BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

ARMINKA MARIC, Claimant, vs. CITIGROUP, INC., Employer, and INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA., Insurance Carrier, and SECOND INJURY FUND OF IOWA, Defendants.	File No. 5065677 ARBITRATION DECISION Head Notes: 1100, 1108, 1402, 1801, 1803, 1803.1, 3200

STATEMENT OF THE CASE

This is a petition in arbitration as well as a claim against the Second Injury Fund of Iowa. The contested case was initiated when claimant filed her original notice and petition with the Iowa Division of Workers' Compensation. The petition was filed on January 25, 2018. Claimant alleged she sustained a work-related injury to her right hand and wrist on December 23, 2016. Claimant also alleged she sustained a first qualifying injury to her left hand so she could receive benefits pursuant to the Second Injury Compensation Act. (Original Notice and petition)

For purposes of workers' compensation, Citigroup, Inc. is insured by Insurance Company of the State of Pennsylvania. Defendants filed their answer on February 7, 2018. They denied the occurrence of the work injury on December 23, 2016. The Second Injury Fund of Iowa filed its answer on February 5, 2018. The Fund denied claimant was owed money under the Second Injury Compensation Act. The employer filed a First Report of Injury on February 13, 2017.

The hearing administrator scheduled the case for hearing on January 8, 2019. The hearing took place at Iowa Workforce Development at 150 Des Moines Street, Des Moines, Iowa. The undersigned appointed Ms. Chris A. Quinlin as the certified shorthand reporter. She is the official custodian of the records and notes. The original transcript was filed on February 8, 2019.

Because English was not claimant's first language, an interpreter was retained by the employer and the insurance carrier. Ms. Azra Sikiric, a Bosnian interpreter, was sworn to interpret the proceedings accurately.

Claimant testified at hearing. Ms. Diana Pasalic, daughter of claimant, testified on behalf of claimant. Ms. Jill Rains, former supervisor of claimant, testified on behalf of the employer and insurance carrier. The Second Injury Fund of Iowa did not call any witnesses.

The parties offered exhibits at the commencement of the hearing. Joint exhibits 1 through 12 were admitted as evidence. Claimant offered exhibits marked 1 through 5; the employer and insurance carrier offered exhibits marked A through J; and the Second Injury Fund of Iowa offered exhibits AA, BB, and CC. All proffered exhibits were admitted as part of the formal record.

Post-hearing briefs were filed on February 8, 2019. The case was deemed fully submitted on that date.

STIPULATIONS

The parties completed the designated hearing report. The various stipulations are:

1. There was the existence of an employer-employee relationship at the time of the alleged work injury;

2. Although entitlement to temporary benefits cannot be stipulated, the parties admit claimant was off work from January 17, 2018 through May 7, 2018;

3. At the time of the alleged work injury, the parties believe the weekly rate to be $412.71 based on gross earnings of $595.11 with claimant being married and entitled to 4 exemptions;

4. Defendants have withdrawn any affirmative defenses that may have been available to them;

5. The amount of weekly benefits claimant has been paid by the employer and insurance carrier is detailed in defendants' exhibit E; and

6. If claimant prevails with her claim for workers' compensation benefits, defendants are entitled to a credit for the net amount of long and short-term disability benefits previously paid to claimant; and

7. The parties are able to agree as to the costs to litigate.

ISSUES

The following issues are relevant to the case before the undersigned:

1. Whether claimant sustained an injury on December 23, 2016 which arose out of and in the course of her employment;

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

3. Whether the alleged injury is a cause of permanent disability to the right arm;

4. If so, what is the extent of the permanency to the right upper extremity?

5. There is an issue as to the commencement date for any permanent partial disability benefits;

6. Whether claimant is entitled to the payment of medical benefits for the alleged injury to the right upper extremity;

7. Whether claimant is entitled to the cost of an independent medical examination pursuant to Iowa Code section 85.39; and

8. Whether claimant is entitled to benefits pursuant to the Second Injury Compensation Act.

FINDINGS OF FACT

This deputy, after listening to the testimony of claimant and the other two witnesses at hearing, after judging their credibility, and after reviewing the evidence, and the post-hearing briefs, makes the following findings of fact and conclusions of law:

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

Claimant is 49 years old and right-hand dominant. She is married and has two daughters. One daughter resides with claimant. The other daughter resides in Humboldt, Iowa with her spouse. Claimant's mother-in law also resides with claimant and her husband. Claimant has a long history as a cigarette smoker. She has been

counseled many times to stop using tobacco products, but it has been too difficult for her to quit.

Claimant was born and educated in Bosnia. She completed the twelfth grade and described herself as an average student. Because of the war in Bosnia, claimant and her family fled to Germany. They resided there for eight years before coming to the United States in 1998.

In February of 1998, claimant spent several months studying English as a second language. In 2014, claimant took additional classes in order to become more proficient in reading, writing and speaking English. While claimant relied on an interpreter during the arbitration proceedings, she does speak and write English. When she attended her many medical appointments, claimant conversed with her medical providers in English.

Claimant's past work experience in the United States consists of working as an assistant in a day care working with three-year-old children. She was a machine operator for Citigroup and for Wells Fargo; she worked in a mail room as a mail clerk; she worked as a general utility clerk for Allied; she worked as an accounting clerk.

Claimant returned to work at Citigroup in 2013 as a machine operator in the mail room. (Transcript, pages 17-18) She was promoted to an operations support representative 3 in 2015. (Tr., pp. 18-19) Claimant testified she had to use her hands and wrists to perform her job duties and she engaged in some data entry too. Claimant also testified she performed writing and used paper clips to secure papers in a file. (Tr., pp. 19-20)

There is a medical record for claimant dated March 5, 2015. Claimant had an appointment with Benjamin Paulson, M.D., an orthopedic surgeon at Iowa Ortho. (Jt. Ex. 7, p. 1) Claimant voiced concerns about mild right hand pain of one year in duration. The pain was occasional but included numbness, swelling, redness, and tingling. (Jt. Ex. 7, p. 1) Claimant had right long finger drainage and recurrent infections in that finger. Dr. Paulson recommended removal of the nail on the right long finger. Claimant agreed to have the procedure. (Jt. Ex. 7, p. 2)

During the beginning of claimant's direct examination, she was questioned by her attorney about a non-work-related injury claimant sustained on May 26, 2015. Claimant was attending a concert at Six Flags Event Center in Clive, Iowa. Claimant slipped on a wet floor. She landed on her left hand and thumb. Initially, claimant thought her fall was a minor incident. However, the next morning, claimant noticed swelling and she experienced pain in her left hand and particularly in the left thumb. She sought emergency care at Des Moines Methodist Emergency Department. (Jt. Ex. 4, p. 1) Clint R. Hawthorne, M.D., diagnosed claimant with a left swollen hand. (Jt. Ex. 4, p. 1) Claimant reported her left thumb was causing most of the pain. (Jt. Ex. 4, p. 2) The physician noted pain was primarily located in the first MCP joint of the left thumb. (Jt. Ex. 4, p. 2) With respect to the left hand, the medical providers noted:

> Left hand: Normal finger cascade. There is a mild amount of swelling and tenderness over the thenar eminence and the first MCP joint. There is laxity of the ulnar collateral ligament of the thumb. She has a difficult time with flexion, extension, and abduction of the thumb. The remaining hand exam is unremarkable. There is no wrist tenderness or snuffbox tenderness.

