

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

JAMES L. FINN,

Claimant,

vs.

QUALITY MANUFACTURING
CORPORATION,

Employer,

and

EMCASCO INSURANCE COMPANY,

Insurance Carrier,
Defendants.

File No. 5068016

A R B I T R A T I O N

D E C I S I O N

Headnotes: 1100, 1801, 1803,
1803.1, 1802, 3000, 2401**STATEMENT OF THE CASE**

Claimant, James Finn, has filed a petition for arbitration seeking workers' compensation benefits against Quality Manufacturing Corporation, employer, and EMCASCO Insurance Company, insurer, both as defendants.

In accordance with agency scheduling procedures and pursuant to the Order of the Commissioner in the matter of the Coronavirus/COVID-19 Impact on Hearings, the hearing was held on August 26, 2020, via Court Call. The case was considered fully submitted on September 16, 2020, upon the simultaneous filing of briefs.

The record consists of Joint Exhibits 1-5, Claimant's Exhibits 1-10, Defendants' Exhibits A-J, and the testimony of claimant.

ISSUES

1. Whether claimant sustained an injury arising out of in the course of his employment on January 29, 2018;
2. Whether claimant is entitled to temporary disability or healing period benefits from March 21, 2018 to March 25, 2018 and October 31, 2018 to December 19, 2018;
3. Whether the claimant sustained a scheduled member or industrial disability;

4. The commencement date for permanent partial disability benefits, if any are awarded;
5. The benefit rate;
6. Whether claimant failed to give timely notice;
7. Whether claimant is entitled to reimbursement of medical expenses in Claimant's Exhibits 8 and 9;
8. Whether claimant is entitled to reimbursement of independent medical examination (IME) under Iowa Code section 85.39;
9. Whether claimant is entitled to further medical care as recommended by Charles Wenzel, D.O.;
10. Disability under Iowa Code section 85.34(2)(u), (2)(n) (2)(w);
11. The assessment of costs.

STIPULATIONS

The parties agree that at the time of the alleged injury, claimant was an employee of the defendant employer. While the defendants will not stipulate that the claimant sustained an injury which gave rise to entitlement to temporary disability benefits, they will agree the claimant was off work from March 21, 2018 to March 25, 2018 and then again from October 31, 2018 to December 19, 2018.

At the time of the alleged injury, claimant was single and entitled to one exemption.

There is a dispute over the entitlement to medical benefits, but the defendants will agree that in reference to the dispute of medical expenses, the treatment was reasonable and necessary.

There are no credits in dispute. Parties agree that the cost for which the claimant claims reimbursement have been paid.

FINDINGS OF FACT

Claimant, James Finn, was a 55-year-old person at the time of the hearing. His educational background includes a high school diploma and a course in computerized numerical control machining. Since graduating high school and completing his course and CNC machining, claimant has worked almost exclusively as a CNC machinist for various manufacturers before beginning his employment with defendant employer on January 3, 2017.

Prior to his employment with defendant employer, claimant underwent a pre-employment physical on December 21, 2016. During this physical, claimant disclosed he had pain and numbness and tingling in his wrist, hand and elbow and knee pain. (JE 1:3) He was deemed medically qualified to perform the essential functions of the job. (JE 1:1) Part of his essential tasks were to swing a two-pound¹ hammer an estimated 1200-1500 times per shift and repeatedly lift up to 40 pounds. His employment ended on July 27, 2018. (DE E:2) After his termination, claimant found employment with Acro as a CNC machinist in June 2019. He is making more for the new employer than he made for defendant employer at \$23.00 per hour as opposed to \$18.25 per hour, which he was earning prior to injury. He is working for the new employer without accommodations. He testified that his shoulder pain does not inhibit his ability to perform the essential functions of his current position although he performs work with pain and discomfort.

