areas of pain could be considered an aggravation of a pre-existing condition, or even a "lighting up" of a previously asymptomatic condition.

(Ex. 1, p. 9)

Dr. Taylor does not seem to assert his opinions with much conviction. Moreover, he did not offer significant analysis of his rationale or medical support for his conclusion that claimant's shoulder conditions were either caused or materially aggravated as a result of the November 13, 2017, work injury. Of particular importance is Dr. Taylor's opinion that, "The positioning of his arms may not have caused the radiographic abnormalities, specifically the labral tears, especially with a prior labral tear on the right side identified back in 2011." Despite his uncertainty as to whether claimant's sleeping position caused the abnormalities on claimant's diagnostic imaging, Dr. Taylor assigned permanent impairment to both shoulders and causally related the same to the November 13, 2017, work injury.

I do not find Dr. Taylor's opinions to be convincing in this case. Dr. Taylor does not sufficiently address claimant's well-documented pre-existing right shoulder condition, or provide sufficient analysis of how claimant's sleeping position materially aggravated claimant's pre-existing right shoulder condition. The temporal relationship could potentially explain a temporary flare-up; however, there is no objective medical evidence that claimant's sleeping position materially aggravated the conditions within the right shoulder. Dr. Taylor's causation opinion is also troubling as it relates to claimant's alleged left shoulder injury. No temporal relationship exists for the left shoulder condition. The evidentiary record reveals claimant did not report any symptoms in the left shoulder until October 2019, nearly two years after the date of injury. (See Ex. 1, p. 15) Dr. Taylor's report does not discuss the lack of a temporal relationship with respect to the left shoulder condition.

Based upon this evidentiary record, claimant cannot establish that his current shoulder symptoms were materially aggravated, caused by, or were sequela of the November 13, 2017, work injury. I specifically find claimant failed to carry his burden to establish that the bilateral shoulder conditions are sequela of the November 13, 2017, work injury.

With respect to the neck claim, there is little to no objective evidence to support a finding that claimant sustained a sequela injury to the cervical spine as a result of the November 13, 2017, work injury. With the exception of claimant's IME physician, there

is no evidence claimant presented to any of the medical providers in this case with complaints of neck pain. There is no evidence claimant ever requested or received medical treatment for the alleged neck condition.

Claimant's IME physician, Dr. Taylor loosely concluded claimant's cervicalgia is causally related to claimant's work injury. (See Ex. 1, pp. 9-10) He provided,

> As far as his neck, it is unclear whether that is due to a combination of the problems with his burns and the impact on the shoulders, or if it is related to the sleep position that was required, or some combination thereof. Assuming a myofascial cause, it appears more likely than not the pain occurred as a sequela of his injury.

(Ex. 1, p. 9)

When assessing claimant's permanent impairment, Dr. Taylor acknowledged the neck condition "did not quite reach the threshold for DRE Cervical Category II." However, because claimant demonstrated decreased range of motion and pain over some of the musculature of the posterior cervical spine and into the trapezius, Dr. Taylor assigned two percent impairment of the whole person. (Ex. 1, p. 10) Such a finding does not comply with the AMA Guides, Fifth Edition.

There are several issues with Dr. Taylor's opinions regarding the cervical spine. First, Dr. Taylor's analysis of claimant's neck complaints is cursory at best. Second, Dr. Taylor's report appears to ignore claimant's pre-existing medical records. Specifically, Dr. Taylor does not address claimant's pre-existing medical records which note a ten-year history of decreased range of motion and pain in the neck in 1997. (See Ex. D, p. 31)

Moreover, Dr. Taylor's report is not in line with the medical records contained in the evidentiary record. Prior to assigning a permanent impairment rating to the cervical spine, Dr. Taylor provides, "He was noted to have degenerative changes in the cervical spine[.]" (Ex. 1, p. 10) A review of Dr. Taylor's medical records summary reveals, "an x-ray of the cervical spine was obtained on October 31, 2019, and revealed scattered cervical spondylosis without acute abnormalities. A lumbar spine x-ray was obtained the same day and revealed degenerative changes at L4-L5 and L5-S1 without compression deformities or fractures." (Ex. 1, p. 3)

It is unlikely the above-mentioned x-rays were collected for diagnostic purposes related to the matter at hand. The evidentiary record does not contain or reference any diagnostic imaging being ordered to address claimant's cervical spine between the date of injury and the date of Dr. Taylor's evaluation. It is more likely the diagnostic imaging was ordered secondary to claimant's cardiogenic pulmonary edema (CPE) on October 31, 2019, and the findings discussed by Dr. Taylor were incidental to the same. (See Ex. 1, p. 17) Typically, how the degenerative condition is discovered is irrelevant; what matters is that the condition was discovered. However, when a claimant has not

asserted an injury, and there is little to no evidence of an injury to said body part until the discovery of an incidental finding, it is reasonable to question the legitimacy of a causal connection. The fact that a degenerative condition was discovered in claimant's neck subsequent to a work injury does not automatically render the condition causally related. This is particularly true in the matter at hand, where claimant did not complain of or seek treatment for the alleged neck condition, and the discovery of the degenerative condition was incidental and occurred nearly two years after the date of injury.