(Jt. Ex. 4, p. 3)

Radiographs of the left hand were ordered in the hospital. Joshua T. Blunck, D.O. found:

> FINDINGS:
>
> There is no fracture or dislocation. There is no unintentional retained radiodense foreign body or subcutaneous emphysema.
>
> IMPRESSION:
>
> 1. There is no fracture or dislocation. There is mild second digit soft tissue swelling. If clinical symptoms fail to improve, consider followup radiographs in 7-10 days to reevaluate for a possible occult osseous injury.

(Jt. Ex. 4, p. 4)

Claimant was provided with a final diagnosis of left Gamekeeper thumb. (Jt. Ex. 4, p. 5) Dr. Hawthorne referred claimant to Melissa D. Young-Szalay, M.D., an orthopedic surgeon at Des Moines Orthopedic Surgeons. (Jt. Ex. 4, p. 5) Claimant was provided with a left thumb spica splint before she was discharged from the hospital. (Jt. Ex. 4, p. 6)

On June 2, 2015, claimant presented to Des Moines Orthopedic Surgeons. Initially, claimant was seen by Rebecca A. Copeland, PA-C. Claimant complained of pain in the left thumb. The physical examination was performed without the spica splint. (Jt. Ex. 3, p. 2) The physician assistant noted:

> The skin is warm, dry and intact. There is no bruising or deformity appreciated. The patient does have swelling to the left thumb, mild at the thenar eminence. She has an unremarkable left thumbnail. She has full flexion and extension at the left thumb IP joint. The patient has reduced range of motion at the left thumb MCP joint with marked laxity on ulnar collateral ligament testing. There is no pain to the base of the left thumb metacarpal.

(Jt. Ex. 3, p. 2)

It was recommended claimant be placed in a thumb spica removable brace. Claimant wanted a plaster splint instead of a removable brace. (Jt. Ex. 3, p. 2)

On June 9, 2015, Dr. Young-Szalay examined claimant for the first time. (Jt. Ex. 3, p. 5) Claimant described her pain as 6 out of 10 on an analog scale with 0 equaling no pain and 10 representing the worst pain imaginable. (Jt. Ex. 3, p. 5) Claimant described her pain as throbbing and burning. (Ex. 3, p. 5) Dr. Young-Szalay assessed claimant's condition as:

> On inspection of the left thumb there is mild diffuse swelling, most significant around the MP joint. She is reproducibly tender to palpation over the MP ulnar collateral ligament. With stress the ulnar collateral ligament opens to 35 degrees with a firm endpoint, and associated pain. This is symmetric with her uninvolved right thumb. Radial collateral ligament opens to 10 degrees bilaterally with firm endpoints.

(Jt. Ex. 3, pp. 7-8)

Dr. Young-Szalay referred claimant to occupational therapy for fabrication of a "long opponens splint". Claimant was advised to wear the splint at all times unless she was bathing. (Jt. Ex. 3, p. 8)

Claimant returned to the orthopedist approximately eight weeks later. She was unhappy with her progress. (Jt. Ex. 3, p. 9) Dr. Young-Szalay found upon examination:

> Left thumb range of motion: MP 0/30 degrees, IP 0/45 degrees. She is concerned about the stiffness in the thumb.
>
> On inspection of the left thumb there is very mild swelling at the level of the MP joint. She is mildly tender over the ulnar collateral ligament, nontender over the radial collateral ligament. She is also tender directly over the MP joint. With stress the MP joint remains stable with about 25 degrees opening of the ulnar collateral ligament, 10 degrees opening of the radial collateral ligament, both symmetric with her uninvolved right thumb.
>
> Impression
>
> Left thumb MP ulnar collateral ligament sprain, objectively healing with a stable joint. However, subjectively she is still very concerned about it and feels that it is not healing.

(Jt. Ex. 3, p. 9)

The treating orthopedist referred claimant to occupational therapy for treatment every other week. Dr. Young-Szalay wanted to wean claimant out of the splint after four additional weeks. (Jt. Ex. 3, p. 9)

Claimant wanted a second opinion concerning her left thumb. She consulted with Benjamin Paulson, M.D. at Iowa Ortho. (Jt. Ex. 7, p. 3) Dr. Paulson examined claimant on November 16, 2015. (Jt. Ex. 7, p. 3) The orthopedic surgeon diagnosed claimant with "Trigger Thumb of left hand." (Jt. Ex. 7, p. 4) Dr. Paulson injected the left thumb with lidocaine and Kenalog. (Jt. Ex. 7, p. 4)

On November 1, 2016, Dr. Paulson performed a left carpal tunnel release and a LEFT UCL reconstruction due to a rupture of the ulnar collateral ligament of the left thumb. The surgeon referred claimant to occupational therapy for a splint. The occupational therapist instructed claimant on the proper use of the brace. (Jt. Ex. 7, p. 16) Dr. Paulson imposed temporary restrictions. They included no use of the left thumb; no grasping with the left hand; no pushing with the left hand; no pulling with the left hand; no pinching with the left hand; no use of vibratory machinery with the left hand; and finally, claimant was to wear her splint at all times. (Jt. Ex. 7, p. 17)

Claimant was distraught because she felt she should not be immediately returning to work at Citigroup, Inc. since she had left hand and thumb surgery. (Jt. Ex. 7, p. 18) Dr. Paulson would not remove claimant from work. He returned claimant to work but restricted her to working with her right hand only. (Jt. Ex. 7, p. 18) Dr. Paulson ordered occupational therapy for claimant on December 1, 2016. (Jt. Ex. 7, p. 20)

On December 8, 2016, claimant telephoned Dr. Paulson's office. She complained of pain in both hands and wrists. (Jt. Ex. 7, p. 22) Claimant requested an appointment for the following day. (Jt. Ex. 7, p. 22)

There was a follow up appointment on December 9, 2016. (Jt. Ex. 7, p.23) Claimant reported her symptoms were constant and unchanged. (Jt. Ex. 7, p. 23) She voiced problems with pain, numbness and tingling. (Jt. Ex. 7, p. 23) Dr. Paulson indicated in his clinical notes:

> Slowly improving after Left carpal tunnel release and Left thumb UCL reconstruction. She is quite stiff and sensitive with thumb and incisions. Unfortunately she has only gone to one therapy session so far. Encouraged to continue OT. Will wean splint. Encouraged massage and light use of thumb. Follow up in 2-3 weeks.