On March 13, 2017, claimant established care with Eric Donels, D.O. (JE 2:1) He presented with complaints of peripheral neuropathy from the knees distally and the bilateral elbows distally. (JE 2:1) Per the claimant, the problem had been ongoing for years but had worsened over the past several years. (JE 2:1) During the examination, he exhibited full range of motion of all extremities with no joint swelling, and gait and stance were normal. (JE 2:2) Because of the pain in the right lateral epicondyle, an injection was offered and administered. (JE 2:2) The neuropathy was to be worked up with TSH, vitamin B12 and additional studies. (JE 2:3) Dr. Donels' initial thought was that the neuropathy was secondary to alcoholism and claimant was encouraged to stop smoking and drinking. (JE 2:3)

On March 16, 2017, an ultrasound of the right upper extremity was performed. (JE 2:4) The impression was of a simple lipoma over the posterior aspect of the left shoulder. (JE 2:4) Dr. Donels arranged for a stress test for the ongoing left chest and shoulder pain as well as a colonoscopy. He further recommended excision of the lipoma. (JE 2:9) The excision took place on July 14, 2017. (JE 2:12)

Claimant returned to Dr. Donels on July 24, 2017, for suture removal of the incision site from the recent lipoma excision. Claimant reported no issues with the excision but did request another cortisone injection in the elbow which Dr. Donels administered. (JE 2:13-14)

Claimant returned to Dr. Donels' office on December 11, 2017 with complaints of the left knee popping, bilateral shoulder pain, chronic insomnia and anxiety complaints and right elbow pain. (JE 2:15) Examination of the musculoskeletal system revealed full range of motion of all extremities and a normal gait and stance. (JE 2:17)

Injection was administered and claimant was prescribed lorazepam as he requested, as well as baclofen. (JE 2:17)

¹ In the letter drafted to Dr. Donels, the hammer is described as twenty pounds. (CE 1:1)

The follow up visit on January 29, 2018, claimant presented with complaints of chronic joint pain, anxiety, and insomnia. The pain was in the shoulders and left knee but the elbow pain was largely resolved with the injection. (JE 2:18) Claimant took daily anti-inflammatories and muscle relaxers without much relief. (JE 2:18) He used the alprazolam at night to sleep. (JE 2:18) Dr. Donels opined that the joint pain was due to overuse from the job and ordered MRIs to address the ongoing shoulder pain. (JE 2:20)

On February 6, 2018, claimant underwent an MRI for the left knee. (JE 2:21) It showed a degenerative tear of the medial meniscus, most prominent involving the body, posterior horn and posterior right; mild to moderate suspected secondary osteoarthritic changes involving the medial tibial femoral compartment; PCL changes most likely related to a chronic sprain or old partial tear; a small Baker cysts; and two intra-articular loose bodies. (JE 2:22) The MRI of the left shoulder revealed mild distal supraspinatus, infraspinatus, and subscapularis tendinosis with trace areas of borderline fluid signal along distal supraspinatus insertional fibers which may reflect some minimal rim-vent tearing. No full-thickness tears or tendon retraction. Mild fluid signal subacromial subdeltoid bursa which may have reflected an element of bursitis. (JE 2:23) There were also signs of a SLAP tear with extension to the posterior superior labrum and mild acromioclavicular arthrosis. (JE 2:24) The right shoulder MRI impressions included a large superior labral tear, mild supraspinatus and infraspinatus tendinitis, a tiny rim-vent tear along the distal articular surface of the infraspinatus tendon, moderate degeneration of the acromioclavicular joint, mild chondromalacia of the glenohumeral joint and mild subdeltoid and subacromial bursitis. (JE 2:26)

Claimant was referred to DMOS where he was seen by Wesley Smidt, M.D. (JE 3:1-3) Examination revealed some pain with right lateral bending and right rotation, full range of motion in the shoulder, and a palpable mass posterior to the trapezius and superior to the scapula. (JE 3:2) Claimant reported a history of left knee pain for approximately a year, pain in the shoulder since the removal of the lipoma a year ago, and pain in the upper arm toward the elbow. (JE 3:1) Dr. Smidt diagnosed claimant with a medial meniscus tear in the left knee and recommended surgery. (JE 3:2) For the shoulder, Dr. Smidt was unclear whether the symptoms were from the area where the lipoma was removed or from cervical spine pathology. He requested an MRI of the lipoma area. (JE 3:3)