While it is possible such findings are causally related to the November 13, 2017, work injury, such a finding is not supported by the evidentiary record as a whole. There is little to no objective evidence to support a finding that claimant sustained an injury to the cervical spine as a result of the November 13, 2017, work injury. The evidentiary record is devoid of any treatment records specific to claimant's neck pain. There is no evidence claimant ever requested medical treatment for the alleged neck condition. Perhaps most importantly, there is no evidence claimant presented to any of the medical providers in this case with complaints of neck pain until June 2020, when claimant presented to Dr. Taylor for an independent medical examination. In fact, the only temporal medical record to reference claimant's neck provides, "No evidence of cervical disc disease." (Ex. 1, p. 13)

Given this record, I find claimant failed to carry his burden of proving the alleged neck condition is a sequela of the November 13, 2017, work injury.

Turning to the issue of permanent impairment, Dr. Aschenbrenner and Dr. Taylor are in agreement that claimant sustained seven percent whole person impairment as a result of the burns to claimant's body. The mutually agreed upon impairment rating is accepted as accurate. I find claimant sustained seven percent permanent impairment of the whole person as a result of his physical injuries.

The evidentiary record is devoid of any physical restrictions attributable to claimant's skin disorder. Claimant returned to his pre-injury position with the defendant employer. (Hr. Tr., p. 43) As of the date of the evidentiary hearing, claimant was working in this position on a full-time basis, without restrictions. (Id.) He continues to receive raises in accordance with his union contract. (Hr. Tr., pp. 51-52) He currently earns a higher hourly wage and higher weekly earnings than he did on the date of injury in November 2017. (See Ex. F) He has no immediate plans to retire. (Hr. Tr., pp. 50-51) Given this information, I find claimant's entitlement to permanent disability benefits is limited to the functional impairment rating to the whole person. I find claimant is not entitled to an industrial disability analysis at this time.

CONCLUSIONS OF LAW

The parties stipulated that claimant sustained a work-related burn injury that arose out of and in the course of claimant's employment on November 13, 2017. The parties further stipulate that the injury caused permanent disability and should be

compensated pursuant to Iowa Code section 85.34(2)(u). (Hearing Report) However, the parties dispute whether claimant sustained sequela injuries to the neck and bilateral shoulders.

The claimant has the burden of proving by a preponderance of the evidence that the injury is a proximate cause of the disability on which the claim is based. A cause is proximate if it is a substantial factor in bringing about the result; it need not be the only cause. A preponderance of the evidence exists when the causal connection is probable rather than merely possible. George A. Hormel & Co. v. Jordan, 569 N.W.2d 148 (Iowa 1997); Frye v. Smith-Doyle Contractors, 569 N.W.2d 154 (Iowa App. 1997); Sanchez v. Blue Bird Midwest, 554 N.W.2d 283 (Iowa App. 1996).

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is also relevant and material to the causation question. The weight to be given to an expert opinion is determined by the finder of fact and may be affected by the accuracy of the facts the expert relied upon as well as other surrounding circumstances. The expert opinion may be accepted or rejected, in whole or in part. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); IBP, Inc. v. Harpole, 621 N.W.2d 410 (Iowa 2001); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995). Miller v. Lauridsen Foods. Inc., 525 N.W.2d 417 (Iowa 1994). Unrebutted expert medical testimony cannot be summarily rejected. Poula v. Siouxland Wall & Ceiling. Inc., 516 N.W.2d 910 (Iowa App. 1994).

A personal injury contemplated by the workers' compensation law means an injury, the impairment of health or a disease resulting from an injury which comes about, not through the natural building up and tearing down of the human body, but because of trauma. The injury must be something that acts extraneously to the natural processes of nature and thereby impairs the health, interrupts or otherwise destroys or damages a part or all of the body. Although many injuries have a traumatic onset, there is no requirement for a special incident or an unusual occurrence. Injuries which result from cumulative trauma are compensable. Increased disability from a prior injury, even if brought about by further work, does not constitute a new injury, however. St. Luke's Hosp. v. Gray, 604 N.W.2d 646 (Iowa 2000); Ellingson v. Fleetguard, Inc., 599 N.W.2d 440 (Iowa 1999); Dunlavey v. Economy Fire and Cas. Co., 526 N.W.2d 845 (Iowa 1995); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985). An occupational disease covered by chapter 85A is specifically excluded from the definition of personal injury. Iowa Code section 85.61(4) (b); Iowa Code section 85A.8; Iowa Code section 85A.14.

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).