(J. Ex. 7, p. 24)

Dr. Paulson ordered claimant to wear the brace as needed and to refrain from using her left hand. The restrictions were listed as temporary in nature. (Jt. Ex. 7, p. 25)

The next appointment with Dr. Paulson occurred on December 22, 2016. Claimant reported her symptoms were moderate in nature and occurred randomly. The symptoms in the left thumb had improved. (Jt. Ex. 7, p. 26) **Claimant reported symptoms in the right hand too.** (Emphasis added.) (Jt. Ex. 7, p. 26) Dr. Paulson

discontinued the brace on the left wrist, continued occupational therapy and injected the right wrist due to carpal tunnel syndrome on the right. (Jt. Ex. 7, pp. 26- 27)

On January 12, 2017, claimant returned to see Dr. Paulson. (Jt. Ex. 7, p. 29) Claimant reported having only mild symptoms. The symptoms were primarily in the left thumb area. Claimant believed she was improving but reported she was being treated by her employer for right hand problems. (Jt. Ex. 7, p. 29) Dr. Paulson transitioned claimant from occupational therapy to a home exercise program. (Jt. Ex. 7, p. 30) Claimant was restricted to lifting no more than five pounds with her left hand. (Jt. Ex. 7, p. 31) Dr. Paulson instructed claimant to return in one month. However, claimant did not make another appointment with Dr. Paulson. January 12, 2017 was the final appointment claimant had with Dr. Paulson for her left thumb and hand. It was also claimant's concluding appointment for treatment of the left hand/upper extremity. (Tr., p. 57) Dr. Paulson did not provide a permanent impairment rating for the left hand/upper extremity.

During direct examination, claimant testified about the time frame when she first discovered problems with her right hand. She testified as follows:

> Q. (By Mr. Mahmutagic) And how long do you work like that before you start getting some symptoms in your right hand now?
>
> A. About a month and a half, two months.
>
> Q. And what starts happening with your right hand?
>
> A. I start feeling in my finger - - my pointy finger and thumb, it's kind of tingling and numbness, and then weakness and restless at the end of the day.
>
> Q. And anything to do with your wrist?
>
> A. With the - - Yeah.
>
> Q. In that area?
>
> A. In that area.
>
> Q. Then do you report that to somebody?
>
> A. Yes, I did report.
>
> Q. Who did you talk to?
>
> A. To my manager, Jill Rains.
>
> Q. And from looking at your records, it seems to me that then Citi offered some medical care to you; is that correct?

A. Yes.

Q. Who was the medical professional they sent you to? Do you recall a name?

A. Sara Glover.

Q. Sara Glover?

A. Glover.

Q. Okay. And do you recall her telling you anything about whether this is related to your work or not related to your work?

A. Yes, she did.

Q. What do you recall her saying?

A. It's overuse.

(Transcript, pages 24-25)

On December 29, 2016, claimant presented to Methodist Occupational Health and Wellness Center. Sara C. Glover, PA-C, examined claimant. Claimant provided a detailed history of her left hand and thumb injury as well as a description of the events post-left hand surgery. Claimant reported in relevant portion:

> She notes that since the surgery [left] nearly two months ago she has been having a gradual onset of right hand pain. She notes that the pain started approximately 2-1/2 weeks after the surgery. She notes that the pain is in her first, second, and third digits. She notes tingling in her right second and third digits, and she notes that the pain radiates from these digits up to her forearm area. She states that she saw Dr. Paulson on a followup visit for her left hand and she told him that the right hand was bothering her, so he did an injection in her right wrist and then she was recommended to wear a wrist splint on her right wrist at night. She stats [sic] that she has been wearing this wrist splint at night, but she is unable to do it during the day as she is only able to work with her right hand, and she already gets very behind with her work. She notes that her work requires a lot of office work including filing, researching, doing some data entry, and 10-key work. She notes that she has to write down a lot of information and then type it up into a system that keeps track of the information electronically. She is right-hand dominant. She notes that the pain seems to get worse at the end of the day and it feels better at the beginning of the day or with any rest. She has been taking three tabs of Ibuprofen approximately three times per day for the pain and tenderness in the area. She does not use any ice or heat on the wrist. She notes that she feels weak in the right wrist and hand. She notes that it has gotten

> even worse in the last month. She notes that the tingling in her second and third digits is constant, although it is not completely numb and she has some sensation in the area. She states that she has also noticed some swelling in her right hand at the end of the day. She describes her pain as a 9/10.

(Jt. Ex. 8, p. 1)

The physician assistant diagnosed claimant with right hand pain with paresthesias. (Jt. Ex. 8, p. 2) Ms. Glover made some recommendations for claimant to follow with respect to the right wrist. They included:

> The patient's evaluation today is consistent with the right hand pain with paresthesias that seems to be an overuse injury. The patient started having the right hand symptoms after doing her hand intensive job with primarily the right hand after her left hand surgery. She continues to have problems with functioning with her left hand, and she continues to be on restrictions for no use of her left hand per her hand surgeon. At this time, the patient needs to also have restrictions on her right hand due to the overuse, as I think that her symptoms will only get worse if she continues to only use the right hand for her hand intensive job and still do the same type of work. The patient is given a prescription for meloxicam 7.5 mg tabs to take twice daily for pain. She was also given prescription for gabapentin 300 mg tablets to take one tab before bed. She may use over-the-counter Tylenol if she needs anything additional for pain relief. The patient can do some wrist tendon glides to work on her right wrist range of motion and to help with some of the inflammation in the wrist joint. I also recommend the patient wear the right wrist brace at night and during the day. The patient can follow up in two weeks for a recheck appointment. She can return sooner if her symptoms are changing or worsening.

(Jt. Ex. 8, p. 2)

Claimant returned to Physician Assistant Glover on January 12, 2017. Claimant reported the symptoms in her right hand had improved because she had been placed on a temporary layoff. (Jt. Ex. 8, p. 3) The physician's assistant devised the following plan:

> The patient's evaluation today is consistent with the right hand pain and paresthesias. She has symptoms that could represent carpal tunnel syndrome, although they seem to be improving with rest and being off work for the last two weeks. The patient notes that her right hand feels much better and now the tingling is limited to the middle finger and it is intermittent. We discussed to work on some exercises at home for her right hand similar to what she has been doing for her left hand at physical therapy. She can continue modified duties effective 01/12/2017, and she

> is given a refill of the meloxicam 7.5 mg to take twice a day for pain. The patient can stop the gabapentin prescription as she seems to be having a lot of side effects from the medication. She should continue to use ice on the area as needed. We discussed to gradually wean out of wearing the wrist brace as tolerated unless the tingling starts to return. She can return for a followup in two weeks. I expect her symptoms to continue to improve. If the tingling persists at this time I may consider referring the patient for a nerve conduction test or EMG of the right upper extremity.