Dr. Donels administered a left shoulder injection on March 5, 2018, and awaited further guidance from orthopedics. (JE 2:29) He noted that claimant's right shoulder and right elbow pain were "all new" since starting the current job that required him to do repetitive and high impact movements each day. (JE 2:27)

On the same day, claimant reported to his employer that he injured his right shoulder in his job where he continuously pounded on parts and opened and closed "jaws." (CE 4:1) In a later recorded statement given by the claimant on June 1, 2018, claimant mentioned only the right shoulder. (CE 5:3) He described having immediate pain upon starting his employment and that while he originally thought it was the lipoma, the pain continued even after the lipoma was removed. (CE 5:3)

Claimant underwent surgery on the left knee on March 21, 2018. (JE 4:1-2)

On April 20, 2018, claimant presented to Dr. Donels for a routine physical examination. His main pain complaints were associated with the bilateral elbow pain. (JE 2:31) Dr. Donels administered a steroid injection on the left and right. (JE 2:34)

He returned for follow up with Dr. Smidt on May 1, 2018. (JE 3:5) At that time, claimant's left knee was healing well with no complaints but the shoulder still pained him. Dr. Smidt again requested the MRI of the lipoma region. (JE 3:5)

On or about May 30, 2018, claimant presented to UnityPoint Health for right shoulder pain. (Join Exhibit 1:6) He was seen by Sara C Glover, PA-C, the medical examiner who signed off on the pre-employment physical. (JE 1:8) The history given by claimant included work for one and a half years, approximately 60 hours per week, performing a physically demanding job. (JE 1:6) Claimant noted that he started to have pain in the right shoulder when he worked the mill job, which required a lot of lifting and pounding with mallets. On examination, there was moderate swelling over the right upper thoracic to posterior scapular area over the trapezius muscle. (JE 1:7) PA Glover noted that it felt like a recurrent lipoma. (JE 1:7) He had slight decrease in strength with shoulder flexion and extension against resistance on the right compared to the left but otherwise the range of motion tests were normal.

PA Glover opined that "based on the patient's report of his recurrent use of the mallet over the 4-month period, this is a possible cause of a labral tear and I suspect that he had some pre-existing degenerative labral faying that may have worsened with this job." (JE 1:8) Glover went on to write that "work relatedness can also not be determined as the patient did not report this to his work at that time and he only reported the injury a year later after the labral tear was found on the MRI." (JE 1:8)

After receiving medical records from Dr. Wesley Smidt, PA Glover concluded that the current pain and symptoms in the right shoulder "were not likely work related." (JE 1:9) PA Glover was not sure whether the right shoulder labral tear on his MRI occurred during his position while working at the mill, whether it happened prior to claimant's current employment, or whether it was a degenerative tear. Regardless, the conclusion was that the current symptomatology was unrelated to claimant's work. (JE 1:9)

With the chronic pains continuing, claimant sought out treatment from Dr. Donels again on July 30, 2018. (JE 2:35) Injections were repeated in the right elbow and the right shoulder. (JE 2:37) He also recommended that claimant be switched to four 10-hour work shifts to better manage his pain. (JE 2:37)

A week later, claimant followed up for treatment on his left shoulder and elbow. (JE 2:38) Dr. Donels administered injections and recommended a repeat MRI of the left shoulder. (JE 2:40)

Claimant was released to return to work after these injections. (JE 2:37) He inquired about a forty-hour work week and, coincidentally, terminated. Defendants maintain that claimant was dismissed for no shows, failure to call in and report absence,

and repeated unexcused absences. Claimant argues that the poor attendance was pre-textual, as he had poor attendance prior to his work injury and was given raises instead of termination. See e.g. DE F1-6

Claimant returned to Dr. Smidt on October 2, 2018, after the MRI of the shoulder was finally completed. It showed extensive tearing of the labrum and AC joint degenerative changes. Since claimant had not responded to conservative treatment such as injection, time or therapy, Dr. Smidt agreed that surgery was an appropriate course. (JE 3:6)