An employer may be liable for a sequela of an original work injury if the employee sustained a compensable injury and later sustained further disability that is a proximate result of the original injury. Mallory v. Mercy Medical Center, File No. 5029834 (Appeal February 15, 2012).

The Iowa Supreme Court held long ago that "where an accident occurs to an employee in the usual course of his employment, the employer is liable for all consequences that naturally and proximately flow from the accident." Oldham v. Scofield & Welch, 222 Iowa 764, 266 N.W. 480, 482 (1936).

A sequela can be an after effect or secondary effect of an injury. Lewis v. Dee Zee Manufacturing, File No. 797154, (Arb. September 11, 1989). One form of sequela of a work injury is an adverse effect from medical treatment for the original injury. Where treatment rendered with respect to a compensable injury itself causes further injury, the subsequent injury is also compensable. Young v. United Fire & Casualty Co., 256 Iowa 813, 129 N.W.2d 75 (1964). For example, the death of a claimant who died on the operating table during surgery for a work injury may be compensable, since the injury caused the need for surgery. Breeden v. Firestone Tire, File No. 966020, (Arb. February 27, 1992). As another example, a claimant who fell as a result of dizziness from medication he was taking to treat a work injury is to be compensated for both the original injury and the resulting fall as a sequela of the first injury. Hamilton v. Combined Ins. of America, File Nos. 854465, 877068, (Arb. February 21, 1991).

A sequela can also take the form of a secondary effect on the claimant's body stemming from the original injury. For example, where a leg injury causing shortening of the leg in turn alters the claimant's gait, causing mechanical back pain, the back condition can be found to be a sequela of the leg injury. Fridlington v. 3M, File No. 788758, (Arb. November 15, 1991).

A sequela can also take the form of a later injury that is caused by the original injury. For example, where a leg injury leads to the claimant's knee giving out in a grocery store, the resulting fall is compensable as a sequela of the leg injury. Taylor v. Oscar Mayer & Co., III Iowa Ind. Comm. Rep. 257, 258 (1982).

Having found claimant failed to prove his right shoulder, left shoulder, and neck conditions are causally related to, or sequela of, the November 13, 2017, work injury, I conclude that the aforementioned conditions are not compensable.

Mr. Tow seeks an award of permanent disability benefits. The parties stipulated that the November 13, 2017, burn injury caused permanent disability and that it should be compensated pursuant to Iowa Code section 86.34(2)(v) (2017).

Unscheduled injuries are compensated pursuant to Iowa Code section 85.34(2)(v) (2017). Iowa Code section 85.34(2)(v) provides that unscheduled injuries should be compensated based upon a 500-week schedule. However, amendments in 2017 changed the traditional industrial disability analysis in at least a couple of ways. First, industrial disability is not awarded if the claimant "returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury." Iowa Code section 85.34(2)(v) (2017).

The pertinent portion of Iowa Code section 85.34(2)(v) (2017) provides:

> If an employee who is eligible for compensation under this paragraph returns to work or is offered work for which the employee receives or would receive the same or greater salary, wages, or earnings than the employee received at the time of the injury, the employee shall be compensated based only upon the employee's functional impairment resulting from the injury, and not in relation to the employee's earning capacity.

In this case, I found that Mr. Tow did return to work for the employer and continued to work for the employer at the time of trial. He earned more per hour and more per week at the time of trial than he did on the date of injury. Therefore, I conclude that the above provision of Iowa Code section 85.34(2)(v) (2017) is applicable. Claimant's recovery is statutorily limited, at this time, to the functional impairment resulting from his injury.

I found that claimant has proven a seven percent permanent functional loss of the whole person as a result of the November 13, 2017, work injury.

Pursuant to Iowa Code section 85.34(2)(v) (2017), an unscheduled injury is compensated on a 500-week schedule. Seven percent of 500 weeks is equivalent to 35 weeks. I conclude that Mr. Tow is entitled to an award of 35 weeks of permanent partial disability benefits. Iowa Code section 85.34(2)(v).

ORDER

THEREFORE, IT IS ORDERED:

Defendants shall pay claimant thirty-five (35) weeks of permanent partial disability benefits commencing on April 17, 2019.

All weekly benefits shall be payable at the stipulated weekly rate of eight hundred fifty-nine and 12/100 dollars ($859.12) per week.

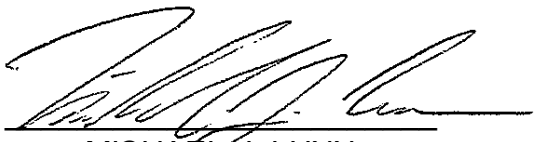
Interest shall be payable on all past-due weekly benefits at an annual rate equal to the one-year treasury constant maturity published by the federal reserve in the most

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 are entitled to the credit the parties stipulated to in the hearing report against any benefits awarded in this decision.

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 8th day of April, 2021.



MICHAEL J. LUNN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Matthew Petrzelka (via WCES)

Lori Nichol Scardina Utsinger (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.