(Jt. Ex. 8, p. 3)

Several weeks later, on January 26, 2017, claimant returned to the physician assistant. (Jt. Ex. 8, p. 4) There was no significant swelling noted in the right hand. Ms. Glover found mild tenderness with palpation to the palm area of the right hand between the third and fourth metacarpal area. Claimant reported no tenderness to her digits or to the wrist. There was normal range of motion with wrist flexion and extension, as well as normal flexion and extension of all digits on the right hand. There was equal grip strength between the right and left hands. Claimant had a positive Tinel's sign with tingling and some pain into the palm area. There was a positive Tinel's sign on the left median nerve. There was a negative Tinel's sign over the right ulnar nerve. The Phalen's test was negative on the right hand. There was normal sensation with light touch over the right hand when compared to the left one. Radial pulses 2+, capillary refill less than 2 seconds. (Jt. Ex. 8, p. 4)

Ms. Glover continued to assess claimant's condition as "Right hand pain with paresthesias, overuse injury." (Jt. Ex. 8, p. 4) Ms. Glover ordered magnetic resonance imaging (MRI). Claimant was advised to continue to use the wrist brace as needed. (Jt. Ex. 8, p. 4)

Claimant underwent EMG/NCV testing on February 6, 2017. (Jt. Ex. 2, p. 1) Irving Wolfe, D.O., interpreted the testing as:

> Impression:
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> Electrophysiologic findings to support mild dysfunction of the right Median nerve at the level of the wrist consistent with right sided Carpal Tunnel Syndrome.

(Jt. Ex. 2, p. 1)

Subsequent to the EMG testing, claimant visited Ms. Glover on February 9, 2017. (Jt. Ex. 8, p.6) Ms. Glover reviewed the results of the EMG/NCV report. She concurred the results showed claimant had right carpal tunnel syndrome. (Jt. Ex. 8, p. 6) Ms. Glover referred claimant to an orthopedic hand specialist. (Jt. Ex. 8, p. 6)

On February 21, 2017, Dr. Young-Szalay conducted a physical examination of claimant's right hand. (Jt. Ex. 3, p. 13) The surgeon noted in her report for the same date:

> She has symmetric wrist range of motion, and full finger range of motion. Two-point discrimination is normal in the digits of the right hand.
>
> On inspection of the right wrist and hand there is no swelling compared to the left. She is nontender to palpation about the forearm, wrist and hand. Provocative signs are mildly positive over the carpal tunnel with mildly positive compression test, positive Tinel's sign, and equivocal Phalen's test. Thenar strength is 5/5 and there is no thenar atrophy.
>
> **EMG**
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> Electrodiagnostic studies were done on 02/06/17. Report was reviewed in detail. EMG demonstrates very borderline right median neuropathy at the wrist.
>
> **IMPRESSION**
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> Right hand pain and paresthesias, with EMG evidence of borderline carpal tunnel syndrome. I suspect that her symptoms represented an overuse scenario with associated tendonitis and secondary irritation of the median nerve. Symptoms have improved with a combination of a corticosteroid injection into the carpal tunnel and a period of rest.

(Jt. Ex. 3, pp. 15-16)

Dr. Young-Szalay ordered a gradual return to work. The orthopedic surgeon increased claimant's work schedule every week by two hours. The hand surgeon also ordered occupational therapy but did not recommend surgery. (Jt. Ex. 3, pp. 16-17)

Erika Sibley OTRL, CHT, provided occupational therapy to claimant commencing on March 13, 2017. (Jt. Ex. 1, p. 1-3) Claimant described her pain as burning pain in the right index finger, dorsal hand and palm near thenar. Claimant used such descriptive phrases as "burning pain and tingling." (Jt. Ex. 1, p. 1) Claimant expressed concerns about waking up in the night with the right hand feeling "hot". Then claimant reported she had to place ice on it. (Jt. Ex. 1, p. 1) Ms. Sibley assessed claimant's condition as:

> **Assessment:**
>
> Symptoms are more dorsally located today, than when patient saw Dr. Young. Patient did confirm that when she saw Dr. Young that she had more pain through her palm. Today pain is reported dorsal right wrist,

dorsal 2nd and 3rd metacarpals and minimal pain through palm near thenar.

Short Term Goals	Status	Type	Achieved
Patient to tolerate postural correction exercises to be able to complete Computer work/mousing at work by 04/10/2017.	In Progress	STG	
Patient to be able to perform initial HEP independently by 03/20/2017.	In Progress	STG	

Long Term Goals	Status	Type	Achieved
Patient to have reduced right wrist pain to be able to complete computer work/mousing at work by 04/24/2017.	In Progress	LTG	

Plan:

The frequency recommended is 2 times per week for 6 weeks.

(Jt. Ex. 1, p. 2)

Claimant returned to occupational therapy on March 31, 2017. She made the following report of symptoms to her therapist:

Subjective:

I don't know why are both of my hands swelling at night? Both of the [sic] swell and get tight. They get really hot and a burning pain. They change color. I have to use ice to keep them from burning. Both of my hands do it. I tried wearing my splint at work and I cannot use it very easily. I can't write and grip anything with the splint. I am already slow with typing so I don't think I can wear a splint at work and have it slow me down even more.

(Jt. Ex. 1, p. 6)

The occupational therapist made the following observations:

Objective:

Patient with radial wrist and dorsal right hand pain. Muscle knotting through forearm extensors continues to be present. Improving with STM. Reviewed radial n [sic] glide with patient. Doorway stretch tol [sic] with some discomfort, VC to not over stretch. VC for correct form. TB exercises performed today. VC for correct form. Pt quick to fatigue.

(Jt. Ex. 1, p. 6)

The occupational therapist intended for claimant to be able to keyboard and use the computer mouse at work effective April 10, 2017. (Jt. Ex. 1, p. 6) Ms. Sibley opined claimant needed occupational therapy two times per week for her bilateral upper extremities. (Jt. Ex. 1 p. 6)

Claimant returned to physical therapy on April 3, 2017. (Jt. Ex. 1, p. 8) Ms. Sibley assessed claimant's condition as:

Assessment: Pt has ongoing right radial wrist and hand symptoms that increase with work tasks. Handwriting, pinching, grasping increase right UE symptoms.