On October 8, 2018, claimant returned to Dr. Donels requesting repeat injections in the right elbow and right shoulder. (JE 2:42) The injections were administered and claimant was advised to quit smoking and lose weight. His prescription for Remeron to treat claimant's chronic insomnia was renewed as well. (JE 2:44)

On October 24, 2018, claimant returned to the Iowa Clinic for a pre surgery evaluation. (JE 2:45) His EKG was normal and claimant was cleared for the arthroscopy. (JE 2:47) Dr. Donels also injected claimant in the right lateral upper condyle and referred claimant to surgery for management of the large lipoma on the right shoulder. (JE 2:48) Surgery for the right shoulder took place on October 31, 2018, and claimant was then referred to physical therapy. (JE 4:3, 3:7)

During the initial post-surgery assessment, the surgery appeared to be successful. Claimant was active and could easily lift his arm overhead. (JE 3:8) During physical therapy, claimant made incremental progress to the point that he was only limited in the IR motion and was otherwise pain-free with exercises except for mild pain in the scaption. (JE 5:15) On December 12, 2018, claimant reported to the physical therapist that he could do anything but had pain in the muscle of his upper arm. (JE 5:16)

On December 18, 2018, Dr. Smidt released claimant from care to return on an as-needed basis. (JE 3:9) In his last physical therapy appointment, it was noted that claimant's range of motion was functional and that he had mild limitations in the IR and strength deficits. (JE 5:19)

Claimant returned to Dr. Donels on April 23, 2019, for repeat injection therapy for his bilateral shoulders and elbows. (JE 2:52)

The medical opinions in this case are varied. Dr. Donels, claimant's treating physician, opined the following:

Mr. Finn's ongoing joint pain, including, but not limited to, the pain in his bilateral shoulders, right elbow and left knee, was directly caused by or worsened, accelerated, aggravated, or lit up as a result of Mr. Finn's repetitive work activities. The manifestation date, or the date Mr. Finn knew or should have known his pain was related to his work activities, is January 29, 2018. Prior to that time, Mr. Finn thought his right shoulder pain was related to the lipoma you surgically removed on July 14, 2017. It

wasn't until January 29, 2018 that you concluded and told Mr. Finn that his ongoing problems were likely related to his work activities. The treatment rendered to Mr. Finn after that date was reasonable necessary and related to the work injury, including the left knee and right shoulder arthroscopic surgeries.

(CE 1:2)

The surgeon who performed claimant's left knee and right shoulder arthroscopy, arthroscopic decompression, arthroscopic subacromial decompression, arthroscopic distal clavicle excision and open biceps tenodesis signed an expert witness opinion letter authored by the defendants agreeing that the shoulder symptoms were not consistent with labral pathology but rather located in the claimant's lipoma and cervical spine. (DE A:2)

J. Joe Hawk, M.D., an occupational medicine expert, performed an IME on July 16, 2020. (Ex. B) Dr. Hawk opined claimant's lipoma condition was not related to his employment but rather a genetic condition. (Ex. B:3) It was his opinion that the MRI results showed signs of degeneration and "not likely related to his work." (Ex. B:3) Additionally, the bilateral epicondylitis was "at best" a temporary aggravation due to claimant's work with no resulting restrictions and that his current condition, regardless of causation, would result in a zero percent impairment. (Ex. B:4) Claimant had no range of motion deficits in either shoulder or elbow and his only range of motion impediment was a 4% lack of extension which did not qualify for an impairment. (Ex. B:4) As for the biceps deformity, Dr. Hawk shared that while the claimant's biceps muscle has migrated, it does not adversely affect his strength or mobility. (Ex. B:4) Dr. Hawk recommended that claimant be evaluated for an autoimmune condition, as 20% of chronic hepatitis C patients have multiple arthralgias that can be read as rheumatoid arthritis. (Ex. B:4)