(Jt. Ex. 1, p. 8)

On April 19, 2017, the occupational therapist attempted to discharge claimant from therapy. (Jt. Ex. 1, pp. 10-11) However, Dr. Young extended the therapy because claimant had been overusing her right hand after left hand surgery. (Jt. Ex. 1, p. 12)

On May 17, 2017, the occupational therapist noted a moderate amount of edema in the right hand. (Jt. Ex. 1, p. 12) There was full range of motion of the right wrist and fingers. (Jt. Ex. 1, p. 12) Claimant reported her symptoms increased with work tasks. (Jt. Ex. 1, p. 13) The occupational therapist noted the mechanism of injury was "work/occupational." (Jt. Ex. 1, p. 14)

According to the records submitted at hearing, claimant received occupational therapy on the following dates: May 19, 2017, May 31, 2017, June 13, 2017, June 15, 2017, June 22, 2017, July 6, 2017, July 19, 2017, August 2, 2017, January 30, 2018, February 26, 2018, March 1, 2018, March 6, 2018, March 20, 2018, March 27, 2018, April 10, 2018, April 25, 2018, April 26, 2018, and, April 30, 2018.

On August 23, 2017, an opinion relative to claimant's right hand/upper extremity was sought from Dr. Young-Szalay. The hand surgeon opined in part:

At that last evaluation she [claimant] continued to have complaints of pain in the upper extremity but her subjective complaints were out of proportion

> to objective findings. At that point I referred her back to occupational medicine. Apparently she saw someone in the occupational medicine clinic on August 8, 2017 who also released her from care and placed her at maximum medical improvement.
>
> ....
>
> Upon review of her records, I would place her at maximum medical as of August 7, 2017. Final impairment rating, as calculated by the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, is 0% of the right upper extremity. I do not anticipate that she would need any further active treatment other than her ergonomic workstation.

(Jt. Ex. 3, p. 28)

Dr. Young-Szalay did not impose any permanent work restrictions. Claimant was released to full duty. (Jt. Ex. 3, p. 27)

Citigroup, Inc. and its insurance carrier, Insurance Co. of the State of Pennsylvania, requested an independent medical examination related to claimant's complaints of right upper extremity pain. (Jt. Ex. 12, p. 1) Timothy P. Fowler, M.D., Clinical Assistant Professor of Orthopedics and Rehabilitation at the University of Iowa Hospitals and Clinics, was selected to provide the examination. The examination occurred on October 20, 2017. Claimant reported to Dr. Fowler:

> She believes that her right hand symptoms started because her left hand was immobilized. She states that she was doing all her work activities with her right hand.

(Jt. Ex. 12, p. 1)

Dr. Fowler diagnosed claimant's conditions and the cause of those conditions. The doctor opined:

> Assessment/Diagnosis:
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> 1. Right hand and upper limb pain, not otherwise specified and not related to workplace exposure
>
> History and physical examination does not demonstrate evidence of any ligamentous abnormality, tendon dysfunction, or neurological abnormality. The cause of her somewhat diffuse and generalized pain is unclear to me. I would recommend symptomatic management.
>
> 2. Mild right carpal tunnel syndrome, not related to workplace exposure

Available medical evidence argues against office type work as a material causative factor in the development of carpal tunnel syndrome. Also, medical evidence does not suggest that carpal tunnel syndrome is likely to develop when the contralateral limb is immobilized after a surgical procedure or injury

3. History of left thumb ulnar collateral ligament reconstruction at the metacarpophalangeal joint and left carpal tunnel release

Specific Interrogatives:

1. Diagnosis: These are listed above

2. Causation: As noted above, I do not believe that any of the diagnoses are secondary to workplace exposure. The rationale is explained above. Office work is not regarded as a material causative factor in the development of carpal tunnel syndrome. Within a reasonable degree of medical probability, carpal tunnel syndrome does not tend to develop after one hand is temporarily immobilized after surgical intervention or an injury

3. I agree with the maximal medical improvement date of August 7, 2017

4. I agree with the other opinions that a full duty release with no restrictions as appropriate

5. In my opinion no permanent partial disability rating is appropriate

(Jt. Ex. 12, p. 4)

It is noted, any occupational sessions from January 30, 2018 through April 30, 2018 and as listed above, were at the specific direction of Eugene Cherny, M.D. (Jt. Ex. 1 p. 28) Claimant's personal care physician referred claimant to Dr. Cherny. He diagnosed claimant with carpal tunnel syndrome of the right wrist and De Quervain's disease (tenosynovitis). (Jt. Ex. 1, p. 28) Positive electrodiagnostic studies on December 28, 2017 confirmed the hand surgeon's diagnoses. (Jt. Ex. 6, p. 2) Dr. Cherny performed a right first dorsal compartmental release and right open carpal tunnel release on January 17, 2018. (Jt. Ex. 6, p. 3)

In a follow-up appointment with Dr. Cherny on March 8, 2018, claimant complained of pain and numbness along the radial side of the right wrist and the dorsum of the thumb. There was edema at the right wrist too. Claimant was limited by "continued pain, hypersensitivity and weakness." (Jt. Ex. 6, p. 4)

On March 12, 2018, Dr. Cherny released claimant to work no more than four hours per day. (Jt. Ex. 6, p. 5) On April 12, 2018, Dr. Cherny injected the radial aspect of the right wrist. The purpose of the injection was to reduce pain and the thickness of scar tissue. (Jt. Ex. 6, p. 6) Claimant indicated she experienced only minimal results. (Jt. Ex. 6, p. 7)

Claimant's final examination with Dr. Cherny occurred on June 14, 2018. The hand surgeon reviewed a June 7, 2018 electrodiagnostic study performed by Dr. Wolfe. The results showed a normal EMG/NCV study. There were no findings to support neuropathy, plexopathy, radiculopathy, or myopathy involving the right upper extremity. (Jt. Ex. 6, p. 8) Dr. Cherny noted claimant was gradually improving. The surgeon recommended therapy on an as-needed basis. Dr. Cherny also suggested a referral to a neurologist for an assessment of ongoing symptoms. (Jt. Ex. 6, p. 8) No referral occurred.

Claimant sought an independent medical examination pursuant to Iowa Code section 85.34 from Richard L. Kreiter, M.D. The evaluation occurred on September 11, 2018. (Ex. 4, p. 1) Dr. Kreiter conducted a physical examination of both the right and left upper extremities. The evaluating physician noted:

> **PHYSICAL EXAMINATION:** On examination, she is 5 feet 3 inches, weighs 175 pounds, very pleasant female but seems to protect her right hand considerably. She has a mild round-shouldered positive. Her cervical range of motion is completely normal. Shoulders show full range of motion, excellent strength. Elbows show full flexion, extension, pronation and supination. She has minimal to negative Tinel's with percussion of the median nerve at the left wrist. On the right hand, she does have a positive Tinel's but has significant tenderness over the entire radial aspect of the wrist extending to the dorsum of the thumb. This is significantly hypersensitive and she has great difficulty making grip strength. She has very mild decreased sensation in the median distribution on the right and basically negative on the left. Her reflexes are somewhat hypoactive but intact. Grip strength on the right, her dominant hand, 10 Kg and on the left, nondominant hand, 22 Kg.
>
> **IMPRESSION:**
>
> 1) Status post 1st dorsal compartment release of the right wrist for tenosynovitis and impingement with probable radial nerve compromise of both superficial branch and dorsal branch to the right hand and wrist.
>
> 2) Status post right carpal tunnel release, doing well.
>
> 3) Reconstruction of the left thumb ulnar collateral ligament and carpal tunnel release of the left, doing well.

(Ex. 4, pp. 4-5)

It is important to note; Dr. Kreiter did not provide an impairment rating for the non-work-related left hand/upper extremity. (Ex. 4, pp. 1-5)

In her answer to Interrogatory Number 7, claimant stated the following with respect to the symptoms she had in the left hand:

> Left hand I still have pain in my middle and ring finger. I mentioned it to Dr. Young and Dr. Paulson and I was told this is normal to have pain and it takes time to heal.

(Exhibit AA, page 2)

In her deposition, claimant testified she had pain in the palm of her left hand. The pain extended into her ring finger and her middle finger. Her thumb hurt when she bent it. She encountered problems with her thumb when she bent it. Finally, she had problems with her grip on the left. (Ex. J, pp. 20-21)

In his formal report to claimant's attorney, Dr. Kreiter opined the following with respect to the left upper extremity:

> 1) Left upper extremity condition includes reconstruction of the ulnar collateral ligament of the thumb with mild instability, no grip strength loss. Left carpal tunnel release with good result with only occasional paresthesias and no significant pain.
>
> 2) Non-work related restrictions on the left would be to avoid repetitive heavy grasping or torque to limit stress to the left thumb collateral ligament reconstruction.
>
> 3) Ms. Maric's grip strength is in the normal range based on the AMA Guide, this being 22 Kg in the minor left hand for the age of 40 to 49. This is normal for her. The sensory condition following the left carpal tunnel release has been satisfactory.

(Ex. 4, p. 1)

With respect to the right hand, Dr. Kreiter opined in his formal opinion:

> 1) My diagnosis of the right upper extremity injury and surgical outcome is neuroma or injury entrapment with marked hypersensitivity of the superficial branch of the right radial nerve and radial digital branch following release of the 1st dorsal compartment for stenosing tenosynovitis. Right carpal tunnel release with satisfactory outcome.
>
> 2) Ms. Maric was released to right-handed duty only after the left thumb reconstruction. The overuse on the right aggravated a pre-existing asymptomatic median nerve with tenosynovitis both in the carpal canal wrist level and leading to the De Quervain's with increasing synovitis in the 1st dorsal compartment. Surgery was performed with a good outcome at the carpal tunnel area but unfortunately it seems that there has been aggravation of the superficial branch of the radial nerve and now that is most significant. I agree partially with Dr. Fowler at the University of Iowa since the 5th Edition of the AMA Guide to Disease and Injury Causation

states that keyboard activities usually are not related to the median nerve entrapment. The right-handed work only, however, doing highly repetitive activity and some forceful led to the aggravation of the pre-existing median nerve condition. She had a carpal tunnel release on the minor left hand and had good outcome there. She had similar condition on the right with good outcome of the carpal tunnel release but not with release of the 1st dorsal compartment.

3) Restrictions on the right hand are self-limited by the hypersensitivity of the nerve. Forceful repetitive work using the right hand seems to flare-up the nerve pain. This needs to be addressed through a second opinion at the University of Iowa or Mayo Clinic, seeing there a hand specialist. This is not an ordinary situation and difficult to treat. I do not agree with Dr. Cherny that the pain will subside over time.

4) There is impairment in the right hand with pain compromising grip strength. It is difficult to rate pain. I would use the 5th Edition of the AMA Guide, looking at grip strength weakness caused by pain to the thumb and radial wrist and hand area. Looking at page 509, table 16-32, major hand in a female age 40 to 49, is a 49 Kg grip strength and Ms. Maric's was 10 Kg. The reduction in the compromised obviously by the pain generated when she makes a fist. From table 16-34, upper extremity due to loss of grip strength, this would be 78% strength loss index or 30% upper extremity impairment. From page 439, table 16-33, 30% upper extremity impairment equals an 18% whole person impairment.

5) Ms. Maric has reached her MMI in regard to her right upper extremity about three months ago.

6) Release of the 1st dorsal compartment is treated conservatively by many hand surgeons in fear of a radial nerve injury which seems to have occurred.

(Ex. 4, pp. 1-2)

In her answer to Interrogatory Number 7, claimant testified about the symptoms in her right hand. She wrote: "As for my right hand it depends on my work load if I have to do a lot of typing or writing, then I feel pain plus swelling and tingling. I have to take pain medicine almost every day." (Ex. AA, p. 2)

During her deposition, claimant testified she still had symptoms in her right hand. (Ex. J, pp. 36-37) Claimant testified the specific symptoms were:

A. I have tingling pain and tingling in my thumb going forward down in the bottom of my palm. My index and my middle finger got burning, tingling

> and numbness right here, and then sometimes shooting pain goes right to here. Then it shoots here and then here.
>
> Q. So it kind of shoots from like your underneath side of your forearm towards your thumb?
>
> A. Towards my thumb, yeah.