Dr. Wenzel performed an IME of the claimant and opined that the right shoulder and right elbow pain originating in January 2017 were the result of repetitive work activities in a mill position and the left shoulder/elbow pain arose out of claimant's work at the lathe position. The knee was aggravated by repetitive work conditions. (CE 2:17-18) Dr. Wenzel pointed out that if the claimant's shoulder pain was not associated with the shoulder problems, the labral debridement and subacromial decompression would not have been consistent with labral pathology. (CE 2:18) Dr. Wenzel documented claimant's current symptomatology as 1-2 out of 10 constant burning in the right shoulder, biceps, elbow that increases to 4 or 5 on a 10-scale with work. (CE 2:13) Surgery did help alleviate pain and increased range of motion and that he can work full time and full duty. (CE 2:13)

Dr. Wenzel concluded that the lipoma was unrelated to work but that the remainder of the claimant's complaints were work related. (CE 2:18) He agreed that no permanent restrictions were appropriate but recommended that claimant receive more treatment for his elbow and right shoulder. (CE 2:21) For impairment, Dr. Wenzel assigned the following:

2% Upper extremity for left shoulder

5% Upper extremity for right shoulder

2% upper extremity for the right elbow

1% lower extremity for the left knee

(CE 2:24) There was no impairment rating for the left elbow.

CONCLUSIONS OF LAW

Claimant alleges that he sustained cumulative bilateral shoulder and elbow injuries along with aggravation of his left knee arising out of his work. Defendants argue that the injuries are not work related and if they are work related, claimant failed to give proper notice.

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

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

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

The question of causal connection is essentially within the domain of expert testimony. The expert medical evidence must be considered with all other evidence introduced bearing on the causal connection between the injury and the disability. Supportive lay testimony may be used to buttress the expert testimony and, therefore, is

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

Because claimant's claims are premised on a cumulative injury rather than a specific traumatic incident, the manifestation date of the cumulative injuries must be determined.

Iowa Code section 85.23 requires an employee to give notice of the occurrence of an injury to the employer within 90 days from the date of the occurrence, unless the employer has actual knowledge of the occurrence of the injury.

The purpose of the 90-day notice or actual knowledge requirement is to give the employer an opportunity to timely investigate the facts surrounding the injury. The actual knowledge alternative to notice is met when the employer, as a reasonably conscientious manager, is alerted to the possibility of a potential compensation claim through information which makes the employer aware that the injury occurred and that it may be work related. Dillinger v. City of Sioux City, 368 N.W.2d 176 (Iowa 1985); Robinson v. Department of Transp., 296 N.W.2d 809 (Iowa 1980).

Failure to give notice is an affirmative defense which the employer must prove by a preponderance of the evidence. DeLong v. Highway Commission, 229 Iowa 700, 295 N.W. 91 (1940).

On January 29, 2018, claimant was seen by his regular care provider, Dr. Donels. During that appointment he was informed that "most of his joint pain is due to overuse from his job."

On March 5, 2018, Dr. Donels noted that the right shoulder and right elbow pain were "new" since starting his current job that had required him to perform repetitive and high impact movements each day. (JE 2:27) On April 20, 2018, Dr. Donels authored a letter stating that "over the past year, [claimant] has been complaining to me about multiple upper extremity pains that are consistent with overuse; likely from repetitive nature of activity that he performs in his work in manual labor." (JE 2:30) Prior to that, Dr. Donels had theorized that claimant's pain was neuropathy was secondary to alcoholism and claimant was encouraged to stop smoking and drinking. (JE 2:3)

Claimant reported his right shoulder injury on March 5, 2018. (CE 3:1, 4:1) There is no mention of the bilateral elbow, left shoulder, or knee pain. Claimant argues that he is not a doctor or lawyer and was unaware that he needed to explicitly detail every injury he suffered. Claimant also argues that the purpose of the notice requirement is to alert

employers to the possibility of a claim so that an investigation can be made. Dillinger v. Sioux City, 368 N.W.2d 176, 180 (Iowa 1985). However, the statute and the court's interpretation of the statute does place the burden of notice on the defendants. Failure to give proper notice results in a bar of the claim.