(Ex. J, pp. 38-39)

Claimant testified at hearing she still encountered symptoms in her right hand. (Tr., pp. 28-29) She indicated as her day progressed, her right hand symptoms increased. (Tr., pp. 28-29) At times, she was forced to rely on her daughter to finish various household chores. Claimant explained she experienced difficulties sleeping due to pain in the right hand. (Tr., pp. 32-33)

After Dr. Kreiter issued his formal independent medical opinion, a copy of the opinion was forwarded to Dr. Fowler at the University of Iowa for his review and comment. Dr. Fowler also reviewed Dr. Cherny's records. On November 14, 2018, Dr. Fowler issued a subsequent report pursuant to a request from defense counsel. Dr. Fowler expressly disagreed with the opinions espoused by Dr. Cherny and Dr. Kreiter. The report provided in relevant part:

> Review of Dr. Cherny's records indicate that Ms. Arminka [sic] underwent surgical intervention on her right upper limb 1/17/18. This procedure consisted of neuroplasties of median and ulnar nerves at wrist and a release of the 1st dorsal compartment. When I saw and evaluated Ms. Maric on 10/20/17, she had no symptoms, exam findings, or electrodiagnostic findings to suggest a diagnosis of ulna neuropathy at wrist, and had no physical exam findings to indicate a diagnosis of tenosynovitis of her first dorsal compartment. She did have symptoms and electrodiagnostic evidence of median neuropathy at wrist, and so I noted a diagnosis of carpal tunnel syndrome (CTS). My opinion at that time was that her diagnosis of CTS was not related to workplace exposure. After review of these additional documents, my opinion has not changed. Available, published medical studies support this opinion that the problems at the right hand were not caused by decreased capacity of use of the left hand. Consequently, it is my opinion that the surgery on her wrist was not related to, nor the result of, workplace exposure at a bank.
>
> On my evaluation of Ms. Maric on 10/20/17, I tested and recorded grip and pinch strength using a Jamar dynamometer. I recorded readings in pounds (not kilograms). Dynamometers typically have 5 settings (I-V), and strength should distribute a bell-shaped curve. In my exam, grip strength was assessed at settings I, III, and V. I then tested "rapid alternating" during which the examinee is asked to quickly grab and

> squeeze the dynamometer. Rapid alternating is likely the most accurate way to assess grip strength with full effort. In customary reporting, the strength of one hand should always be assessed in comparison to the contralateral hand. On rapid alternating testing, Ms. Maric consistently generated 65-70 lbs. of strength on both hands. This indicates no reduced or compromised grip strength on either side. Pinch strength testing similarly revealed equality of left and right. Dr. Kreiter reports a 78% loss of grip strength from his exam of Ms. Maric. Unclear is the setting at which this was tested at, and if the other side was tested. He references a normal/expected grip strength of 49Kg. 49Kg is equal to 108 lbs., and I would opine that few people can generate that amount of grip strength. Clarification is needed for appropriate interpretation of this exam data. In any case, if Ms. Maric's strength was impaired on 9/11/18, it was likely the result of the surgical procedure she underwent on 1/17/18 and not workplace exposure.

(Jt. Ex. 12, pp. 6-7)

CONCLUSIONS OF LAW AND RATIONALE

A wrist injury is an injury to the arm, not the hand. Holstein Elec. V. Breyfogle, 756 N.W.2d 812, 813 (Iowa 2008). The first issue to address is whether claimant's right hand condition arose out of and in the course of her employment.

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).

When the injury develops gradually over time, the cumulative injury rule applies. The date of injury for cumulative injury purposes is the date on which the disability manifests. Manifestation is best characterized as that date on which both the fact of injury and the causal relationship of the injury to the claimant's employment would be plainly apparent to a reasonable person. The date of manifestation inherently is a fact based determination. The fact-finder is entitled to substantial latitude in making this determination and may consider a variety of factors, none of which is necessarily dispositive in establishing a manifestation date. Among others, the factors may include missing work when the condition prevents performing the job, or receiving significant medical care for the condition. For time limitation purposes, the discovery rule then becomes pertinent so the statute of limitations does not begin to run until the employee, as a reasonable person, knows or should know, that the cumulative injury condition is serious enough to have a permanent, adverse impact on his or her employment. Herrera v. IBP, Inc., 633 N.W.2d 284 (Iowa 2001); Oscar Mayer Foods Corp. v. Tasler, 483 N.W.2d 824 (Iowa 1992); McKeever Custom Cabinets v. Smith, 379 N.W.2d 368 (Iowa 1985).

Nurse Practitioner Glover, Dr. Yung-Szalay, Occupational Therapist Sibley, Dr. Cherny, and Dr. Kreiter, all opined claimant had an overuse syndrome as a result of her using only her right hand at work. However, out of the aforementioned, only Dr. Kreiter held the opinion the right hand/upper extremity condition resulted in a permanent impairment. The remainder of the medical providers opined the condition was temporary in nature. Dr. Fowler held the right hand/upper extremity condition was unrelated to claimant's employment at Citigroup, Inc. Dr. Fowler opined claimant's conditions were not secondary to workplace exposure. (Jt. Ex. 12, p.4)

After reviewing all of the medical records in their entirety, it is the conclusion of this deputy; claimant sustained a temporary condition to her right upper extremity as a result of her cumulative injury on December 23, 2016.

The next issue to determine is whether claimant is entitled to temporary total disability benefits. Claimant is requesting benefits for the period from January 17, 2018

through May 7, 2018. The period equates to 15 weeks and 5 days. Defendants Citigroup, Inc., and its insurance carrier, Insurance Company of the State of Pennsylvania, admitted claimant was off work for the period in question. However, the same defendants denied liability for the same time frame.

Defendants did not pay benefits pursuant to Iowa Code section 85.33(1). However, according to the hearing report, the parties stipulated defendants paid claimant short-term and long-term disability benefits for the period claimant was off work due to her right hand/upper extremity injury. The parties also stipulated, if workers' compensation benefits were awarded, defendants would be entitled to a credit against any weekly workers' compensation benefits for the net amount paid as short and long-term disability benefits as provided in Iowa Code section 85.38(2)(b).

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. Iowa Code section 85.33(1).

Prior to the hearing date, defendant employer and its insurance carrier, paid unto claimant, weekly indemnity benefits for the period from January 4, 2017 to March 2, 2017. (Ex. E., p. 7, and Ex. E., p. 8) The benefits were paid at the stipulated weekly rate of $412.71 per week. Defendants also paid temporary partial disability benefits for the periods:

March 2, 2017 until March 9, 2017	$291.58
March 9, 2017 until March 16, 2017	$185.46
March 16, 2017 until March 23, 2017	$58.12

The total amount of temporary benefits paid equals $3,999.11 plus interest in the amount of $2.47. Later, defendants denied liability for the right hand/upper extremity. (Ex. E., p. 7 and Ex. F., p. 8) Defendants Citigroup, Inc., and its insurance carrier, Insurance Company of the State of Pennsylvania, shall take credit for all benefits paid prior to the date of the hearing.

Claimant is entitled to additional temporary total disability benefits and possibly some temporary partial disability benefits commencing on March 12, 2018. On January 17, 2018, Dr. Cherny performed surgery on claimant's right upper extremity. (Jt. Ex. 11, p.1) Per the recommendations of Dr. Cherny, claimant remained off work through May 7, 2018. During the period claimant was off work, she participated in occupational therapy at Athletico Physical Therapy. Effective March 12, 2018, Dr. Cherny released claimant to work no more than four hours per day. Nevertheless, as of April 12, 2018,

Dr. Cherny noted claimant was off work. She was not anticipated to work for at least three more weeks. (Jt. Ex. 6, p.6)

Effective June 14, 2018, there was evidence, both subjective and objective, to support the conclusion; the surgery did improve claimant's condition. (Jt. Ex. 6, p. 8) Claimant reported a decrease in the pain she experienced in her right hand. (Jt. Ex. 6, p. 8) Additionally, claimant had electrodiagnostic tests conducted on June 7, 2018. The EMG/NCV test results were normal. Consequently, the surgical procedures performed on January 17, 2018 did improve claimant's condition. Temporary benefits are warranted in this case.

Therefore, it is the determination of the undersigned; defendants shall pay unto claimant, temporary total disability benefits for the period from January 17, 2018 through May 7, 2018. This is a period of 15 weeks and 5 days. Said benefits shall be paid at the rate of $412.71 per week. Defendants shall take credit for the net amount of any short or long-term disability benefits paid to claimant during the same time frame.

Defendants shall pay accrued weekly benefits in a lump sum together with interest. 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. April 24, 2018).

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

Defendants denied liability for the right hand/upper extremity condition after Ms. Glover, the physician's assistant, and Dr. Young Szalay released claimant from their care. Both medical providers declined additional care even though claimant was symptomatic. As a result, claimant pursued care on her own. She sought care from her personal care physician who referred claimant to Dr. Cherny, the hand surgeon. Dr. Cherny performed surgery as discussed earlier in this decision. The care was reasonable, given the symptoms. Claimant's condition improved following the surgery. While the end result was not perfect, there was evidence to support improvement following the surgery. Defendants are liable for the medical expenses causally related to treat the right hand/upper extremity. Defendants are also liable for any transportation costs incurred to travel to and from those medical appointments. Claimant detailed the medical expenses in her exhibit 5, pages 1 through 21.

Claimant is requesting the cost of the independent medical examination. Dr. Kreiter performed the independent medical exam on September 11, 2018. The cost was $1,000.00. Previously, Dr. Fowler had conducted an independent medical examination on October 20, 2017. Dr. Fowler's examination was conducted pursuant to a request from the employer and insurance carrier. Dr. Fowler opined claimant's condition was not work related and **there was no permanent partial disability**. (Emphasis added.)

Section 85.39 permits an employee to be reimbursed for a 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.

It is the determination of the undersigned, claimant followed the procedures detailed in Iowa Code section 85.39. Therefore, she is entitled to the cost of the independent medical examination in the amount of $1,000.00.

The next issue for resolution is the matter of benefits pursuant to the Second Injury Compensation Act. Iowa Code section 85.64.

Section 85.64 governs Second Injury Fund liability. Before liability of the Fund is triggered, three requirements must be met. First, the employee must have lost or lost the use of a hand, arm, foot, leg, or eye. Second, the employee must sustain a loss or loss of use of another specified member or organ through a compensable injury. Third, permanent disability must exist as to both the initial injury and the second injury.

The Second Injury Fund Act exists to encourage the hiring of handicapped persons by making a current employer responsible only for the amount of disability related to an injury occurring while that employer employed the handicapped individual as if the individual had had no preexisting disability. See Anderson v. Second Injury Fund, 262 N.W.2d 789 (Iowa 1978); 15 Iowa Practice, Workers' Compensation, Lawyer, Section 17:1, p. 211 (2014-2015).

The Fund is responsible for the industrial disability present after the second injury that exceeds the disability attributable to the first and second injuries. Section 85.64. Second Injury Fund of Iowa v. Braden, 459 N.W.2d 467 (Iowa 1990); Second Injury Fund v. Neelans, 436 N.W.2d 355 (Iowa 1989); Second Injury Fund v. Mich. Coal Co., 274 N.W.2d 300 (Iowa 1970).

In the present case, claimant does not qualify for benefits from the Second Injury Fund. This deputy will not address whether the first injury was a qualifying injury. It is sufficient to know; claimant did not prove she sustained a qualifying second injury.

Claimant did not prove she sustained a permanent loss or permanent loss of use of a specified hand, arm, foot, leg, or eye. The undersigned has previously discussed why she did not find any permanent disability in the right hand/upper extremity. It is unnecessary to duplicate the same arguments. The arguments are detailed in aforementioned paragraphs. Claimant takes nothing in the form of benefits from the Second Injury Fund of Iowa.

The final issue to address is the matter of costs. Rule 876 of the Iowa Administrative Code 4.33 governs costs that may be taxed by the Iowa Workers' Compensation Commissioner. Claimant is requesting the $100.00 filing fee. It is a taxable cost. Defendants Citigroup, Inc. and Insurance company of the State of Pennsylvania are liable for the $100.00 filing fee.

ORDER

THEREFORE, IT IS ORDERED:

Claimant takes nothing from the Second Injury Fund of Iowa.

Defendants Citigroup, Inc., and its insurance carrier, Insurance Company of the State of Pennsylvania, shall pay unto claimant, temporary total disability benefits for the period from January 17, 2018 through May 7, 2018, and said benefits shall be paid at the rate of four hundred twelve and 71/100 dollars ($412.71) per week.

Defendants Citigroup, Inc., and its insurance carrier, Insurance Company of the State of Pennsylvania, shall take credit for the net amount of any short or long-term disability benefits paid to claimant during the same time frame.

Defendants Citigroup, Inc., and its insurance carrier, Insurance Company of the State of Pennsylvania, shall pay accrued weekly benefits in a lump sum together with interest as detailed in the body of the decision.

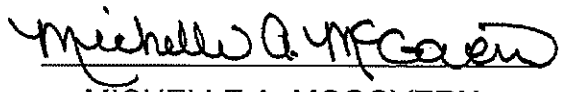
Defendants Citigroup, Inc. and its insurance carrier, Insurance Company of the State of Pennsylvania, shall pay all causally related medical expenses and travel expenses, to treat the right hand/upper extremity.

Defendants Citigroup, Inc., and its insurance carrier, Insurance Company of the State of Pennsylvania, shall pay the cost of the independent medical examination in the amount of one thousand and 00/100 dollars ($1,000.00).

Defendants Citigroup, Inc., and its insurance carrier, Insurance Company of the State of Pennsylvania, shall pay the cost of the filing fee in the amount of one hundred and 00/100 dollars ($100.00).

Defendants Citigroup, Inc., and its insurance carrier, Insurance Company of the State of Pennsylvania, shall file all reports as required by law

Signed and filed this 21st day of January, 2020.



MICHELLE A. MCGOVERN
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Aaron Oliver (via WCES)
Adnan Mahmutagic (via WCES)
Meredith Cooney (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.