During a phone call with defendant insurer, claimant repeated that his only affected body area was his right shoulder. (CE 5:3)

According to the reasoning and application of the law in Nordstrud v. Snap-On Logistics Co., File No. 5061935 (May 30, 2019) and Stiles v. Annett Holdings, Inc. File No. 5064673 (November 15, 2019), the claimant was plainly aware that his joint pain was related to the work he was performing. Thus, it was from January 29, 2018, that the ninety-day notice period began for claimant's joint pain including but not limited to his bilateral shoulders and elbows. For his knee condition, claimant underwent surgery by Dr. Smidt on March 21, 2018. Even the most generous reading of the facts would attribute the manifestation date for any knee pain as March 21, 2018.

The law does not state that claimant is only required to give notice of one injury, but of each occurrence of an injury unless the employer has actual knowledge of the occurrence of the injury. Claimant does not argue defendant employer had actual knowledge of the injury but that the defendant employer knew or should have known of all of the joint complaints and possible other cumulative injuries claimant may have suffered arising out of his work injury. During the investigation process, claimant gave a recorded statement on June 1, 2018, and repeated that it was his right shoulder injury that was affected. He had had the right knee surgery and multiple injections to his bilateral elbows and shoulders by this time as well as MRIs. He did not report this to the employer in 2018.

Thus, it is determined that defendants' affirmative defense of lack of notice bars any recovery for claimant's injuries except for the right shoulder.

Defendants argue that the claimant has not carried his burden of proof on the issue of causation. As noted previously, there are varying opinions in this case. Dr. Smidt, an orthopaedic surgeon, opined by way of a document prepared by the defendants that claimant's right shoulder issues were not work related but instead associated with cervical issues. Dr. Hawk prepared a multi-page report based on a review of the medical records and his own examination of the claimant and concluded similar to Dr. Smidt that the tears were degenerative rather than from cumulative work duties. PA Glover agreed, writing that the shoulder issues were not likely work related.

Contrary opinions come from Dr. Donels, claimant's regular physician, and Dr. Wenzel, an occupational medicine expert. Dr. Donels signed a letter of opinions written by claimant's counsel re-affirming his contemporaneous medical notes that the claimant's repetitive work caused his joint pain and lit up his underlying arthritic condition. Dr. Wenzel did a full examination and authored a twenty-six page report. Dr. Wenzel opined that if the shoulder pain stemmed from the cervical spine, as Dr. Smidt suggested, the surgical debridement of the shoulder seemed to lack a medical purpose.

While shoulder pain and the need for shoulder surgery can stem from cervical issues, the lack of clarity on this issue from Dr. Smidt does make his opinion less helpful.

If this was a cumulative injury as opined by Dr. Donels and Dr. Wenzel, the claimant's assertion that his pain started upon the first day of his employment seems difficult to reconcile. Complicating Dr. Wenzel's opinion is that it appears to be based on the assertion that claimant repetitively lifted and pounded a 20-pound hammer. The 20-pound weight could have been a scrivener's error in the letter prepared by claimant's counsel, but it was also included in claimant's answers to interrogatories. (Ex. D:2)

Claimant argues that the weight is not relevant and that the act of repetitive jarring labor is the cause of the injury, however; to disregard the basis of the expert opinion which did include the weight of the hammer would not be responsible. On the whole, defendants' expert opinions are more reliable because they are based on more accurate information (Dr. Hawk) and personal experience (Dr. Smidt).

Claimant is a hard worker, as evidenced by his return to work post the injury; however, it is the claimant's burden to prove the causal link and the greater weight of the evidence does not support a finding in claimant's favor.

It is determined that claimant has not met his burden to prove his work resulted in a right shoulder injury necessitating surgery and resulting in an alleged permanent impairment. Because of this, the remaining issues are moot.

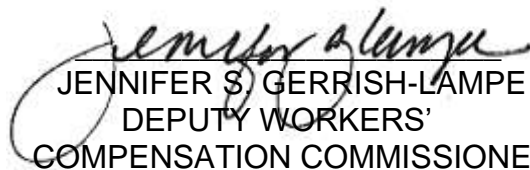
ORDER

THEREFORE, it is ordered:

Claimant shall take nothing.

Each party shall pay their own costs.

Signed and filed this 30th day of November, 2020.


JENNIFER S. GERRISH-LAMPE
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served as follows:

Jordan Christensen (via WCES)

Jenna Green (via WCES)

David Scieszinski (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.